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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13th July, 2023

+ CRL.REV.P. 231/2019

SH. DHIRENDER KUMAR

..... Petitioner

Through: Mr. Shailender Singh, Advocate.

versus

SMT. BALA & ANR

..... Respondents

Through: Mr. Rahul Sharma, Ms. Jyoti Dutt
Sharma, Advocates.

+ CRL.REV.P. 643/2019

BALA & ANR

..... Petitioners

Through: Mr. Rahul Sharma, Ms. Jyoti Dutt
Sharma, Advocates.

versus

DHIRENDER

..... Respondent

Through: Mr. Shailender Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present revision petitions are directed against the judgment dated 19.11.2018 passed by Ms. Sarita Birbal, Judge, Family Court: East District, Karkardooma Courts, Delhi in CC No. 201/2017 titled 'Bala and Ors. v. Dharendra Kumar', whereby in a petition under Section 125 of CrPC, filed on behalf of Smt. Bala and Master Himanshu (petitioners in CRL.REV.P. 643/2019) seeking maintenance, Sh. Dhirender (petitioner in CRL.REV.P.



231/2019) was directed to pay maintenance in the sum of Rs. 25,000/- per month to Smt. Bala with effect from 01.12.2018 and Rs. 20,000 per month to Master Himanshu with effect from 01.12.2018 till he attains majority.

2. By CRL.REV.P. 643/2019, the petitioners Smt. Bala and Master Himanshu (hereinafter referred to as 'wife and minor son') seek enhancement of the interim maintenance passed by the learned Judge, Family Court, East District, Karkardooma Courts, Delhi *vide* order dated 19.11.2018. Learned counsel on behalf of wife, in the alternative prays that maintenance awarded by the impugned order should be from the date of application instead of being prospectively from 01.12.2018.

By CRL.REV.P. 231/2019, the petitioner Sh. Dhirender (hereinafter referred to as 'husband') seeks quashing and setting aside of the impugned order.

3. The case on behalf of petitioners in CRL.REV.P. 643/2019, as argued before the learned Family Court is as under:

- i. The marriage between wife and husband was solemnized on 21.02.2001 according to Hindu rites and ceremonies. Out of the said wedlock, a male child was born on 21.01.2002. Due to temperamental differences, the parties started residing separately and the minor child stayed with wife.
- ii. It was argued that wife's father, at the time of her wedding, gave dowry including a Maruti-800 car and cash in the sum of Rs. 51,000/-. It was further their case that husband's family demanded Rs. 1.5 lakh in cash and an Esteem car and even harassed wife for non-fulfillment of the said demands. Ultimately, wife left her matrimonial home and returned to her parental home. After some time, husband took wife and minor



son back to their matrimonial home but the harassment and physical abuse did not stop. It was further argued that wife had filed a complaint at the local *chowki* but no action was taken. It was argued that on one occasion, husband and his brothers beat wife and threatened to kill her, however, she was rescued by passersby. A police complaint with respect to the said incident was also filed. Thereafter, the parties started residing separately.

- iii. It was argued that husband had refused to maintain wife and minor son, even though wife was unemployed and unable to maintain herself and minor son. Husband worked as a money lender and a property dealer and earned Rs. 50,000/- per month and other than maintaining his estranged wife and minor child, he had no other liabilities.

4. The case on behalf of petitioner in CRL.REV.P. 231/2019, as argued before the learned Family Court is as under:

- i. It was argued that the allegations leveled pertaining to demands of dowry and the alleged harassment and physical abuse were false and that the differences between the parties were on account of wife's arrogant behavior to husband's family. It was further argued that on one occasion, wife quarreled with husband which resulted in physical injuries to the latter.
- ii. Husband denied working as a property dealer and it was submitted that he had a private job as a 'supervisor' at M/s Avis Aqua and earned Rs. 3,500/- a month. It was urged on behalf of husband that wife earned Rs. 10,000/- per month from her own boutique and that she earned Rs. 3,000/- per month by way of interest.



5. In a petition under Section 125 of the CrPC filed on behalf of wife and minor son seeking interim maintenance, the learned Metropolitan Magistrate, *vide* order dated 26.02.2007 granted interim maintenance at the rate of Rs. 1,500/- per month to wife and Rs. 1,000/- per month to minor son.

6. During the pendency of the proceedings before the learned Family Court, husband filed a petition seeking divorce. On an application filed under Section 24 of the Hindu Marriage Act, 1955 in that proceeding, the learned Additional District and Sessions Judge, *vide* order dated 06.01.2009, granted *pendente-lite* maintenance in the sum of Rs. 8,000/- per months to wife and Rs. 5,000/- per month to minor son alongwith Rs. 5,000/- as litigation expenses. The said order was challenged by wife, seeking enhancement of maintenance. A learned single judge of this Court, in C.M.(M) 441/2009, *vide* order dated 28.09.2010 disposed of the said challenge and ordered husband to pay maintenance to wife and minor son at the rate of Rs. 20,000/- per month and further directed that arrears of maintenance be cleared within three months of passing of the said order. It is pertinent to note that while passing the said order, the single judge accorded due consideration to the amount of compensation received by husband in lieu of the land acquired by the Government, as was admitted by him. It was held as under:

“6. I have heard counsel for the parties and also perused the order dated 6.1.2009 passed by learned trial court. It has been repeatedly held by the courts that while considering an application under Section 24 of the Hindu Marriage Act the Court must consider the means and capacity of a person against whom an order of payment of maintenance is made. While determining the quantum of maintenance, not only the actual income but also the potential capacity must be considered. Court must also take into account the position and status of the parties. The petitioner herein is an able bodied person and has a capacity to earn and maintain his wife. The husband is duty bound and has to ensure that the wife and the minor son are provided a similar style of living as was being



enjoyed by them in the matrimonial home. The respondent (husband) owns a house in Fraidabad where the parties were residing. The respondent owns lands which have been acquired and respondent has been awarded compensation to the tune of 60.00 lakhs. The respondent was working with M/s Avis Acqua at Faridabad but he has contended election and has been elected as a Counselor. The above facts indicate the status and the financial capacity of the respondent. It is further common knowledge that large amounts are spent by candidates during election. The respondent has only made a vague allegation that petitioner is running a beauty parlour. No particulars have been furnished by the respondent in support of this plea. The respondent has nowhere denied receipt of the amounts as compensation. It has only been submitted that part of the amount has been invested.

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8. The trial court has rightly relied upon in Manish Kumar vs. Mrs. Pratibha, but has failed to consider that the maintenance so awarded should not be so low as to make the order meaningless. Taking into consideration the settled position of law on the basis of the judgments rendered by the Supreme Court and having regard to the fact that it is not disputed that the respondent has received more than 65.00 lakhs as compensation as his share of the land acquired, the fact that it is not possible for a Counselor to live with a salary of Rs.1500/-, the impugned order dated 6.1.2009 is modified. The respondent will pay maintenance to the petitioner and the minor son @20000/-, per month. All arrears will be cleared by the respondent within three months from today.”

The said order was challenged before the Hon'ble Supreme Court. *Vide* order dated 13.12.2010 passed in Special Leave to Appeal (Civil) 32672/2010, the Hon'ble Supreme Court dismissed the said challenge.

7. After considering the rival contentions of the parties and the evidence placed on record, including their income affidavits, the learned Family Court assessed the income of husband at Rs. 90,000/- and observed that he had no other liabilities except to maintain his estranged wife and minor son. In view thereof, it was directed that he shall pay maintenance in the sum of Rs. 25,000/- per month to wife with effect from 01.12.2018 till her lifetime or till she gets remarried after divorce. It was further directed that husband shall pay



maintenance in the sum of Rs. 20,000/- per month to minor son, his then minor son with effect from 01.12.2018, till he attains the age of majority. It was noted by the learned Family Court that apart from a bald assertion, no evidence was placed on record to show that wife had a boutique of her own and earned Rs. 15,000/- per month, as claimed by husband and thus, she could not be denied maintenance under Section 125 of the CrPC on the ground that she had a source of income.

8. Learned counsel appearing on behalf of wife and minor son submitted that the said parties are entitled to an enhanced maintenance as the learned Family Court has erred in assessing the income of husband at Rs. 90,000/- per month. It was submitted that the learned Family Court has failed to consider the admitted fact that husband had received a sum of Rs. 1,36,80,068/- as compensation for family land that was acquired by the Government. Learned counsel drew the attention of this Court to the following observation made in the impugned judgment:

"The respondent of his own violation has chosen not to step into witness box. Thus, an adverse presumption can be way drawn that had the respondent had appeared as his own witness, he would have been required to disclose the exact amount of compensation received by him and the manner in which the amount has been utilized and the same would not have been favourable to him. I am of the opinion that in the facts and circumstances of this case, it can be presumed that the respondent has received an amount in excess of Rs. 85 lacs by compensation."

It was submitted that even though the learned Family Court records that husband has received an amount in excess of Rs. 85,00,000/- in compensation, it fails to consider the same while computing his income and assets.



9. It was further submitted that maintenance was granted prospectively from 01.12.2018 and not from the date of institution of the case under Section 125 of the CrPC, which is not in accordance with the judgment rendered by the Hon'ble Supreme Court in *Rajnish v. Neha & Anr.*, (2021) 2 SCC 324, wherein it was held as under:

"110. In *Shail Kumari Devi v. Krishan Bhagwan Pathak* [*Shail Kumari Devi v. Krishan Bhagwan Pathak*, (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839] , this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In *Bhuwan Mohan Singh v. Meena* [*Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200] , this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

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126. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children. Contempt proceedings for wilful disobedience may be initiated before the appropriate court.

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VI. Final Directions

128.1. (i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while



determining whether any further amount is to be awarded in the subsequent proceeding.

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132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21."

10. Learned counsel for wife and minor son further submitted that the conduct of husband throughout the proceedings before the learned Family Court also shows that he has not approached the Court with clean hands. Attention of this Court was drawn to an application dated 05.06.2018 filed on behalf of wife before the learned Principal Judge, Family Courts, Karkardooma seeking enhancement of maintenance granted *vide* order dated 06.01.2009 on the ground that husband had deliberately concealed the receipt of compensation amount of Rs. 13,15,736/- against acquisition of land even after the order passed by a coordinate bench of this Court in CM(M) 441/2009. In the said application, an averment was made that the aforesaid amount was just a part payment of the full compensation amount which was in fact Rs. 4,67,33,960/-. It was also averred that husband had concealed the factum of disbursement of additional compensation to the legal representatives of his father to whom the land belonged. It was submitted that in an execution proceeding in connection with a suit for partition pending before a Court in Faridabad, Haryana, a Statement of Enhanced Compensation was filed by husband wherein he claimed to have received Rs. 42,20,202/- and Rs. 11,36,861/-. Attention of this Court was further drawn to



the fact that in the proceedings under Section 125 of the CrPC (which is the subject matter of the present revision petitions), husband was proceeded *ex-parte vide* order dated 05.11.2015. In order dated 31.08.2018 passed on an application filed on his behalf seeking setting aside of the *ex-parte* order, the learned Family Court had observed that husband had filed an application seeking recall of certain witnesses for further cross-examination and it was not clear whether the said application had been pursued and disposed of. It was further recorded that no reply had been filed by him to an application seeking enhancement of *pendente-lite* maintenance filed by wife despite the same being listed for filing of the reply. Further attention of this Court was drawn to order dated 16.10.2018 wherein it has been recorded that husband chose not to lead evidence in the case and his statement to that effect was recorded. Learned counsel submitted that husband suppressed material facts and mislead the Court at every stage of the proceedings and the same is substantiated by the following observations made in the impugned order:

“22. As per the respondent, his income is Rs.25,000/- to Rs.30,000/- per month. He relies on the copies of income tax returns filed by him for the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2018- 2019. As per these returns, the total income of the respondent for assessment year 2013-2014 was Rs.4,62,000/-; for assessment year 2014-2015 his total income was Rs.4,98,440/-; for assessment year 2015-2016 his total income was Rs.2,32,680/-; for assessment year 2016-2017 the total Income of the respondent was Rs.2,60,350/-; and for the assessment year [2018-2019, the gross total income of the respondent has been shown as Rs.2,61,318/-. These incomes are shown to have been earned under the head of 'profits and gains of business and profession' and the 'salary' received at the time when the respondent was a Municipal Counsellor.

23. As noted in the earlier part of the judgement, vide order dated 12.11.2018 this court had directed the respondent to file copies of balance- sheet and computations of income in support of the income tax



returns on which the respondent has filed an affidavit alongwith copies of computations of income and stated that the returns were filed under section 44 ADA of the Income Tax Act and thus the balance sheets were not got made.

24. Though the respondent has maintained that his monthly income is to the tune of Rs. 25,000/- to Rs.30,000/- per month but the respondent has not been consistent in disclosing as to how this income has been earned. During cross examination of petitioner No.1, she was suggested that the respondent has no income other than interest income which is the tune of Rs.25,000/- to Rs.30,000/- per month. However in the affidavit of income, assets and expenditure dated 29.09.2018, the respondent has claimed that neither he has any assets nor has no income by way of interest, dividend, rent etc.

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26. The Hon'ble Delhi High court in the order dated 28.09.2010 C.M. (M) 441/2009 (supra) recorded the admission of the respondent that he has received an amount in excess of Rs.65 lacs by way of his share of compensation for the land acquired by the Government. More than eight years have passed from the date of that order. The attention of this court was drawn to the copies of certain documents on record which show that the respondent received additional amounts of compensation after the ore dated 28.09.2010 was passed by the Hon'ble Delhi High Court in C.M.(M) 441/2009. These sums include an amount of Rs.13,15,736/- which was got deposited in a bank account of the respondent in State Bank of India, Neelam Chowk Branch, Faridabad on 30.07.2011. It is pointed out on behalf of the petitioners that the respondent has never disclosed anything about this bank account. The respondent has not disclosed the exact amount of compensation in any proceedings between the parties to this petition. The respondent has not disclosed as to how he utilised the account of compensation.

27. The respondent of his own volition has chosen not to step into witness box. Thus, an adverse presumption can be drawn that had the respondent had appeared as his own witness, he would have been required to disclose the exact amount of compensation received by him and the manner in which the amount has been utilised and the same would not have been favourable to him. I am of the opinion that in the facts and f circumstances of this case, it can be presumed that the respondent has received an amount in excess of Rs.85 lacs by way of compensation.”



11. *Per contra*, learned counsel appearing on behalf of husband submitted that the impugned order is liable to be set aside. The learned Family Court has erred in drawing an adverse inference against husband on account of him not examining himself as a witness inasmuch as the reason husband did not examine himself was that the learned presiding officer had expressed a view that since all the relevant documents and submissions were already on record, there was no need for his deposition to be recorded. It was further submitted that apart from the compensation which was received by husband, there was no other material on record to show that he earned Rs. 90,000/- per month. Moreover, the compensation received by him was also a one-time payment received in his bank account and cannot be considered as a source of regular income. He is only earning a monthly interest on it. It was submitted that even if the figure of compensation stated by wife, i.e., Rs. 1,36,80,068/- is taken at its face value, the maximum income earned by way of interest at the rate of 6% p.a. comes out to Rs. 42,000/- per month.

12. The submission made by the learned counsel on behalf of the husband that he did not examine himself as a witness on account of the fact that the learned presiding officer expressed a view that all relevant facts were already on record and his examination was not required, cannot be accepted. In the order dated 19.11.2018 it has been categorically recorded that he chose not to lead any evidence in the case. Nothing has been placed on record to demonstrate that the husband tried to move any application to clarify the aforesaid position. This court cannot at this stage accept the statements made by the husband.

13. The husband was elected as the Municipal Counselor in 2010 and thereafter he contested again in the years 2014 and 2016 although



unsuccessfully. It is relevant to observe that the husband had enough means to contest elections twice after passing of the order dated 28.09.2010 by the single judge of this court in CM(M) 441/2009. After perusal of the records of case, this court is of the view that the impugned order passed by learned Family Court does not suffer from infirmity and the same has been passed in accordance with law in so far as the amount of maintenance is concerned. So far as the date of commencement of payment towards amount of maintenance, the judgment of *Rajnesh v. Neha & Anr. (supra)* has clearly held that maintenance awarded should be from the date of application which would be subject to adjustment of maintenance awarded in any other proceeding between the same parties.

14. In view of the aforesaid discussion, the petition filed by the wife is partly allowed. Paragraph 30 of the impugned order dated 19.11.2018 is amended to the extent that the maintenance awarded shall be from the date of application of the petition under Section 125 CrPC. So far as paragraphs 31, 32 and 33 of the impugned judgment are concerned, the same shall remain enforceable. Sh. Dhirender, the respondent in CRL.REV.P 643/2019 is directed to clear all the arrears within a period of one month and pay the amount awarded to petitioners no. 1 & 2 by the 7th day of every month.

15. The petitions are accordingly disposed of in the aforesaid terms.

16. Pending applications, if any, also stand disposed of.

**AMIT SHARMA
JUDGE**

JULY 13, 2023/sn