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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR(F)-517-2022
Date of Decision: 20.01.2023

Smt. Suman and another ....Petitioners

versus

Parkash Chander ....Respondent

CORAM HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present Mr.Lajpat Rai Sharma, Advocate, for the petitioners.

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JAGMOHAN BANSAL, J (ORAL)

Through instant petition, the petitioner is seeking modification of order dated 13.05.2022, whereby Additional Principal Judge, Family Court, Hisar, has granted maintenance of Rs.25,000/- per month to the petitioners.

Learned counsel for the petitioners *inter alia* contends that husband of the petitioner no.1 is a well placed person and trial Court without considering status of the respondent has awarded maintenance of Rs.25,000/- to both the petitioners. The amount awarded is not in consonance with the status of the parties. He further submits that respondent was directed to bear burden of loan by paying monthly instalments of loan amount directly to HDFC Bank, however, respondent did not pay EMI, resultantly, bank issued Recovery / Demand Notice and petitioners to save their house had to borrow a sum of Rs.7,67,000/- to pay to bank. The respondent is not even paying maintenance of Rs.25,000/- and petitioners have filed execution petition before the competent Court.

I have heard the arguments of learned counsel for the petitioners and scrutinized the record.

The relevant extract of the impugned order dated 13.05.2022 reads as under:-

> " *The marriage between the applicant no.1 and respondent was solemnized on 05.04.2001 as per Hindu rites and ceremonies and there is no dispute between the parties with regard to this fact. It is also not in dispute that out of this wedlock two children were born. The daughter is at present residing with the respondent whereas son is residing with the applicant no.1. Both the parties lived together for many years after marriage and the applicant no.1 was working as a Principal in Barwala Public Senior Secondary School. That the respondent is the President of the Society running Barwala Public Senior Secondary School. Both the parties have placed on record number of documents to prove the financial status of the parties and to establish the fault of the other party. This Court is of the view that the proceedings under Section 125 Cr.P.C are summary in nature and purpose of this proceeding is to provide maintenance to the person who is unable to maintain herself. The applicants have alleged that they have no independent source of income whereas the respondent is earning in lacs per month. The respondent on the other hand has stated that the applicant no.1 is highly educated lady and she is earning more than Rs.1 lac per month by giving tuitions to the students. However, the*

respondent has not placed on record any documentary evidence to prove this fact that the applicant no.1 is giving tuitions to students and is earning money. Another important fact in the present case is that the property in which the applicants are residing is on loan from HDFC Bank and there has been default in repayment of loan. It is quite clear that since relationship between the husband and wife have got strained, therefore, both the parties are leaving no stone unturned to cause maximum damage to other party. The allegations levelled by both the parties are matter of evidence and at this stage it cannot be ascertained that who is at fault. However, being the legally wedded wife of respondent and applicant no.2 being the real son of respondent are entitled to maintenance because nothing has been brought on record which would disentitle the applicants from claiming maintenance under Section 125 Cr.P.C. The application is accordingly partly allowed to the effect that the applicant no.1 is entitled to monthly maintenance to the tune of Rs,15,000/- whereas the applicant no.2 is entitled to monthly maintenance to the tune of Rs.10,000/- per month till his attaining majority. The applicants are accordingly entitled to maintenance from the date of the application. It is further directed that in addition to maintenance amount the respondent shall be liable to bear the burden of the loan by paying the monthly instalments of the loan amount directly to the HDFC Bank. The applicant no.1 is also directed to intimate this

> *Court as and when she get any job or start any earning of her own so that suitable order can be made with regard to the payment of EMI of house loan as the applicant no.1 is also co-owner to the extent of half share in the property. It is made clear that any amount paid by the respondent towards maintenance in any other proceedings shall be liable to set off from the maintenance amount awarded to the applicants by way of present application. The applicant no.1 is directed to furnish her bank account to the respondent and the respondent is directed to make the payment of maintenance in said account on or before the 7th day of every month. Application is disposed of accordingly."*

From the perusal of aforesaid order, it is quite evident that petitioners are staying in their home and it is responsibility of respondent to pay EMI of the loan borrowed against the said house. The petitioners are claiming that respondent has not paid EMI, thus, Demand Notice has been issued.

The petitioners have right to file execution petition which they have already filed. The trial Court vide impugned order has awarded interim maintenance and final maintenance allowance would be determined after considering income, assets and liabilities of both the parties.

This Court does not find any reason to interfere at this stage, accordingly, present petition is dismissed without commenting on merits.

I would hasten to add that Executing Court would expedite the matter qua recovery of maintenance as well as payment of EMI of loan and preferably decide Execution Petition within three months from today.

(JAGMOHAN BANSAL)
JUDGE

20.01.2023

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