

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

Date of Order: February 11, 2019

+ **CRL.M.C. 3052/2017 & CRL.M.A. 12652/2017**

SWATI KAUSHIK

.....Petitioner

Through: Mr. Jatin Sehgal, Mr. Adhirath
Singh and Ms. Raymon Singh,
Advocates

versus

ASHWANI SHARMA

.....Respondent

Through: Mr. Laksh Khanna,
Advocate with Respondent
in person.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

In proceedings under the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as 'PWDV Act'*), trial court vide order of 2nd March, 2017, has dismissed petitioner's application for striking off respondent's defence by observing that non-payment of maintenance/arrears of maintenance cannot be a ground to do so.

Appellate Court vide impugned order of 14th July, 2017, has rightly observed that the defence can be struck down in proceedings under the aforesaid Act, as counsel for respondent

had submitted that respondent is in arrears of ₹9,00,000/- approximately till the passing of the impugned order. Appellate Court in the impugned order has evolved equitable solution, which is as under :

“Appellant has also filed Contempt Petition bearing No. 474/16 against the respondent, which is stated to be pending before the Hon’ble High Court and in the said petition, vide order dated 21.12.2016, the Hon’ble High Court has directed the employer of the respondent to deduct Rs. 50,000/- from the respondent’s salary every month and pay directly to the appellant i.e. respondent’s wife. The current monthly maintenance amount is Rs. 25,000/- per month and therefore balance Rs. 25,000/- received by the appellant would automatically be towards the clearance of the arrears of maintenance. Since by the orders of the Hon’ble High Court, appellant has been receiving Rs. 50,000/- from the respondent’s salary every month, and the arrears would be recovered over some period of time, in my view, it would not be appropriate to strike off the defence of the appellant.”

Learned counsel for petitioner-wife submits that the arrangement worked out by the Appellate Court, as reflected in paragraph no. 12 of the impugned order, is in respect of the undertaking given by respondent-husband on 30th June, 2015 for payment of 50% of arrears of interim maintenance and handing over the car to petitioner-wife. It is next submitted that this

arrangement has not been made to operate during the pendency of the proceedings under the Protection of Women from Domestic Violence Act, 2005. It is further submitted that respondent is in arrears of ₹12,50,000/- and even if this arrangement, as reflected in paragraph no. 12 of the impugned order, is made to work, still, it will take a long time to recover the arrears of maintenance and so, it is a fit case to strike off the defence of respondent because he is a chronic defaulter.

On the contrary, learned counsel for respondent supports the impugned orders and draws the attention of this Court to trial court's order of 30th November, 2018 to point out that despite repeated opportunities granted by the trial court, petitioner is not coming forward to give evidence and it is strongly refuted that respondent is in arrears to ₹12,50,000/-. It is submitted that respondent has already paid a sum of ₹11,20,000/- towards the arrears of maintenance. Learned counsel for respondent further submits that after passing of the impugned order, respondent-husband has been paying varying amount as per his capacity. Respondent's counsel has handed over a copy of respondent's pay slips of August, 2018 and September, 2018 and a copy of his bank account statement.

Upon hearing and on perusal of impugned orders, material on record and the division bench decision in *Smt. Santosh Sehgal vs. Shri Murari Lal Sehgal* AIR 2007 Delhi 210, I find that as per respondent's own showing, he was in arrears of maintenance to the tune of ₹9,00,000/- (approx) in July, 2017. The stand of respondent that he is paying maintenance from time to time as per his capacity cannot be appreciated, as the salary slip of respondent reveals that he is making substantial deduction towards EPF and under other heads and that he is getting gross salary of about ₹1,00,000/- per month.

During the course of hearing, it was put to respondent's counsel that the compliance of maintenance order can be made by directing his employer to deduct ₹50,000/- per month from respondent's salary and out of it ₹25,000/- can be adjusted towards current monthly amount of maintenance and remaining ₹25,000/- would be adjusted towards the arrears of maintenance. Respondent is present in the Court with his counsel but this is not acceptable to him. A division bench of this court in *Smt. Santosh Sehgal vs. Shri Murari Lal Sehgal* AIR 2007 Delhi 210, while dealing with a similar situation has opined that disobedience of Court's order can be taken into account as a

ground to strike off of the defence and no hyper technical approach is to be adopted in such matters.

In the instant case, I find that failure of respondent-husband to clear the arrears of maintenance in terms of paragraph no. 12 of the impugned order, justifies striking off the defence of respondent. Consequentially, petitioner's application for striking off respondent's defence is hereby allowed by striking off his defence.

This petition and the application are accordingly disposed of.

FEBRUARY 11, 2019

v

**(SUNIL GAUR)
JUDGE**