

219

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COCp-1496-2018 (O&M)
Date of decision: 09.03.2023

Shilpa Khanna

....Petitioner

Versus

Nallicheri Vaidhyanathan Tyagarajan and Anr

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.K. Kansal, Advocate
for the petitioner.

Mr. Shrey Goel, Advocate
for the respondents.

ARVIND SINGH SANGWAN J. (Oral)

The petitioner alleges violation of the order dated 04.08.2017 vide which in a complaint filed by the petitioner under the Protection of Women from Domestic Violence Act, it was directed that in the interest of justice, it is required to verify the income of the respondent from the employer i.e. Genpact India Pvt. Ltd., CEO and Drawing and Disbursing Officer of the company were directed to file an affidavit regarding the salary. The petitioner also referred to another order dated 19.08.2017 vide which again a similar direction was issued.

Counsel for the petitioner submit that on 31.08.2017, the parties were directed to remain present in the Court being a matrimonial dispute and later on the respondent has filed CRM-M-32213-2017, in which on 31.08.2017 there was some directions issued to the trial Court, however, the same was wrongly interpreted as no such directions were issued. It is further submitted that the petitioner is not disclosing

the income and therefore, he has violated the direction of the trial Court.

Reply by way of affidavit of the respondent is on record and as per the reply, it is stated that the matter is sub judice before the Court which is competent to take all penal action against the respondents under the provisions of Domestic Violence Act itself. It is also submitted that later on, the Court of Judicial Magistrate Ist Class, Gurugram, on 11.01.2023 has passed an order deciding the application filed under Section 25(2) of the Act, according to which the calculations of the arrears is given. The operative part of the order, reads as under:-

“10. As such, in view of the fact that substantial amount of interim maintenance has been paid by the respondent to the petitioner, there appears no justified grounds to issue warrant of arrest against the respondent at this stage. Reliance being placed upon case titled Kanchan vs Vikramjeet Setiya 2013 CrLJ 85 and Francis Cyril C. Cunha vs Lydia Jane D’cunha 2016 CrLJ 1967.

11. But it is relevant to note that after July, 2021, the employer of the respondent has not deducted one-third of the salary of respondent as the respondent had proceeded on sabbatical leave (without pay) for a period of one year from April, 2021. This Court cannot lose sight of the fact that it is the moral responsibility of the respondent to maintain her wife and children, therefore, merely on the ground that the respondent had proceeded on sabbatical leave would not be absolve the respondent from the liability to make the payment of interim maintenance allowance. Accordingly, for a period between August, 2021 till December 2022, the court would take into consideration the one third of the salary as deducted in the preceding financial 2021-2022 i.e. from April 2021 to March 2022, as per the pay record of the respondent, which comes out to be Rs.1962348- per annum and Rs.163529/- average monthly amount for the purpose of determining the one-third salary during the said period. Thus, from August, 2021 till December, 2022, the

respondent is required to make the payment of Rs.2779993/- (Rs.163529/- x 17 months). Aslo, as per the order dated 28.03.2018, the respondent has not cleared the arrears calculated by the court to the tune of Rs.1712722/-. Thus, total arrears required to be paid by the respondents are Rs.4492715/- (Rs.2779993 + Rs.1712722/-). However, it is clarified that if any more amount is found outstanding/due at a later stage, the same shall be payable by respondent within a reasonable time.

12. As the respondent would have resumed the job after coming from sabbatical leave, the employer of the respondent is directed to deduct one-third salary of the respondent from January, 2023 onwards. Copy of this order be sent to Finance Department, Genpact India Private Limited, DLF Phase V, Gold Course Road, Gurugram, for compliance. The application stands disposed of in the above terms.”

Be whatsoever, the matter is sub judice before the Judicial Magistrate Ist Class, which is taking care of the release of the arrears of salary from the respondent/husband and therefore, no willful disobedience is made out.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

09.03.2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No