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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 06.08.2019

+ CRL.REV.P. 609/2017 & CrI. M.A. 13333/2017, 48489/2018

RAVINDER KUMAR

..... Petitioner

versus

ASHA & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. P.K. Bhardwaj, Adv. with petitioner in person.

For the Respondent : Ms. Richa Dhawan, Adv. (DHCLSC) with respondent in person

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 31.08.2016 whereby maintenance has been granted to the respondents.

2. Learned counsel for the petitioner submits that the trial court while hearing final arguments, by order dated 28.07.2016, directed the parties to file income affidavits in terms of the judgment in FAO No. 369/1996 dated 14.01.2015 titled '*Kusum Sharma Vs. Mahender Kumar Sharma*' along with documents.

3. Learned counsel submits that the detailed income, assets and

expenditure affidavits were filed by the parties on 09.08.2016. He submits that thereafter the trial court without giving any opportunity to parties to prove the affidavits and an opportunity to the opposite party to cross-examine each other on their respective affidavits, continued to hearing final arguments and pronounced the impugned judgment.

4. Learned counsel for the petitioner submits that there were several disclosures made in the affidavit filed by the respondent which contradicted her earlier testimony and as such an opportunity to cross-examine on her income and expenditure affidavit was very much necessary.

5. Learned counsel for the respondent submits that the trial court has only awarded maintenance on minimum wage and even in the affidavit of income and expenditure filed by the petitioner there were several contradictions from the stand before the trial court. She submits that even to the respondents an opportunity to cross-examine the petitioner and confronting him with his affidavit was not granted.

6. Learned counsel for the parties submit that an opportunity be granted to the parties to cross-examine each other based on income and expenditure affidavits filed by them.

7. Petitioner who is present in Court in person undertakes that pending reconsideration by the trial court, he shall pay the ad-interim maintenance as awarded by the impugned order dated 31.08.2016 for

the child @ 100% and for the mother @ 50%. He submits that this would be without prejudice to the rights of the parties.

8. The petitioner further undertakes that the entire arrears of maintenance, if any, calculated on the above basis, shall be paid to the respondents within a period of three months from today.

9. The undertaking is accepted.

10. In view of the above, the impugned order dated 31.08.2016 is set aside to the limited extent. The matter is remitted back to the trial court to grant an opportunity to both - petitioner as well as respondents to cross-examine the respondents and petitioner respectively with regard to their income and expenditure affidavit filed in terms of order dated 28.07.2016.

11. List before the trial court on 07.09.2019, on which date the parties shall file their respective calculation sheets in terms of this order.

12. In view of the above, the petitioner shall pay 100% of the maintenance amount awarded by the trial court i.e. for the daughter and @ 50% for the mother as awarded by the trial court i.e. 100% and 50% respectively of Rs. 1075/- p.m., Rs. 1297/- p.m., Rs. 1445/- p.m., Rs. 1599/- p.m., Rs. 1738/- p.m., Rs. 1846/- p.m. and Rs. 1937/- p.m. for the years from 13.09.2010 to 2016 respectively and @ Rs. 1937/- p.m. onwards.

13. It is directed that an opportunity to the petitioner to cross-examine the respondent shall be granted only if the petitioner clears the entire arrears in terms of this order. In case the petitioner fails to clear the arrears, within three months, no further opportunity shall be granted, however, the respondent shall be granted an opportunity to cross-examine the petitioner, irrespective.

14. It is clarified that this court has neither considered nor commented on the merits of the case of with party. All rights and contentions of parties are reserved.

15. Trial court shall endeavour to conclude the proceedings and decide afresh within a period of six months from today.

16. The petition is disposed of with the aforesaid directions.

17. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 06, 2019
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