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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 29th April, 2019

+ CRL.M.C. 4436/2016

KANWAL KISHORE

..... Petitioner

Through: Mr.G.K.Chauhan, Advocate,
alongwith petitioner in person.

versus

DR SEEMA

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner and the respondent were married to each other on 09.03.1998. From out of their cohabitation two daughters took birth, the first named Kiran born on 25.03.1999 and the other named Rishika born on 15.10.2004. The parties had some differences, the respondent (wife) accusing the petitioner (the husband) of certain acts of commission and omission statedly constituting cruelty and domestic violence. It appears that the petitioner also had his own set of grievances against the respondent wife, he accusing her of subjecting him to cruelty.
2. Against the above backdrop, the respondent wife filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 (D.V. Act) bearing C.C.No.2005/1/07 which was decided by the Metropolitan Magistrate by judgment dated 26.07.2010.

3. It appears both the petitioner and the respondent have been gainfully employed, the petitioner having served Indian Army in the rank of Lieutenant Colonel from which post he took premature retirement w.e.f. 22.06.2004, he having eventually joined private employment (with certain private companies, final employer being M/s.Wipro). The respondent, on the other hand, concededly has been engaged as a lecturer earning her livelihood. It is primarily on the basis of evidence to this effect that the Metropolitan Magistrate, by her decision dated 26.07.2010, concluded that consolidated income of the petitioner at the relevant point of time was Rs.70,000/- per month, this inclusive of pension then found to be Rs.16,385/- per month, the balance being the earnings from private employment. Taking note of the fact that respondent wife has been an earning hand, the Metropolitan Magistrate granted Rs.10,000/- each per month as maintenance allowance for the two minor daughters besides Rs.10,000/- per month towards household expenses.
4. The petitioner subsequently, claiming to have lost his private job, moved an application (CC No. 610/1/12) seeking modification of the aforesaid order dated 26.07.2010 (wrongly referred to as order dated 26.06.2010 instead of 26.07.2010). But upon consideration of the said application, and the reply filed thereto by the opposite party, the Metropolitan Magistrate was not satisfied. She dismissed the application for modification observing, *inter alia*, that it was not believable that

an able-bodied person would choose to sit idle for no reason. The said order was challenged in the Court of Sessions by Criminal Appeal No. 54317/2016, which was dismissed by order dated 15.10.2016 by District and Sessions Judge. The petitioner thereafter approached this Court by the petition in hand under Section 482 Cr.P.C., 1973 assailing the abovementioned order of the Metropolitan Magistrate and the Sessions Judge in appeal.

5. The respondent wife had submitted on 10.09.2018 that she did not want to engage any counsel to assist her and would rather make her submissions on her own, she being competent and capable to do so. By order dated 23.01.2019, the parties were referred to the process of mediation through Delhi High Mediation and Conciliation Centre but the said exercise remained “non starter”, this being indicated by report dated 12.03.2019. The parties were also directed by order dated 23.01.2019 to disclose on affidavit details of their earnings from all sources and assets in the nature of bank accounts, investments etc. and the Income Tax Returns for the last past seven years with copies of documents in support.
6. Both sides have filed their affidavits. But, it appears each party has chosen to file the documents selectively. The petitioner, it be noted, though affirming that he does not have any income except the pension, now concedes that, upon acceptance of the recommendations for “one rank one pension” (OROP) by the Government *vis-a-vis* personnel retiring from the Armed

Forces, he is now in receipt of pension the gross amount accruing to him, at the time of filing of affidavit being Rs.54,000/-, it having since risen to about Rs.55,000/- on account of increased dearness allowance.

7. Though the respondent insists that the petitioner is still continuing to be in some private employment in Mumbai referring to proof showing his presence in Mumbai during the period 2016-17 on account of certain withdrawals from his bank account, she concedes that her income from the job of lecturer is now approximately Rs.60,000/- per month.
8. The Metropolitan Magistrate while considering the prayer in modification of the maintenance order did not give the opportunity to the parties to adduce formal evidence. The manner in which the contentions of the petitioner were short shifted was not a correct approach. He is on oath to say that he does not have any income other than pension on account of his past service with the Armed Forces. The wife insists that he has income additionally from private employment but submits she does not have the resources to muster proof in that regard. This stand is unacceptable. Since it is she who asserts that he continues to be in a private job, it is her obligation to prove the same by positive evidence.
9. In the facts and circumstances, the impugned order dated 20.05.2016 of the Metropolitan Magistrate and dated 15.10.2016 of the District and Sessions Judge in appeal are hereby set aside. The applications of the petitioner for

modification of the earlier order of maintenance granted on 26.07.2010 are revived for appropriate inquiry in which the petitioner, and the respondent, will be called upon to adduce formal evidence as to the changed circumstances. The Metropolitan Magistrate will thereafter decide the said applications for modifications taking into account the evidence led before the said court.

10. Meanwhile, taking into account the admitted increase in the income of the respondent wife and, *prima facie*, reduction of the income of petitioner husband, the order dated 26.07.2010 is temporarily and partially modified so as to reduce the liability to pay only amount of Rs.10,000/- each in favour of two daughters, such modification taking effect from the current month (i.e. April, 2019 onwards), it being subject to the final adjudication on the contentions rendered in the applications of the petitioner hereby remitted for inquiry.
11. The parties are directed to appear before the concerned Metropolitan Magistrate for further proceedings in accordance with law on 16.05.2019.
12. The petition is disposed of in above terms. The trial Court record be sent back.

R.K.GAUBA, J

APRIL 29, 2019/mr