

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 109

Criminal Revision (F) No.435 of 2023 (O & M)

Date of Decision: March 23, 2023

Harvinder Kaur

..... PETITIONER(S)

VERSUS

Tarvinder Singh Grover

..... RESPONDENT(S)

...

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

...

PRESENT: - Mr. Munish Gupta, Advocate, for the petitioner.

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Tribhuvan Dahiya, J (Oral)

This revision petition has been filed against order dated 03.03.2023 passed by the Family Court, wherein the respondent-husband was granted time up to 31.03.2023 to pay ₹ 1,05,000 as arrears of maintenance, including expenses for medicines, due from him in terms of compromise executed between the parties, dated 20.02.2018.

2. As apparent from the facts on record, a compromise was executed between the parties on 20.02.2018 (Annexure P-1), vide which the respondent-husband agreed to make payment of ₹ 30,000 per month w.e.f. 01.03.2018, regularly pay electricity bills and meet the expenses of medicines needed by the petitioner-wife. As per one of the agreed terms of compromise, Clause 10, in case party no.1 (respondent herein) backs out from the compromise, party no.2 (petitioner herein) will be entitled to maintenance at the rate of ₹ 1 lac per month from the due date along with

arrears earlier forgone, amounting to ₹ 4,40,000, which she can recover as per law. Clause 10 of the compromise read as under:

10) That in case the party No.1 backs out from the said compromise/agreement, then party No.2 will be entitled for maintenance of Rs. 1,00,000/- per month from due date alongwith arrears due given up amounting to Rs. 4,40,000/- which she can recover as per law against Party No.1.

3. The respondent defaulted in making payment of the agreed amount of maintenance for April, May and July 2020 leading to the petitioner filing execution application dated 03.08.2021 (Annexure P-4) under Section 128 Cr.P.C. for implementation of the compromise dated 20.02.2018, claiming maintenance at the rate of ₹ 1 lac per month, and also the amount of given up arrears of ₹ 4,40,000 w.e.f. 01.07.2021. The respondent filed objections to the application, *inter alia* objecting to the claim of maintenance at the rate of ₹ 1 lac per month along with the forgone arrears. The objections were dismissed by the Family Court vide order dated 01.11.2021 (Annexure P-6). He filed a revision petition against this order before this Court which was also dismissed as withdrawn, vide order dated 23.09.2022 (Annexure P-7), granting liberty to approach the Executing Court by filing a fresh objection petition on fresh grounds.

4. Learned counsel for the petitioner contends that no fresh application was filed by the respondent before the Executing Court, despite the liberty granted by this Court vide order dated 23.09.2022 (Annexure P-7). Therefore, there was no impediment before the Executing Court to move ahead with the execution application, wherein the petitioner-wife had claimed maintenance at the rate of ₹ 1 lac per month along with the foregone

arrears, in terms of the compromise. During pendency of the execution application, the impugned order, dated 03.03.2023, has been passed, wherein certain observations have been made by the Family Court that 'the petitioner-wife cannot be allowed to blow hot and cold in one go, as on the one side she was claiming ₹ 1 lac per month from the respondent-husband on the ground that he had resiled from the compromise, and, on the other, she was claiming electricity and medicine charges from him, and had received the same and also same amount of ₹ 30,000 from him after July 2020 till filing of the execution petition. She has also supplied bills for her medicines.' By thus observing, the Court had granted time to the respondent to pay the balance amount of twenty-two months of arrears due from him including medicine expenses.

5. Learned counsel further contends that these cursory observations by the Family Court have the effect of declining the main relief, i.e., maintenance at the rate of ₹ 1 lac per month, and the given-up amount of arrears in terms of settlement/compromise executed between the parties, dated 20.02.2018, based upon which execution application was filed. Merely because certain amount of maintenance has been accepted by the petitioner-wife after filing the execution application, to meet her living and medical expenses, that cannot be a ground for the Family Court to hold that she has given up her stand in the execution application, or, that the compromise arrived at between the parties cannot be given effect to.

6. Learned counsel has been heard and case file has been perused.

7. There has been a settlement/compromise between the parties, dated 20.02.2018, based on it the petitioner-wife filed the execution

application in question. It is also a matter of record that the revision petition against the order passed by the Family Court, dated 01.11.2021, declining objections to the execution application has already been dismissed by this Court vide order dated 23.09.2022; and despite the opportunity granted to the respondent-husband to file fresh objections, the same have not been filed. In this factual background, there is no escape from concluding that maintainability of the execution application, dated 03.08.2021, claiming maintenance at a higher rate as also the foregone arrears in terms of the compromise, stands affirmed up to this Court. It has, therefore, to be adjudicated on merits by the Family Court after considering submissions of both the parties. The issues raised in the application cannot be brushed aside by making cursory observations and/or accepting the respondent's offer to pay arrears of previously agreed maintenance during pendency of the execution application. At the same time, it needs to be observed that the impugned order does not finally decide the execution application.

8. Consequently, it is directed that the aforementioned observations by the Family Court, referred to in para 4, cannot have any effect upon maintainability or merits of the petitioner-wife's execution application which shall be decided by the Court on its own merits, taking into account all the facts and circumstances of the case, including the payment and acceptance of arrears of previous amount of maintenance and other expenses.

9. Keeping in view the nature of directions issued, service of notice on the respondent has been dispensed with. However, liberty is granted to the respondent to seek recalling of the order in case the facts submitted before this Court are incorrect.

10. Disposed of accordingly.
11. Since the main petition stands decided, pending applications if any are disposed of as having been rendered infructuous.

(Tribhuvan Dahiya)
Judge

March 23, 2023
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No