

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

% Reserved on: 20th February, 2023

Pronounced on: 11th April, 2023

+ CRL.M.C. 1758/2021, CRL. M.As 12233-34/2022,
CRL.M.A. 2011/2022 and CRL.M.A. 25454/2022

POONAM Petitioner

Through: Ms. Sumitra Choudhary,
Ms. Renu Bajpai, Sh. M.K.
Raghav Raman, Advs. for
petitioner with petitioner in
person

versus

SURAJ PAL Respondent

Through: Mr. Gautam Panjwani &
Mr. Himanshu Nagpal, Advs.

+ CRL.REV.P. 258/2021 & CRL.M.As. 26478-79/2022,
CRL.M.A. 3403/2023 (early hearing)

SURAJ PAL Petitioner

Through: Mr. Gautam Panjwani &
Mr. Himanshu Nagpal, Advs.

versus

SMT.POONAM Respondent

Through: Ms. Sumitra Choudhary,
Ms. Renu Bajpai, Sh. M.K.
Raghav Raman, Advs. for
respondent with respondent in
person

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This common judgment and order will decide both these petitions, one filed by Ms. Poonam (petitioner in CRL.M.C. 1758/2021) and the other filed by Mr. Surajpal (petitioner in CRL. REV. P. 258/2021). Both these petitions have been filed seeking setting aside of the impugned order dated 27th March, 2021 passed by the Ld. ASJ, (West), Tis Hazari Courts, New Delhi in Crl. A. 33/2021. Since both are petitioners in these cross petitions, for the ease of reference, petitioner Poonam shall hereinafter be referred as 'P' and petitioner Surajpal shall hereafter be referred as 'S'.

2. The background facts are that 'P' and 'S' got married on 3rd February, 2005 at Delhi and three children were born out of this wedlock. In 2016, there was matrimonial discord between 'P' and 'S', where 'P' alleged that 'S' had been subjecting her to cruelty for demand of dowry and that 'S' was a habitual drunkard who had physically abused her while also maintaining illicit relationships outside the marriage. 'P' filed a petition under Section 12 of Domestic Violence Act (DVA) being CC No. 5552613/2016 along with an application under Section 23 DVA for interim maintenance. *Vide* order dated 11th November, 2016 the Ld. MM was pleased to restrain S from entering into the 3rd Floor of property bearing No. A-121, Shardapuri, Ramesh Nagar, New Delhi-110015 which was the matrimonial home of 'P' and 'S'. On 26th April, 2017, the Ld. MM allowed the application under section 23 DVA filed by 'P' and fixed the interim maintenance @ Rs.50,000/- per month, including Rs.20,000/- for P and Rs.10,000/- each

for three minor children. This amount included rental charges for suitable accommodation, if any, but excluded school expenses of the children which were to be solely paid by 'S' directly to the school. The school expenses were to include expenses of school fees, uniform, books, co-curricular activities and any other miscellaneous expenses which may be incurred at school of all the three minor children. The Ld. MM further directed that this amount of interim maintenance was to be paid from the date of filing of the application till further orders and that arrears of maintenance be cleared within 4 months from the date of the said order. It was also directed that the amount paid by 'S' to 'P' in this or in any other proceedings would be adjusted accordingly.

3. Aggrieved by the said order, 'S' filed an application under Section 25 (2) of the DVA for modification of the said order. On 20th August 2020, Ld. MM took into account the fact that 'P' was staying in the matrimonial home and therefore did not have to pay rent as also she needed to account for Rs.10,800/- per month which was accrued to 'P' as rent from the 4th floor of the said property and an ATM tower. The Ld. MM reduced the maintenance to 'P' from Rs.20,000/- per month to Rs.10,000/- per month and accordingly, modified the order dated 26th April 2017. Therefore, a total of Rs.40,000/- was to be paid as interim maintenance to 'P' as Rs. 10,000/- for 'P' and Rs.10,000/- each for three minor children.

4. Since 'S' was irregular in making payments, 'P' filed execution petitions *inter alia* Ex. Pet. Nos. 48/2018, 174/2018, 86/2021, 68/2020, 24/2020 and 327/2017 which are pending adjudication and at the time of filing the petition in 2021, as per 'P', 'S' was liable to pay sum of Rs.21 lacs to her. In these execution applications, three further applications were filed, one by 'S' and two by 'P'. The application filed by 'S' was

for attachment of 3rd and 4th floor of the said property while one of the applications filed by 'P' was for arrest of 'S' for execution of order of maintenance and the other was for attachment of property of 'S' bearing No. WZ-38C, Mansarovar Garden, New Delhi.

5. By order dated 8th February, 2021, the Ld. ASJ dismissed the application of 'S' seeking attachment of 3rd and 4th floor of the property at Shardapuri against which he preferred an appeal. An application of 'P' for issuing and executing warrant of arrest was also dismissed. In the meantime, the Ld. MM *vide* order dated 12th March, 2021, dismissed the objections to the applications filed by 'P' for attachment of the property of 'S' at Mansarovar Garden stating that the objectors have been unable to place proper documents on record, including the family settlement and also any other document to prove the ownership of the said property. According to 'P', the family settlement stating co-ownership of the property at Mansarovar Garden was forged and fabricated and therefore, would lead to offence of perjury.

6. By order dated 27th March, 2021, the Ld. ASJ while passing an order in CA No.122/2020, observed that the Ld. Trial Court had already adjusted Rs.10,000/- per month accrued as rent from the 4th floor of the property at Shardapuri and therefore, created a lien in favour of 'P'. Consequently, 'P' should be at liberty to ask for sale of the 3rd and 4th floor of the property at Shardapuri for fulfilment of arrears of maintenance. The request of 'S' to sell both these floors was rejected. The Ld. ASJ therefore, modified the order dated 8th February 2021 to the extent that though 1/4th property in Mansarovar Garden shall remain attached, but sale of shares shall remain prohibited till objections of objectors are decided on merits. As a result of this modification, the order dated 12th March, 2021, was therefore set aside, and it was directed

that 'S' and his family members shall be given an appropriate opportunity to prove their claim and for 'P' to oppose it.

7. 'P' has challenged this order of 27th March, 2021 contending that because of the impugned order, S has been protected from any coercive steps regarding attachment of Mansarovar Garden property and there was no other way for 'P' to recover arrears since they could not sell 4th floor of the property at Shardapuri because they would not have a steady source of income since virtue of the order of 20th August 2020, the rental income from the 4th floor had been adjusted in the maintenance amount. The contention of 'P' was that sham documents had been created relating to the Mansarovar Garden property and the family settlement was fabricated in order to create ownership of the family members in the said property.

8. Other contentions were raised by 'P' stating *inter alia* that 'S' has other properties including the factory where 15 persons are working, a property at Haridwar which 'S' has allegedly transferred to his nephew, and also two properties situated at Najafgarh and Mohan Garden; all these facts had been concealed from the Court for which 'P' has sought prosecution under section 340 Cr.P.C. Further, she contended that a huge amount of Rs.15 lacs, one Alto Car, gold and silver jewellery had been given to 'S' at the time of their marriage. Further, 'S' has not disclosed the bank details of various accounts that he holds. Essentially, the grievance of 'P' against the impugned order is that on the one hand it stays the order of attachment of 1/4th of the Mansarovar Garden property thereby extinguishing the option for her to recover the arrears of maintenance and on the other hand, it gives 'P' the liberty of proceeding with the sale of the said property at Shardapuri which would render 'P' and the minor children homeless.

9. On the other hand, the grievance of 'S' against the impugned order is that the financial capacity of 'S' had been exaggerated and misunderstood by the Ld. Family Court and Ld. ASJ, and that he had not been able to bring on record any proof or evidence that she was incapable of maintaining herself and had not filed any income affidavit. As per 'S', she was misleading the Court since he was unable to pay such exorbitant, unjust and unreasonable amounts. 'S' had already paid approximately Rs.12 lacs excluding the rent amount to 'P' and was unable to pay the remaining decreed amount of Rs. 9 lacs. He further contended that 'P' is earning a good amount of income to the tune of Rs.55,000/- and is capable of maintaining herself. 'S' was willing to satisfy the decretal amount by selling his self-acquired property, the said premises at Shardapuri for which he had already moved an application for attachment which has not been disposed of. As regards the Mansarovar property, 'S' has no share or right in the said property and therefore, the attachment was stayed.

10. On an assessment of respective contentions of the parties, there are five issues that seem to be contested at this stage, notwithstanding various execution applications and applications for perjury filed by 'S'. *First* is the issue of justification of interim maintenance granted by the Ld. MM and later altered by the Ld ASJ; *second* is the issue of rentals received from the 4th floor and the ATM tower by P; *third* is the issue of expenses related to the school which had been directed by the Ld. MM; *fourth*, relates to the property at Shardapuri and whether 'P' or 'S' ought to be allowed to sell it; and *fifth*, is of the other property at Mansarovar Garden, which 'P' desires to get attached for sale in execution and 'S' claims that it is a family property and does not belong to him. These issues are dealt with *in seriatim* herein below:

i) A perusal of order dated 20th August, 2020 passed by the Ld. MM would show that the Ld. MM has traversed facts stated by the parties relating to their income and assets, as given in their affidavits in para Nos. 9 to 12 of the said order. Accordingly, an assessment was made by the Ld. MM that 'S' was expected to be earning not less than Rs.1 lac - 1.5 lacs per month. The said facts and figures are not being repeated for the sake of brevity and to avoid unnecessary prolixity. Dividing that family income equally between the members, it was, therefore, directed that a sum of Rs.50,000/- would be shared as Rs. 20,000/- for 'P' and Rs.10,000/- each for the three minor children. The educational expenses, inclusive of uniform, books, co-curricular activities and any other miscellaneous expenses, were excluded from this maintenance which were to be borne by 'S' and to be paid directly to the school. The Ld. MM had yet another opportunity to traverse through the details of incomes, assets and expenses of the parties and as recorded in detail in the said order. However, the Ld. MM modified the maintenance awarded by order dated 26th April 2017 on the ground that the amount of Rs.50,000/- per month (including Rs. 20,000/- for 'P' and Rs.10,000/- each for three minor children) included "*the rental charges for suitable accommodation as well*". Since the petitioner was in occupation of the 3rd and 4th floor of the matrimonial home, therefore, the Ld. MM thought it fit to reduce the portion of maintenance to 'P' to Rs.10,000/- per month since no rental charges for their accommodation were necessary. This assessment by the Ld. MM, in the considered opinion of this Court, is based on sound rationale, tenable reasons and is based on good conscience and equity. Additionally, the fact that 'P' was in receipt of rents from the 4th floor and the ATM tower has also been noted, which is an aspect dealt with below. The issues have been traversed in

detail before the Ld. MM and are just, fair and based on reasonable assumptions and facts which were there before the Ld. MM. However, it is noted that since this interim maintenance amount to 'P', after modification, excludes rental charges for their stay, it is made clear that if and when 'P' and the children are not using or staying in the matrimonial home, she would be entitled to rental charges in addition to the existing maintenance, for their accommodation.

ii) The Ld. MM has further taken into consideration that 'P' is receiving rentals relating to 4th Floor and the ATM Tower on the said property and would continue to receive the same. It would be adjusted in the amounts she is entitled to receive in execution. This is also a fair and proper direction since 'P' is receiving such amounts in addition to what she is entitled for as maintenance directed by the Court. Considering that 'P' is in occupancy and control of the 3rd and 4th floor of the property, she would therefore, continue to be entitled, by law, to let out the 4th Floor and receive rental amounts in that regard and also to receive the rental amount relating to ATM Tower. These amounts will be paid by the respective tenants/licensee henceforth through cheques to 'P' in order that a record can be maintained. 'P' will file a quarterly statement of the amounts received on these accounts before the Ld. MM. These amounts being received by 'P' will finally be adjusted in the amounts to be received in execution, as already directed by the Ld. MM.

iii) Therefore, the interim maintenance payable by S to P stands at Rs. 10,000/- per month for 'P' and Rs. 10,000/- per month for each of the minor children. In addition, 'S' would be obligated and mandated to take care of all the educational expenses including the fees, uniform, books, co-curricular activities and any other miscellaneous expenses related to the school of three minor children, which as per the Ld. MM, ought to be

paid directly to the school by 'S'. Accordingly, as and when the statement of expenses/demand by the school is provided by 'P' to 'S' along with supporting documents/vouchers, if any, 'S' would be obligated to pay them on an immediate basis. Considering that the children would have advanced in age since the order was passed in 2017, 'S' will continue to be liable to pay all actual costs as may be incurred on account of children for all educational expenses. Reference to 'school' in order dated 26th April, 2017, would include, by necessary implication, of college/any other institution as well which the child may become old enough to join, post completing their schooling. This would only be a necessary concomitant of the order for providing maintenance for the children.

iv) As regards sale of the 3rd or 4th floor of the Shardapuri property, 'P' cannot be coerced to sell it since it provides housing and protection to 'P' and the children, nor can 'S' claim a right to sell it or deal with it till such premises is being used by 'P' and the children. The family, though separated, needs a roof over their heads and currently it is this property which provides them security. However, in the event 'P' and the children choose for whatever reason to reside elsewhere, then the said property can be sold and the proceeds thereof will first be used to clear the arrears of maintenance, if any at that stage and the balance be kept in an interest bearing fixed deposit by 'S' to be utilized for payment of the maintenance amounts to 'P' and the children. As mentioned earlier, if and when 'P' and the children reside elsewhere, they will also be entitled to rental charges for the new accommodation in addition to the interim maintenance as directed above in para 6.2. It is also noted that 'P' has contended there is no full 4th floor but there is only a terrace which has one small *barsati* room and the way to *barsati* is through the

3rd floor and the storeroom in the stairway is used by 'P' and her children, thereby making it difficult to sell 4th floor independently. Considering that 'P' and her children are staying in that property and various directions have been passed by the Ld.MM, dismissing the application of 'S' either to live on 4th floor or to sell the said 3rd floor along with 4th floor, it is directed that there may be no interference with the right of 'P' and her children to continue staying in the said property.

v) As regards the issue relating to attachment of Mansarovar Garden property, it is noted that the impugned order is now two years old and the objectors to such attachment, have not been able to prove their titles as yet. This indeterminate and indefinite position cannot preclude 'P' from getting attachment of the property pursuant to her execution for the arrears. In the event the arrears are not paid by 'S', it is directed that the execution in relation to Mansarovar Garden property be concluded by the Ld. Trial Court within a period of 3 months and a conclusive order be passed in relation to the said execution.

vi) Further, it is directed that S will pay all the arrears based upon the maintenance of Rs.40,000/- (Rs.10,000/- to 'P' and Rs.10,000/- each for the three children excluding education expenses as directed) since the date of filing of DV application, as directed by the Ld. MM, till date. As per the calculation provided by 'P' this amounts to about Rs.28 lacs till January 2023. The balance payment of arrears will be paid by 'S' within a period of 3 months from the date of this order in installments of 1/3rd each per month.

11. It is noted that this Court in proceedings before it by an *ex parte* order dated 23rd August, 2021, stayed the order of Ld. ASJ of 27th March, 2021 and later on 25th October, 2021 directed 'S' to pay Rs.10,000/- to 'P' until further orders. Assailing this order of 25th

October 2021, 'S' went to the Hon'ble Supreme Court and by order dated 31st March, 2022 the Apex Court directed that considering the totality of facts and circumstances, 'S' should continue to pay a sum of Rs.20,000/- per month towards the maintenance subject to further decision in the revision petition. These were interim orders passed by the courts to protect rights in the interim and will not be relevant since detailed final orders are passed above.

12. It is further noted that contempt proceedings were filed by 'P' before the Roster Bench of Contempt in this Court relating to the omission to pay transport charges for one of the minor children *viz.* Diya by 'S' for the months of April and May, 2022. A direction was passed on 12th January, 2023 noting the undertaking of S that the said amount would be reimbursed as well as the balance amount of Rs. 7,500/- will be paid in compliance with the order of the Hon'ble Supreme Court. On 25th January, 2023, this Court in its contempt jurisdiction noted that 'S' had not complied with the said undertaking given to the Court and further directions were given by the Contempt Court to conclude the execution proceedings within 3 months. Subsequently, another order was passed by the Contempt Court on 13th February, 2023 whereby 'S' undertook to pay Rs.6,315/- pending towards charges raised by school. 'P' was given liberty to file appropriate applications for payment/ reimbursement of tuition fees or other educational expenses borne by her. It is directed that 'S' continues to comply with orders of this Court and also reimburses and/or pays the amounts towards the educational expenses of the children with promptitude so as to not necessitate unnecessary expansion of legal proceedings. 'P' will be at liberty to move an appropriate application before the Ld. MM regarding the additional expenses towards tuition which may be considered in

accordance with law and based on a reasonable assessment to be paid and reimbursed by 'S'.

13. These directions have been passed having taken into account the totality of facts and circumstances as also on an appreciation of the order impugned herein. All the execution petitions/applications pending before the Ld. Trial Court will be concluded within a period of 3 months.

14. Accordingly, both these petitions are disposed of with above directions. All pending applications, if any, are rendered infructuous, in light of the directions above of this Court in these petitions.

15. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 11, 2023/sm