



\$~

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

%

Reserved on: 01.08.2023
Pronounced on: 21.08.2023

+ **CRL.M.C. 5289/2023**

NEELAM GOEL Petitioner

Through: Mr. F.K. Jha, Advocate

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Manoj Pant, APP for the
State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking issuance of direction to respondent no. 1 to produce respondent no. 2 before the competent courts and to execute NBWs against respondent no. 2.

2. It is stated that the petitioner was married to respondent no. 2 on 05.05.2001. Disputes arose between the parties on account of demand of dowry by respondent no. 2 and his addiction to alcohol as well as illicit relationship with two other women. The petitioner was



allegedly thrown out of matrimonial home and is staying with her three children at her parental home since 13.03.2013. She had filed a petition under Section 125 Cr.P.C. and was granted interim maintenance of Rs. 7,500/- per month *vide* order dated 26.04.2014. She had also filed a complaint under Section 12 of Domestic Violence Act before the concerned court, where the learned Judge had *vide* order dated 31.10.2016 fixed the maintenance @ Rs. 10,000/- per month including rent for all tenant accommodation. The order of learned Magistrate was challenged before the learned ASJ who was pleased to uphold the order of learned MM and an FIR bearing no. 241/2023, for the offences punishable under Sections 498A/406/34 IPC was also registered at PS Bharat Nagar, Delhi and charge-sheet stands filed in that case. The witnesses have been examined in the said case.

3. Learned counsel for the petitioner states that respondent no. 2 has not been paying maintenance to the petitioner and her three minor children despite several execution petitions filed which are 60 in number. It is also stated that despite issuance of bailable warrants and NBWs against the respondent no. 2, he is not appearing to attend the execution proceedings. It is now stated that the petitioner is a homemaker and it is difficult for her to take care of her three minor children and herself and since the executing courts have not been able to ensure execution of the warrants, the petitioner has not been able to secure maintenance despite orders despite struggling for the last 10 years. It is, therefore, prayed that directions be issued to the learned



Trial Court and respondent no. 1 to produce respondent no. 2 before the concerned court and for execution of NBWs.

4. This Court has heard arguments addressed by both the learned counsel for petitioner and learned APP for the State, and has perused the material on record.

5. In the present case, this Court is of the opinion that interim maintenance in this case was granted *vide* order dated 26.04.2014 passed by learned Principal Family Court, Rohini, Delhi and final order confirming the maintenance was granted *vide* order dated 31.08.2016 passed by learned Special Judge (P.C. ACT), CBI, Rohini Court, Delhi, and the petitioner has not yet been able to secure the amount of maintenance despite multiple execution proceedings being initiated by her.

6. The Hon'ble Apex Court in ***Rajnesh v. Neha (2021) 2 SCC 324*** had considered the delay in execution of maintenance orders, and observed as hereunder:-

“V. Enforcement of orders of maintenance

Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law.

The Bombay High Court in *Sushila Viresh Chhawda v Viresh Nagsi Chhawda AIR 1996 Bom 94* held that :

“The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds.”



An application for execution of an Order of Maintenance can be filed under the following provisions:

(i) Section 28 A of the Hindu Marriage Act, 1956 .w. Section 18 of the Family Courts Act, 1984 and Order XXI Rule 94 of the CPC for executing an Order passed under Section 24 of the Hindu Marriage Act (before the Family Court);

(ii) Section 20(6) of the DV Act (before the Judicial Magistrate); and

(iii) Section 128 of Cr.P.C. before the Magistrate's Court.

Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC / Cr.P.C. Section 125(3) of the Cr.P.C provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.

Discussion and Directions on Enforcement of Orders of Maintenance

The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order XXI.”

7. The Hon’ble Apex Court, as noted in *Satyawati v. Rajinder Singh* (2013) 9 SCC 491 has aptly recognized that litigants truly encounter substantial hurdles after securing a decree, owing to the intricate nature of executing such decrees. The relevant observation is reproduced as hereunder:

“ 2. In relation to the difficulties faced by a decree holder in execution of the decree, in 1872, the Privy Council had observed that “.....the difficulties of a litigant in India begin when he has obtained a Decree.....”

3. ... the position has not been improved and still the decree holder faces the same problem which was being faced in the past...



13. It is really agonizing to learn that the appellant- decree holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant- plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in the case of *The General Manager of the Raj Durbhnga under the Court of Wards vs. Maharajah Coomar Ramaput Sing* had observed **that the difficulties of a litigant in India begin when he has obtained a Decree**. Even in 1925, while quoting the aforesaid judgment of the Privy Council in the case of *Kuer Jang Bahadur vs. Bank of Upper India Ltd., Lucknow [AIR 1925 Oudh 448]*, the Court was constrained to observe that “Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.”

14. In spite of the aforesaid observation made in 1925, this Court was again constrained to observe in *Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors. [(1982) 1 SCC 525]* in para 29 that “Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections.....”

15. This Court, again in the case of *Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr. [(1999) 2 SCC 325]* was constrained to observe in para 4 of the said judgment that “.....it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes long time.....”

17. As stated by us hereinabove, the position has not been improved till today. **We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is**



unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

18. We are sure that the Executing Court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice.”

(Emphasis Supplied)

8. The present case highlights the life of the wife who has filed petition under Section 125 Cr.P.C. for maintenance as well as under Section 12 of DV. Act. The Court has to ensure that the matter is expedited by issuing directions to the police since the matter pertaining to the case of the petitioner who has been knocking the doors of justice for maintenance has been made mockery of by the absence of the respondent/husband and no effective hearing taking place before the learned Trial Court instead on every date of hearing, it is mentioned that NBWs have been received back unexecuted without mentioning as to what the report is and why the NBWs remained unexecuted and in case for last five years is not traceable, why no further action has been taken. The Courts have to ensure and have been advised by various judgments of the Apex Court and this Court that the matters pertaining to maintenance have to be taken up with utmost sensitivity and every endeavour should be made to dispose them off expeditiously.

9. This Court observes that Section 125 of the Cr.P.C. serves as a benevolent provision with a social objective. Its primary goal is to provide support to wives, children, and parents who lack the means to support themselves. The core intention behind this provision is to



thwart the impending threats of impoverishment and homelessness that could befall these dependent individuals in the absence of such support. The underlying purpose of this law is to ensure fairness and prevent individuals from facing hardships caused by financial struggles and homelessness. In essence, Section 125 Cr.P.C. embodies a commitment to social justice by offering a safety net against destitution and the hardships of being without a stable living situation.

10. In view of the foregoing discussions, this Court is of the opinion that the execution proceedings initiated by the petitioner be decided expeditiously within a period of two months from the receipt of copy of this judgment. Learned Trial Court is also directed to issue suitable instructions to the police officials for execution of NBWs against accused for ensuring the timely disbursement of maintenance to the petitioner.

11. Accordingly, the present petition stands disposed of.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 21, 2023/zp