

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.3826 of 2019 (O&M)
Date of decision: 28th April, 2022

Amir Kapoor

... Petitioner

Versus

Nisha & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. S.K. Panwar, Advocate for the petitioner.

FATEH DEEP SINGH, J.

Having recourse to every conceivable legal remedy available under the law, the parties who happen to be husband, wife and their minor son, are now before this Court in the instant civil revision instituted by the disgruntled husband.

Heard Mr. S.K. Panwar, Advocate for the petitioner and perused the records of the case. Admittedly marriage between Amit Kapoor present petitioner and Nisha respondent No.1 was solemnized on 04.05.2003 out of which respondent No.2 Master Harshit was born to them on 10.09.2004. It is on account of matrimonial dispute that arose between the spouses led to filing of a criminal case under Sections 498, 323, 406 IPC; a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005; maintenance application under Section 125 Cr.P.C. and it was by virtue of a petition under Section 13(1)(ia) and (ib) of Hindu Marriage Act, 1955 by a decree of divorce dated 28.05.2015 passed by the Court of learned District Judge, Family

Court, Faridabad the marriage stood dissolved. But in spite of the same, the battle between them did not subside and proceedings under Section 127 Cr.P.C. were invoked by the husband as well as the present petition by way of civil revision whereby challenge is sought to be laid to orders dated 26.10.2018 (Annexure P1) in respect of appeal (Annexure P2) and orders dated 31.05.2018 (Annexure P3) on application dated 24.05.2018 (Annexure P4) were passed in an application under Order 39 Rule 1 and 2 CPC read with Section 151 CPC whereby the husband had sought an injunction against the wife and which stood dismissed.

Appreciating the submissions of the counsel, what the husband is trying to seek in the suit (Annexure P5) is a mere declaration and mandatory injunction with consequential relief of permanent injunction for a decree that judgment and order dated 26.08.2010 is an outcome of fraud and so the other petitions under the cruelty to married women; maintenance and alteration in the maintenance allowance including proceedings under the Protection of Women from Domestic Violence Act, 2005 have been termed to be misuse of the process of Court. The judgment and order dated 26.08.2010 (Annexure P11) is passed in an application under Section 125 Cr.P.C. for grant of maintenance allowance whereby maintenance allowance has been granted to the wife and the minor child by the Court of learned District Judge, Family Court, Faridabad. Under the relevant provisions of Cr.P.C., only a revision lies under Section 397, 398 and 399 Cr.P.C. and which has not been assailed of nor brought to the notice of this Court by

learned counsel for the petitioner and therefore, mere challenging such a finding in a civil suit certainly is not permissible in view of the well enunciated law that recourse has to be laid to the provisions enshrined under the law and since the statute provides a remedy to challenge this order, the same needs to be followed which the petitioner has failed to do so.

Annexure P3 is the order dated 31.05.2018 whereby ad-interim injunction was sought in this suit and the Court had declined the same for which there is a specific remedy under Order 42 CPC which has never been assailed of. Furthermore, in order to seek enforce and grant of maintenance, provisions of Chapter IX have been laid down under Cr.P.C. and which needs to be followed and which has not been adhered to by the petitioner. Thus in the light of well settled law and the statutory provisions by way of Section 41(h) of the Specific Relief Act where a more efficacious remedy is available, the party is under legal obligation to choose that one. Since the filing of the civil suit, challenging of this order is contrary to the law and such a suit does not lie and so the present petition against the orders under challenge. The petition being without any merit stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

April 28, 2022
rps

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