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

+ **CRL.M.C. 1568/2020 & CRL.M.A. 9217/2020**

NINA CHATTERJEE RAY ...Petitioner

Through: Mr. Gaurav Gupta, Mr. Swastik
Dalai, Mr. Robin Singh, Advs. with
petitioner.

versus

GOURAV RAY Respondent

Through: Mr. Mukesh Vatsa, Ms. Mahak
Rathee, Advs. with respondent.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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28.07.2020

Vide the present petition, the prayer made by the petitioner are to the effect:

“A. Issue appropriate orders and direction, under Sections 482 read with 483 of the Criminal Procedure Code, to the Ld. Metropolitan Magistrate, Saket Court for restoration/revival of the earlier application under Section 12 of the DV Act bearing No. CC No. 615916/2016, filed by the Petitioner, along with the Petitioner's Application for interim maintenance filed along with the Complaint, which was disposed of vide order dated 20.04.2017 by the Ld. Trial Court;

B. Direct the Respondent to forthwith file his income Affidavit 1 Statement before the Court of the Ld. M.M. in accordance with law',

C. Direct the Ld. M.M. to decide the Petitioner's Application for Interim Maintenance expeditiously;

D. Revoke the custody of the child, which till now was with the Respondent and hand him over to the Petitioner;

E. Direct the Respondent to return the amount of Rs. 68,31,221/-, taken by the Respondent from the Petitioner's father, along with

simple interest at 18% per annum, from the date of transfer of such amount to the Respondent, till the time of actual realization of the amounts.

F. Pass any other order and/or direction, as this Hon'ble Court may deem fit proper under the facts and circumstances of the present case and in the interest of Justice.”

Vide order dated 20.04.2017, the application under Section 12 of the PWDV Act was disposed of in view of the settlement arrived at between the parties thereto qua the present petitioner and the respondent vide a settlement deed dated 19.04.2017 sworn on 20.04.2017 before the Notary Public, Saket which is indicated to have been exhibited as Ex.C/1 before the learned trial Court and statement of the complainant in relation to seeking the withdrawal of CC No.615916/2016 was also recorded.

Through the submissions that have been made on behalf of the petitioner through the petition it is submitted that there has been a breach of the conditions dated 19.04.2017 specifically qua clause 5 thereof in relation to the stay of the minor child born of the wedlock between the petitioner and the respondent. The petitioner is indicated thus to have filed an application seeking revival of the PWDV application before the learned trial Court and the learned trial Court is indicated to have been seized of the said proceedings. As rightly submitted on behalf of the respondent as of date the application seeking the restoration of the complaint filed by the petitioner is still pending before the learned trial Court. It is submitted on behalf of the petitioner that in view of the pendency of the said application, qua which submission on the aspect of non-maintainability thereof has also been made on behalf of the respondent, the petitioner is grossly aggrieved by the breach of the conditions of the settlement, pursuant to which, she had withdrawn

the CC No.615916/2016.

A submission has been made on behalf of the respondent by learned counsel that there has equally been a breach of the compromise Ex.C/1 on behalf of the petitioner who is not coming forth for the filing of the petition under Section 13B (2) of the HMA to seek the grant of a decree of divorce through mutual consent, qua which learned counsel for the petitioner submits that the same is because the respondent has not been forthcoming in letting the minor child of the parties visit the petitioner, which it is submitted by the learned counsel for the petitioner is against the desire of the child as well.

On a consideration of the submissions that have been made on behalf of either side, it is apparent that presently in as much as the application seeking restoration of CC No.615916/2016 is pending before the learned trial Court, the directions as sought by the petitioner herein cannot be so granted presently.

However, in the interest of justice, the learned trial Court seized of CC No.615916/2016 is directed to take up the proceedings of the said matter expeditiously despite the factum that presently the physical functioning of the Courts is not in operation and that the proceedings be thus taken up through video conferencing, to which, the petitioner and the respondent herein represented by the counsel have no objection. The learned trial Court shall dispose of the application filed by the petitioner seeking restoration of CC No.615916/2016 within a period of 45 days from today.

Furthermore, in the interest of justice, in as much as apparently there appears to be misgivings between either side which do not appear to be irreconcilable, it is considered appropriate that an opportunity is given to

either side to explore the possibilities of a settlement further in relation to the settlement dated 19.04.2017 Ex.C/1 mentioned in the order dated 20.04.2017 vide which CC No.615916/2016 was indicated to have been disposed of in view of the settlement deed dated 19.04.2017 sworn on 20.04.2017 arrived at between the parties.

In view thereof, the petitioner and the respondent are directed to join the proceedings before the Delhi High Court Mediation and Conciliation Centre through VC on 05.08.2020 with the request to the Co-ordinator of the Delhi High Court Mediation and Conciliation Centre Ms. Veena Ralli to conduct the mediation herself.

Copy of this order be sent to the District & Sessions Judge, South-East to ensure compliance of the directions hereinabove and copy of this order be also sent to the learned trial Court for compliance. Copy of this order be also sent to the Delhi High Court Mediation and Conciliation Centre.

The petition is disposed of.

ANU MALHOTRA, J

JULY 28, 2020

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