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

Date of decision: 06.01.2020

+ CRL.REV.P. 884/2017 & CrI.M.A. 19330/2017

AJAY DIKA

..... Petitioner

Through: Mr.H.K. Shekhar, Adv.

versus

SHALU & ANR

..... Respondents

Through: Adv. (appearance not given)

.CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby to set aside the impugned judgment dated 15.05.2017 passed by Principal Judge, Family Court, Central Distt., Tis Hazari Courts in MT No.5861924/2016 whereby the learned Judge allowed the petition of the respondents and awarded the maintenance of Rs.10,000/- p.m. to respondent no.1 and Rs.5,000/- p.m. to respondent no.2 from the date of filing of the petition.
2. The brief facts of the case are that the respondents have filed a petition U/s 125 Cr.P.C. against the petitioner and the petitioner filed the written statement and argued the matter on the point of interim maintenance.

Accordingly, the Trial Court was pleased to award the maintenance of Rs.2,000/- p.m. to Respondent no.1 and Rs.1,000/- p.m. to Respondent no. 2 vide order dated 13.04.2011. Respondent no.1 had filed a petition u/s 12/17/18/19/20/ 22/23 of the Protection of Women from Domestic Violence Act against petitioner and his father Sh. Sunder Singh Dika and both the petitions were pending before same Mahila Court and even evidences of both the cases were jointly taken up by the said Court and the relevant order dated 26.08.2013 was passed. The petitioner was acquitted by learned MM-02, Mahila Court on 10.10.2016 in domestic violence case. The said court was also trying the other case u/s 125 Cr.P.C. and the petitioner was never told by his lawyer that the case u/s 125 Cr.P.C. is still pending and the petitioner was under impression that both these cases were disposed off and he has to pay Rs.3,000/- p.m. jointly to both the Respondents and thereby the petitioner used to pay the same to the Respondents till today before the court of Principal Judge, Family Court, Central Tis Hazari, Delhi.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner was not aware about the fact that the maintenance case was still pending and same was transferred to the Principal Judge, Family Court and moreover neither petitioner was informed by his counsel nor any court

notice was received from the Family Court about transfer of the case to said Court. However, on account of non-appearance of the petitioner and his counsel, the matter was proceeded ex-parte vide order dated 27.03.2015 and finally the judgment and order was passed against the petitioner on 15.05.2017. The petitioner came to know about the outcome of the impugned judgement dated 15.05.2017 and also about the pendency of the petition on 04.08.2017, when he received execution petition for impugned judgement dated 15.05.2017. Being aggrieved, the present petition has been filed.

4. Learned counsel further submits that the impugned judgment dated 15.5.2017 passed by Principal Judge is prima facie illegal, irregular and suffers from number of patent snags. The impugned judgment is contrary to the records of the case and the Family court has not appreciated the contents of written statement filed by the petitioner and also the contents of the cross-examination of Respondent no.1, therefore, the impugned order is not sustainable in the eyes of Law. Moreover, the Family Court has not appreciated the facts that petitioner had not appeared before the Family Court even once after transfer of petition to the Family Court from Mahila Court on 29.03.2014, whereas the fact is that petitioner used to appear on

each and every date of hearing before the Mahila Court. The Family Court has not even issued any court notice to the petitioner and non-issuing of court notice to petitioner is itself a non-judicious order and thereby deserves to be quashed.

5. On the other hand, learned counsel appearing for the respondents submits that the present petition is filed on false grounds to the fact that the petitioner was ignorant about the proceedings which were going before the Family Court despite the fact that he had been appearing continuously in the court before the predecessor judge to the Principal Judge, Family Court. In fact, the petitioner did not attend the Family Court proceedings on various dates deliberately with his malafide intention and delaying tactics *not to pay the huge amount of maintenance in arrear which is approximately more than Rs.10 lacs to the defendants, i.e. aggrieved wife and children.*

6. Counsel for the respondents further submits that on 26.08.2013, the petitioner along with his counsel were present and the learned MM had deferred the date of cross examination for CW-1 due to paucity of time and the same was put up on 15.01.2014. Therefore, there is no ground made out that the petitioner was ignorant about the proceedings going on before the court of Principal Judge, Family Court. In the order dated 27.03.2015, it is

evident that both the parties were present before Principal Judge along with their counsel, which clearly shows that the petitioner was waited till 02:30 p.m. and only thereafter matter was directed to be fixed on 14.09.2015 for ex-parte PE. Learned Principal Judge vide orders dated 14.09.2015 and 24.09.2015 clarified that the petitioner had not attended the proceedings and this fact has been incorporated in the '*first para*' of the order dated 24.09.2015.

7. Learned counsel for the respondents submits that interim maintenance was granted by the Ld. M.M wherein petitioner was directed to pay Rs.3,000/- (Rs. 2000/- to respondent no.1 and Rs.1,000/- to respondent no.2). The petitioner was aware of the fact that this amount was only interim maintenance, which he had to pay regularly to the respondents, till final orders/judgement, before the trial court.

8. I have heard learned counsel for the parties and perused the material available on record.

9. It is not in dispute that on 28.09.2011, the petition under Domestic Violence Act and the petition under section 125 Cr.P.C. was listed before one court. On 18.01.2012, the matter was fixed for CE, however, complainant sought adjournment on the ground that the main counsel was

not available. Accordingly, learned MM, Mahila Court directed to put up the matter for CE on 26.04.2012 and the complainant was given last opportunity for CE, however, adjournment was again sought by proxy counsel for the complainant on the ground that the main counsel was still not available. Accordingly, learned MM granted one more opportunity to the complainant to lead her evidence subject to cost of Rs.1,000/- to be deposited in DLSA and the matter was put up for CE on 27.08.2012. From the order dated 27.08.2012, it is evident that the cost amount was not deposited and further directed to deposit the amount and put up the case for CE on 08.11.2012. However, on the said date, an application for waiver of cost was moved and the same was allowed as the case was from the legal aid.

10. It is evident from order dated 26.08.2013 that the matter was fixed for PE/CE. On that date, PW-1/CW-1 was partly cross examined and further cross examination was deferred due to paucity of time. Accordingly, the matter was directed to be listed for cross-examination of PW-1/CW-1 for 08.11.2013 and PW-1 was bound down for the next date of hearing. Even on 08.11.2013, both the cases were fixed before Mahila Court, however, the domestic violence act case was transferred to the Family Court and the

petitioner did not appear before the said court.

11. It is not in dispute that the petitioner has been appearing in both the cases and the learned Trial Court awarded an amount of Rs.3,000/- jointly in favour of the respondents. In fact, said maintenance was interim but, counsel for the petitioner did not clearly tell him nor he appeared before the Family Court. Thus, the petitioner presumed that the case had been disposed of and he was directed to pay an amount of Rs.3,000/- p.m. as maintenance and continued to pay.

12. It is not in dispute that the Family Court did not issue any notice and did not try to serve the petitioner when he was appearing before the Mahila Court in case filed under section 125 Cr.P.C. Thus, non appearance of the petitioner was unintentional.

13. It is also not in dispute that the complainant was examined, partly cross-examined and thereafter the petitioner could not get an opportunity to cross examine the complainant any further.

14. Be that as it may, the petitioner has been paying an amount of Rs.15,000/- as maintenance as per the directions of the Family Court from November 2017 and the petitioner could not get opportunity to cross examine the complainant.

15. Accordingly, I hereby set aside the order dated 15.05.2017 with the direction that the petitioner shall continue to pay an amount of Rs.15,000/- till disposal of the petition under section 125 Cr.P.C.

16. It is not in dispute that the complainant is having two minor children, but she has made only one child as a petitioner, in the Court below. The petitioner herein has no objection if other child is also made party in the petition. Accordingly, the Family Court is directed to allow the complainant to make second child as one of the petitioners therein.

17. Family Court is directed to give opportunity to the petitioner to cross examine the complainant and decide the petition finally within four weeks from the date of conclusion of evidence.

18. In view of above directions, the petition is disposed of.

19. Pending application stands disposed of.

20. Order dasti under signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 06, 2020
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