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

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Reserved on: 17.08.2023
Pronounced on: 12.10.2023

+ **CRL.M.C. 2501/2023 & CRL.M.A. 9498/2023 & CRL.M.A. 11853/2023**

SUSHIL KUMAR SINGH & ORS. Petitioners

Through: Mr. D.P. Kaushik, Advocate

versus

DR. SHRUTI SINGH Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Articles 226 and 227 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf petitioner assailing the judgment dated 19.12.2022 passed by learned Additional Sessions Judge-02, South-West District, Dwarka, Delhi in Criminal Appeal no. 189/2022 filed under Section 29 of Protection of Women from Domestic Violence, 2005 ('DV Act').



2. Briefly stated, the facts of the case are that the marriage between petitioner no. 1 and respondent was solemnized on 17.04.2002 as per Hindu rites and ceremonies. During the course of time, respondent had filed petitions seeking divorce alongwith petitions for maintenance under Section 125 Cr.P.C. on the ground that petitioners had forced her to quit her studies, had abused her, had physically assaulted her, and also had demanded dowry. It is also alleged that petitioner no. 1 had attempted to kill respondent, however, all the petitions were dismissed. On 03.01.2011, the respondent/wife had filed a complaint under Section 12 of DV Act against petitioners herein. The petitioners had filed an application under Section 9 read with Section 151 of Code of Civil Procedure, 1908 ('CPC') seeking dismissal of complaint under Section 12 DV Act filed by respondent however, the learned Trial Court had dismissed the application on 10.08.2011. The learned Trial Court in order dated 11.11.2013 had passed an order rejecting the arguments on maintainability and held that there was no ground to dismiss the complaint filed by respondent. On 04.01.2014, petitioners had filed an appeal under Section 29 of DV Act against the order dated 11.11.2013 which was dismissed by the learned Appellate Court *vide* order dated 11.07.2017. Thereafter again, the Appellate Court had dismissed the review application preferred by petitioners *vide* order dated 31.08.2017. The petitioners had filed an appeal under Section 29 of DV Act against respondent which was dismissed *vide* impugned order dated 19.12.2022.



3. Learned counsel for petitioners states that the learned Trial Court or Appellate Court had not decided the issue of maintainability. The learned Trial Court had decided application under Section 23 of DV Act moved by respondent despite it being not maintainable. It is stated that learned Trial Court had not applied its judicial mind while passing the impugned order. It is also stated that respondent had concealed the documents revealing her income and employment status alongwith other litigation documents. It is further stated that learned Trial Court had not considered the grounds led on record by the petitioners and, therefore, the impugned judgment be set aside.

4. Despite service, the respondent did not file reply nor anyone appeared on her behalf to address arguments.

5. This Court has heard arguments addressed on behalf of learned counsel of petitioner and have perused the material on record.

6. At the outset, it would be appropriate to look into the provision of Section 23 of DV Act which reads as under:

“23. Power to grant interim and ex parte orders. —

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

7. The relevant portion of impugned judgment dated 10.10.2022 reads as under:



“7. Main contention of the appellant is that the complaint case instituted by respondent is not maintainable and is liable to be dismissed.

8. It is matter of record that on 11.11.2013 the Ld. Trial Court decided the said issue while observing that there was no ground for the dismissal of the complaint case instituted by respondent.

9. The said order dated 11.11.2013, was challenged by the appellant by preferring an appeal. The said appeal was dismissed by the Ld. ASJ-03, West vide his order dated 11.07.2017 by holding that there were no justified grounds for the Trial Court to dismiss complaint under Section 12 of the DV Act. Ld ASJ Court also observed that even after more than 6 years of pendency of the petition, interim application could not be disposed off and Ld Trial Court was requested to expedite the disposal of the matter.

10. Appellant contends that Ld ASJ Court did not decide the issue of maintainability of the application under Section 12 of DV Act and in para 15 of its order dated 11.07.2017, observed as under: “..in view of the pendency of the application under Section 61117 CPC, I am refraining from deciding the issue of maintainability of the application under Section 12 of DV Act till the disposal of the application under Section 6 R. 17 CPC by the Ld Metropolitan Magistrate.”

11. Though, Ld ASJ in the abovenoted para stated that he is refraining from deciding the issue of maintainability of the application under Section 12 of DV Act, but while concluding the order on appeal, Ld ASJ categorically stated that there were no justified grounds for dismissal of complaint under Section 12 of DV Act.

12. Said order dated 11.07.2017, passed by Ld ASJ has not been challenged by the appellant and hence, it has attained finality. Therefore, the Ld Trial Court has rightly observed that the issue of maintainability stands rightly decided by the orders passed by Ld ASJ on 11.07.2017 and hence, the same cannot be re-agitated before the Trial Court.

13. Thus, in facts of the case the Ld Trial Court has rightly called upon both the parties to file their income affidavits in the light of the judgment passed by Hon'ble Apex Court in case titled as "Rajnish vs. Neha & Anr" and proceeded to decide the application of the respondent filed under Section 23 DV Act.



14. Accordingly, there is no legal infirmity or material illegality or jurisdictional error in the impugned order which would occasion injustice, if it is not set-aside.”

8. In the case at hand, petitioners have assailed the order dated 19.12.2022 passed by the Appellate Court wherein petitioners had assailed the order dated 07.04.2022 vide which the learned Trial Court had directed the parties to file their income and expenditure affidavits and had rejected the contention of the petitioners that the complaint was not maintainable. The petitioners have also contended that the learned Trial Court had wrongly held that the question of maintainability already stood decided *vide* order dated 11.11.2013 and then by Appellate Court *vide* order dated 11.07.2017.

9. The learned Trial Court and that the learned Trial Court had passed a reasoned order *vide* order dated 07.04.2022 and had directed both parties to file their income affidavits in light of ***Rajnish v. Neha (2021) 2 SCC 324***. The learned Appellate Court in impugned order dated 19.12.2022 had upheld the order passed by learned Trial Court.

10. The Hon’ble Supreme Court in ***Rajnish v. Neha (supra)*** has observed that affidavits disclosing income and other assets must be filed at the time of filing of pleadings, the same reads as under:

“(vi) The Delhi High Court in a series of judgments beginning with *Puneet Kaur v Inderjit Singh Sawhney* and followed in *Kusum Sharma v Mahinder Kumar Sharma* directed those applications for maintenance under the HMA, HAMA, D.V. Act, and the Cr.P.C. be accompanied with an Affidavit of assets, income and expenditure as prescribed. In *Kusum Sharma*, the Court framed a format of Affidavit of assets, income and expenditure to be filed by both parties at the threshold of a matrimonial litigation. This procedure was extended to maintenance proceedings under the Special Marriage Act and the Indian Divorce Act, 1869. In *Kusum Sharma*, the Delhi High



Court modified the format of the Affidavit, and extended it to maintenance proceedings under the Guardians & Wards Act, 1890 and the Hindu Minority & Guardianship Act, 1956. In *Kusum Sharma*, the Court took notice that the filing of Affidavits alongwith pleadings gave an unfair advantage to the party who files the affidavit subsequently. In this judgment, it was clarified that the Affidavit must be filed simultaneously by both parties. In *Kusum Sharma*, the Court consolidated the format of the Affidavits in the previous judgments, and directed that the same be filed in maintenance proceedings.”

11. This Court notes that the question of maintainability of complaint already stands decided *vide* order 11.11.2013 by learned Trial Court. The learned Appellate Court in order dated 11.07.2017 had observed that there were no justified grounds for dismissal of application filed by respondent under Section 12 of DV Act and thus, was held as maintainable. The observation of the appellate court that the petitioner has not shown any justified ground for dismissal of the application filed by the complainant amounts to holding that he has held it to be maintainable. This order has not been challenged admittedly by the petitioner herein and the order has attained finality.

12. A perusal of records reveals that respondent had filed affidavit disclosing her income and assets on 15.11.2018. However, petitioner no. 1 has not filed affidavit disclosing his income and other assets despite being given multiple opportunities by learned Trial Court and had sought adjournments on multiple occasions.

13. Considering the overall facts and circumstances of this case, this Court finds no infirmity or illegality in the order dated 19.12.2022 passed by learned Appellate Court which had upheld the order dated 07.04.2022 passed by learned Trial Court calling upon



both parties to file their income affidavits. In view thereof, the order of learned Appellate Court is upheld and the present petition is dismissed.

14. Accordingly, the present petition along with pending application stands disposed of.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 12, 2023/dk