IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.98 of 2021 (O&M)
Date of Decision. .09.2021
(Heard through VC)

Vikas Gupta ...Petitioner

Vs

State of Haryana and another ...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aman Bansal, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

Mr. Vivek Puri, Advocate
for the complainant.

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JAISHREE THAKUR J.

1. The instant revision petition has been preferred against the order dated 21.01.2021 passed by the Additional Sessions Judge, Faridabad, whereby the appeal filed challenging the order dated 25.02.2019 passed by Judicial Magistrate 1st Class, Faridabad vide which the petitioner-husband has been directed to pay an interim maintenance of ₹15,000/- per month, has been dismissed.

2. In brief, facts as stated are that the wife-complainant filed a petition under Section 12 of the Protection of Woman from Domestic Violence Act, 2005 wherein she claimed interim maintenance for herself and two minor children and also made a prayer that the respondents therein may be restrained from committing any act of domestic violence against her. The application for interim maintenance was contested by the husband taking the plea that earlier he was engaged in the business of export and

used to work as a commission agent but now he has been unemployed for quite some time. It was submitted that he was suffering from health ailments and is a chronic patient of blood sugar and blood pressure, apart from suffering from kidney issues. It was also submitted that there was no domestic relationship between the petitioner herein and the complainant. It was also averred that the complainant was a person of independent means as she was earning ₹60,000/- per month while running a play school, as would be evident from the fact that she was filing income tax returns, which would reflect that there was a gross annual income of approximately ₹1,90,000/- and above. In fact, for the assessment year of 2015-2016, the gross total income has been shown to be about ₹2,42,365/- and for the assessment year 2017-2018 it was about ₹3,10,701/-. It was argued that the petitioner himself did not earn the same amount and was living in rented accommodation as the house was occupied by the complainant. The JMIC assessed an amount of ₹15,000/- per momth to the respondent-wife as an interim maintenance, which was challenged before the Additional Sessions Judge, Faridabad, who affirmed the same. The revision petition has been filed challenging the said orders.

3. Pursuant to the order passed by this Court, the petitioner herein has placed on record his ITRs for the assessment years 2016-2017, 2017-2018 and 2018-2019, which would reflect a gross annual income of ₹3,42,505/- ₹3,60,801/- and ₹1,58,930/- respectively.

4. The sole argument raised by the counsel appearing for the petitioner is that the petitioner does not have sufficient means to pay interim maintenance of ₹15,000/- per month as assessed by the JMIC,

Faridabad by relying upon the ITRs furnished. Apart from the fact that being a patient of diabetes and suffering from high blood pressure, the petitioner is not in a position to earn. It is argued that income tax returns filed would reflect his gross earnings, which would not support payment of ₹15,000/- per month as maintenance.

5. Learned counsel appearing on behalf of the respondent-wife would submit that she has no source of income and in fact, the petitioner herein in order to avail the benefits in his income tax returns used to file the income tax return in her name. In fact, she had no knowledge about said returns being filed as would be evident from the fact that her signatures are not appended on it and that she had filed a complaint with the Income Tax Authorities regarding the same.

6. I have heard learned counsel for the parties and with their assistance have perused the pleadings. Income tax returns of both the parties are available on record. The latest ITRs furnished by the petitioner would reflect gross annual income of ₹1,58,930/- whereas of the two previous assessment years, there was a gross income of ₹3,42,505/- for the year ending 2016-2017 and ₹3,60,801/- for the assessment year 2017-2018, whereas income tax returns available on record of the respondent-wife would reflect income of ₹2,47,515/- for the year 2016-2017 and ₹3,10,701/- for the year 2017-2018 . However, there is no explanation forthcoming as to why income of the petitioner stands reduced from ₹3,60,801/- for the assessment year 2017-18 to ₹1,58,930/- for the assemment year 2018-2019 and that too after the institution of the proceedings under the Protection of Women from Domestic Violence Act.

7. The contention raised by the counsel appearing for the respondent-wife that the petitioner herein used to fill the income tax returns of the respondent and the fact that she was running a play school would be a matter of evidence during trial. Merely because the respondent-wife is physically fit and is capable of providing tuitions would not automatically mean that she has the income to support herself and her two minor children. Moreover, the Appellate Court has taken into account the details of S.S. International wherein the annual turnover of the firm has been mentioned about ₹5-10 crores and the name of the petitioner has been mentioned in these documents. Therefore, based on the average ITRs of the past three years and the fact that the petitioner herein has no explanation as to why there is a reduction in the income, it can be concluded that the interim maintenance has rightly been assessed.

8. The argument raised by the counsel for the husband for reduction of the maintenance amount on the ground that the respondent-wife is residing in the house belonging to petitioner's brother is not sustainable, owing to the fact that suit for eviction has already been filed against her.

9. It is trite to say that it is the responsibility of the petitioner to maintain his wife and minor children so as to ensure that they are not deprived of the basic necessities of life, which would necessarily include housing, health and education for the minor children. Keeping in view the aforementioned facts and circumstances, this Court does not find merit in the arguments raised by the counsel for the petitioner to interfere in the orders passed by the courts below and consequently, the instant petition

stands dismissed. However, needless to say that the final maintenance is yet to be settled on the basis of evidence adduced and could also be reduced and therefore, any observations made herein by this Court are limited to the pleadings available before the Court.

(JAISHREE THAKUR)
JUDGE

September , 2021
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No