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

Judgment reserved on: 5.1.2022
Date of decision: 08.08.2022

\+ CRL.M.C. 182/2018, CRL.M.A. 744/2018, CRL.M.A. 30991/2018 & CRL.M.A. 10820/2021

BALESHWAR GAHLOT ..... Petitioner

Through: Mr.Ashok Agrawal and Ms.Aditi Saraswat, Advocates.

Versus

RITU GAHLOT ..... Respondent

Through: Ms.Sunita Arora, Advocate. (DHCLSC)

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The petitioner vide the present petition seeks the setting aside of the impugned judgment dated 06.11.2017 of the Court of the learned ASJ Saket Courts, New Delhi in CRL.A. 204/17, vide which an appeal filed by the respondent to the present petition against an order dated 24.11.2016 of the Trial Court of the learned MM-02, South, Saket Courts in CC No. 594/1/14 seeking ad interim relief of maintenance against her husband i.e. the petitioner herein, whereby, the Trial Court had directed the husband/petitioner to continue to pay Rs.6,000/- per month to the complainant/wife i.e. the respondent herein for household expenses and the husband i.e. the petitioner herein was also directed to continue to bear other expenses which he had been paying voluntarily i.e. medical bills, electricity, water, gas, mobile/telephone, maintenance and repair of household expenses and the husband i.e. the petitioner herein was also directed to additionally pay school tuition fees of his children as per the schedule of payment of the school, qua which order challenged by the wife i.e. the respondent herein vide CRL.A. 204/17 whereby, the wife i.e. the respondent to the present petition had sought enhancement of the amount of maintenance, was disposed of with directions to the petitioner herein to pay the maintenance at the rate of Rs.15,000/- per month as claimed by the wife with directions also to the husband i.e. the petitioner herein to continue to pay the school fees of the children and to bear the medical expenses of his wife and children as the same were reimbursable from his department apart from directing the petitioner herein to make the payment of the overdue arrears of the school fees in instalments as directed by the Trial Court.

2. The petitioner herein has submitted that the impugned judgment dated 06.11.2017 of the Appellate Court leaves the petitioner herein in an impossible financial situation and that the impugned order places an excessive unjust, arbitrary and disproportionate financial burden on him which on the face of the record is beyond his paying capacity.

3. Vide order dated 15.01.2018 whilst issuing notice of the petition to the respondent/wife, it was directed that the petitioner would pay Rs.8,000/- instead of Rs.15,000/- as ordered, which order has not been varied till date.

4. CRL.M.A. 30991/2018 has however been filed by the respondent seeking recall of the order dated 15.01.2018 submitting to the effect that she, the respondent has been placed under immense financial strain because of this order and that she has the responsibility of looking after her two minor children and providing for the education and other expenses, which is not possible in a meagre amount of Rs.8,000.

5. The present petition and CRL.M.A. 30991/18 are thus being taken up together for adjudication, in view of the proceedings dated 25.10.2021 when the matter was heard in toto qua CRL.M.C. 182/2018 as well as CRL.M.A. 30991/2018, the said order dated 25.10.2021, in as much as, the *lis* arises out of a matrimonial dispute, the petitioner and the respondent were referred to the Delhi High Court Mediation and Conciliation Centre to explore the possibility of a settlement. As reported by the Delhi High Court Mediation and Conciliation Centre as observed vide proceedings dated 30.11.2021, no settlement was arrived at between the parties and the matter was reported as being a non-starter.

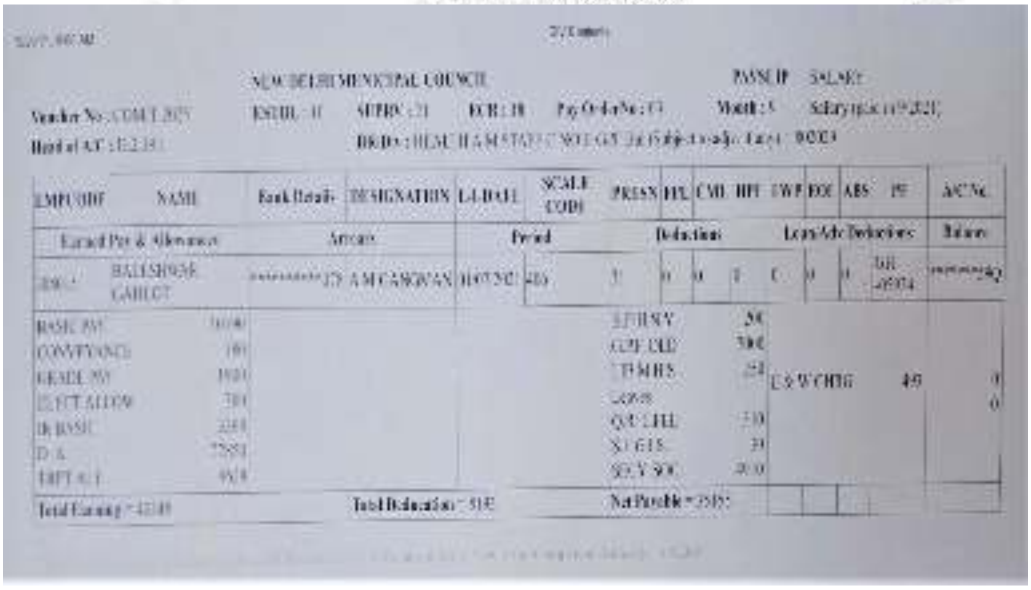
6. The petitioner, vide the present petition dated 22.12.2017 submitted that he is a Class-IV employee of the New Delhi Municipal Corporation and draws a net salary of Rs.19,500/- and that the impugned order dated 06.11.2017 of the Appellate Court in CRL.A. 204/2017 does not take into account the legitimate expenses and liabilities of the petitioner; does not take into account that whereas the school tuition fees and medical bills are reimbursable to him, they are reimbursable only in the next financial year and thus the petitioner has to pay from his own pocket; that the school fees of the children is about Rs.4,500/- per month and thus, the total additional burden cast on the petitioner is more than Rs.19,500/- i.e. more than his entire take home pay.

7. The petitioner has further submitted that in addition to the monthly fees, there are school annual charges at about Rs.1,500/- to Rs.2,000/- per month and that the petitioner also has to pay for the books and other statutory requirements of his children as well as for their school uniform which results into an additional burden of Rs.1,000/- per month. The petitioner has further submitted that vide the impugned judgment he also has been fastened the burden of being liable for the medical expenses of the respondent and his children and submitted that though these expenses are reimbursable to him, the reimbursement takes place in the next financial year as stated by the petitioner.

8. The petitioner submits that the impugned order dated 06.11.2017 in CRL.A.204/17 does not take into account the factum that the petitioner has been paying Rs. 6,000/- to the respondent since 26.09.2015, i.e. the date of the order of the learned MM in CC No.594/1/14 and in addition has been bearing all the other expenses, i.e., the medical bills, electricity, water, gas, mobile/telephone and household maintenance/repair and paying the school fees of the two minor children of the parties.

9. The petitioner has also submitted that vide order dated 24.11.2016 of the Trial Court in CC no. 594/1/2014 apart from the maintenance to the tune of Rs.6,000/- per month towards household expenses and in addition to bearing other expenses, i.e., the medical bills, electricity, water, gas, mobile/telephone and maintenance/repair of household expenses, the petitioner was also directed to pay outstanding school fees for the two children of the parties, which the respondent had been directed to pay vide order dated 24.11.2016, to the tune of Rs. 30,000/- in five monthly instalments.

10. The salary statement of the month of September 2021 placed on record by the petitioner in terms of order dated 24.09.2021 which was filed along with an additional affidavit vide and index no.813690/2021 shows that the petitioner designated as A.M. Gangman with the New Delhi Municipal Council earned pay and allowances to the effect:-


NEW DELHI MUNICIPAL COUNCIL
PAYSLIP SALARY
EMPCODE NAME Bank Details DESIGNATION SCALE CODE PRESN ABS PF A/C No.
Earned Pay & Allowances Arrears Period Deductions Loan/Adv Deductions Balance
GAHLOT A M GANGMAN
BASIC PAY
CONVEYANCE
GRADE PAY
D.A.
Total Earning
Total Deduction
Net Payable

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which shows the total earnings of the petitioner to be Rs.43348/- with total deductions to be Rs.8193/- and net payable salary of the petitioner being Rs.35,155/-.

11. The respondent/ wife lives in the matrimonial home and has been granted residential protection vide orders dated 21.04.2018 and 06.06.2018 by the Trial Court in CC No.594/1/14 whereby the petitioner herein has been restrained from forcibly dispossessing the complainant/respondent herein from property bearing No. K-II/729, Ground Floor, Sangam Vihar, New Delhi i.e. the matrimonial home of the respondent without due process of law.

12. The petitioner has submitted that he has been allotted a Government accommodation at Bapudham, New Delhi in 2019 but despite the extreme hostility of the petitioner in March 2020, he brought the respondent/wife and the minor children of the parties to his house at Bapudham because she was extremely ill and in a state of virtual collapse and the respondent had assured the petitioner that she would return to her matrimonial home in Sangam Vihar once she recovered but after recovering she refused to go back and continues to retain possession and control of the matrimonial home in Sangam Vihar and she runs a wholly illegal shop from the petitioner's government house. The petitioner submits that he is drowning neck-deep under the burden of multiple loans, most of which were taken to meet the needs of the respondent and their children and that his net salary income after deductions, is Rs. 35,155/-, i.e., as on September, 2021 and after repaying the loan installments, plus Rs. 8,000/- per month to the respondent, the petitioner is left with approximately Rs. 9,500/- per month in hand; that he pays the school fees and other expenses of his younger son Somay, amounting to about Rs.3,500/- to Rs.4,000/- per month; that the petitioner is eligible for reimbursement of education expenses of his children but from 2018, the money has not been reimbursed to him and after paying school fee and expenses for Somay, he is left with approximately Rs.5,500/- per month for personal expenses.

13. The petitioner submits that he remained committed to providing maintenance for the respondent and his children within the means available to him and if the respondent agrees to leave the petitioner's house i.e. his official accommodation at Bapu Dham, he is prepared to take a further loan to pay for rented accommodation in Sangam Vihar equivalent to the accommodation available at her matrimonial home and that he expects that he would be able to help her find such accommodation within a rent of Rs. 4,000/- per month.

14. The respondent through her written submissions dated 25.11.2021 has submitted that the petitioner and the respondent have two sons aged 13 years and 18 years after their marriage solemnized on 03.06.2002. She further submitted that the maintenance which was awarded by the Appellate Court to the tune of Rs.15,000/- ought to be enhanced to at least Rs. 24,000/- per month in view of the salary of the petitioner which is Rs.43,348/- as per the salary slip of the month of September 2021 with it having been submitted by the respondent that vide the impugned order dated 06.11.2017 of the Appellate Court, it has categorically been observed to the effect that the petitioner herein was not disclosing true facts on record and thus, any deduction beyond compulsory deduction as well as any deduction towards voluntarily availing of loan by the petitioner herein to deprive his wife and children from their legal entitlement was not required to be considered.

15. The respondent has further submitted that the petitioner in order to deprive the respondent and their two sons of their legitimate right to maintenance has been adopting various means to shows his incapacity to pay for the same. The respondent has further submitted that she was staying at the Sangam Vihar property i.e. her matrimonial home but the same is in such a dilapidated condition that it is not fit for living at all and the same has been verified by the SHO concerned after directions of this Court and the SHO has reported that major repair is required in this house to change the same into living conditions.

16. The respondent has also submitted that the petitioner has paid the school fees of the younger son only after directions of this Court vide order dated 03.09.2021 and that the elder son of the parties has also passed Standard XII in the year 2021 and was interested in pursuing further studies but the respondent did not have any money for getting her son admitted in the college and the requests made by the respondent to the petitioner for the same have not been heeded to. The respondent has further submitted that she has no source of income and is totally dependent upon the maintenance granted to her and her children which is too meagre and insufficient to maintain herself and her children. The respondent has further submitted that the petitioner has been adopting means of increasing his GPF deduction which has since been enhanced from Rs.3,000/- to Rs.10,000/- per month.

17. A submission had been made on 25.08.2021 on behalf of the respondent that she had been brought to the petitioner's present accommodation only for treatment and she needs to return to her matrimonial home but submitted that she can return to the said accommodation only if it becomes useable and inhabitable submitting to the effect that the Sangam Vihar residence is not habitable. The respondent had also sought directions that the petitioner may be directed to make requisite repairs or an alternative accommodation in lieu thereof be provided.

18. Vide order dated 25.08.2021, a report was called for from the SHO, PS Sangam Vihar qua the condition of the house at from property bearing No. K-II/729, Ground Floor, Sangam Vihar, New Delhi with coloured photographs of the entire accommodation having been directed to be placed on record. The report dated 02.09.2021 of the SHO, PS Tigri stated to the effect:-

> ***"The ground floor of house at K-II/729, Sangam Vihar, New Delhi has been physically checked which revealed that the house belong to Smt. Jayanti Gahlot (deceased) mother-in-law of respondent. At present no one found residing at the given address. The position of the house is not in living condition. The roof and the wall of the house found fully in crack and is likely to be fallen. The wooden door/ windows are almost eaten by the termite and is in danger condition. Besides, it is also found that rain water is logged inside the house which came through the ventilator and also logged the water through the sewage. Major repair is required in this house to change the same into living condition.",***

which thus indicates that the said house is not in a living condition and major repairs are required to make it livable. Apparently, the respondent thus cannot be compelled to shift to K-II/729, Sangam Vihar, New Delhi, the matrimonial home of the respondent until repairs are made, as the same is not habitable.

19. As regards the submission that has been made on behalf of the petitioner that the respondent was utilizing the official accommodation by selling vegetables, a submission had been made by the respondent that she had been so compelled to do so to make a living whilst staying at the official accommodation of the petitioner. As regards this aspect, it was vide order dated 25.8.2021, observed to the effect:

> *" ……..Though it is also submitted on behalf of the petitioner that the respondent has converted the premises where the petitioner is residing into a godown for sale of vegetables and photographs in relation thereto have also been annexed by the petitioner, to which, the respondent has submitted that she is forced to make ends meet by the sale of vegetables temporarily. Apparently, the respondent cannot utilise the official accommodation of the petitioner for sale of any wares and she needs to take the said aspect into account in relation to which, it would always be open to the authority to take action."*

20. The record thus, makes it apparent that the respondent has no substantial means of earning.

21. On a consideration of the entire available record, the Court is of the considered view that taking into account increasing inflation rates, and the salary of the petitioner as per his salary slip of September, 2021, the aspect that Dearness Allowance has since September, 2021 been enhanced by 3% per annum, with the DA on the basic salary of the petitioner Rs.10190/- being increased by Rs.305.7 p.m. thus to Rs.23,156/- the salary thus of the petitioner having been enhanced to that extent w.e.f January, 2022, the requirements of a decent mode of sustenance for the respondent wife, and her one minor son, as also for the well being of the other son, who though now would have attained majority (in view of the verdicts of the Hon'ble Supreme Court in ***Rita Dutta and Ors. V. Subhendu Dutta:*** AIR 2006 SC 189, ***Kirti Malhotra V. M.K.Malhotra:*** 1995 Supp (3) SCC 522 and Crl.Rev.P No. 549/2018 titled ***Urvashi Aggarwal & Ors V. Inderpaul Aggarwal*** a verdict dated 14.6.2021) and taking into account the judgment of this Court in ***Annurita Vohra V. Sandeep Vohra***; 2004 (74) DRJ 99 ***decided on 15.3.2004*** wherein it has been observed to the effect:

> *"2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit………...................In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members.",*

and the verdict of the Hon'ble Supreme Court in ***Rajnesh V. Neha and Ors.:*** (2021) 2 SCC 324, to the effect in para 77, 78 and 81:

"III Criteria for determining quantum of maintenance

77. The objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

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81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes

> *oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.",-*

would have to be taken into account.

22. The Court is thus of the considered view that the impugned order dated 6.11.2017 of the Court of the learned Additional Sessions Judge, New Delhi, in Crl.Appeal No. 204/2017 awarding interim maintenance @ Rs.15,000/- per month to the wife with directions to the petitioner to continue to pay the school fees of the one minor son and to bear the medical expenses of his wife and both sons, be sustained w.e.f. January, 2022, with directions to the petitioner to pay the said amount into the bank account of the respondent No.2 by the 7th day of each succeeding calendar month and is sustained accordingly.

23. However for the period from the date of November, 2017 till December, 2021, the amount of interim maintenance enhanced vide the impugned order dated 6.11.2017 from Rs.6,000/- per month to Rs.15,000/- per month in addition to the school fees of the children and medical expenses of the respondent No.2, is modified to the extent that the amount of interim maintenance awarded during this period shall be a sum of Rs.8,000/- per month for the period November, 2017 till December, 2018. The said amount shall be @ 8,000/- per month with addition to the payment of school fees of the children, medical expenses of the wife and children, Rs.9,000/- per month for the year

2019 and Rs.10,000/- for the year 2020 and Rs.11,000/- for the year 2021 and Rs.15,000/- from January, 2022.

24. The amounts paid already by the appellant in terms of orders dated 26.9.2015 of the learned MM in CC No.594/1/2014 and in terms of order dated 6.11.2017 of the Court of the learned Additional Sessions Judge in Crl.Appeal No. 204/2017 as well as in terms of the order dated 15.1.2018 in Crl.M.C. 182/2018 shall be adjusted and accounted for in the payments already made. The arrears of the amounts of the interim maintenance due, if any, shall be paid by the appellant in terms of the directions herein above in six equal instalments to the respondent commencing w.e.f. September, 2022.

The petition and the accompanying applications are disposed of accordingly.

ANU MALHOTRA, J.

AUGUST 08, 2022
nc/sv