



* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 18th July, 2023
Pronounced on: 23rd August, 2023

+

MAT.APP.(F.C.) 226/2019

VASU BAJAJ

..... Appellant

Through: Mr. Ankur Mahindra, Mr. Ankush Satija and Mr. Aditya Kapur, Advocates.

versus

RAKESH BAJAJ

..... Respondent

Through: Mr. Kamal Kumar, Mr. Rakesh Bajaj and Mr. Savyasachi Rawat, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. This is a case that clamours for the exercise of judicial conscience to address the conundrum of *whether an individual's right to recover arrears in maintenance subsists even after the expiry of the period stipulated in section 125(3) Cr.P.C.* It warrants our endeavour to determine whether the jurisprudential principle of *Ubi jus ibi remedium* which posits that every right has a commensurate remedy stands true when it is confronted with the letter of the law i.e. Section 125 Cr.P.C in this instance.



2. An Appeal under Section 19 of the Family Courts Act, 1984 is preferred against the judgment dated 17.05.2019 dismissing the suit filed by Smt. Nirmal Bajaj on behalf of minor Vasu Bajaj, for recovery of Rs.2,78,800/-on account of the maintenance by the Ld. Additional Principal Judge, Family Court, West District, Tis Hazari Courts, Delhi.

3. The **facts in brief** are that the Smt. Nirmal Bajaj, mother of the Appellant got married to Respondent Shri Rakesh Bajaj on 14.12.1999 according to Hindu Marriage Rites and Ceremonies. One child i.e. Master Vasu Bajaj, the Appellant, was born from the said wedlock on 13.11.2000. Disputes arose between the parties and allegations of being harassed and beaten mercilessly were leveled by Smt. Nirmal Bajaj against the Respondent husband. It was alleged that in January, 2003 when Smt. Nirmal Bajaj was sitting in her room, the Respondent husband and mother-in-law started abusing and beating Smt. Nirmal Bajaj and threw her and the appellant out of the matrimonial home. Thereafter, Smt. Nirmal Bajaj along with her son Vasu Bajaj shifted to a rented premises in West Patel Nagar in February 2003.

4. An application was filed on 25.02.2008 under **Section 12 of Protection of Women from Domestic Violence Act, 2005** (*hereinafter referred to as "D.V. Act"*) wherein Smt. Nirmal Bajaj stated that she is working as UDC in Ordinance Depot, Shakurbasti and earning Rs.12,000/- per month. On the other hand, the respondent/husband is employed at State Bank of Patiala, Karol Bagh Branch, Delhi and earning about Rs.35,000/- per month. Smt. Nirmal Bajaj, therefore, sought maintenance in the sum of Rs.20,000/- per month aside from Rs.10 Lakhs



as compensation and damages for mental and emotional distress and the right of residence in the matrimonial home.

5. The Respondent had contested the application by asserting that Smt. Nirmal Bajaj was earning more than Rs.16,000/- per month. While denying that his salary was Rs. 35,000, he stated that he was merely earning Rs. 20,000/- per month, out of which he was paying a sum of Rs.3,700/- per month towards the installment of his car and was also maintaining his dependent mother.

6. The **learned Metropolitan Magistrate** after considering the evidence of both the parties, granted maintenance @ Rs.5,000/- per month for the Appellant child from the date of petition i.e. 25.02.2008 vide judgment dated 07.01.2010 under Section 12 D.V. Act.

7. The Respondent assailed the said Order by way of an Appeal on 29.01.2010 before the Ld. Sessions Judge, Delhi in Criminal Appeal No.04/2010 which was dismissed vide judgment dated 03.08.2010.

8. On the failure of the respondent to pay the monthly maintenance, the appellant filed an Execution Petition under Section 125(3) Cr.P.C for recovery of arrears in maintenance on 23.05.2012. The Order dated 04.07.2012 records that the Respondent tendered a sum of Rs.60,000/- to the Decree Holder and, the execution was disposed of as satisfied.

9. An application for the restoration of the Execution Petition for the balance amount was filed, however, it was dismissed by learned Metropolitan Magistrate vide Order dated 28.08.2012 with the observations that the execution can be filed within one year of passing of the Order/Accrual of arrears of maintenance. Thus, the appellant herein



was entitled to maintenance for the period from 26.05.2011 to 25.05.2012. Since the Execution Petition was neither accompanied with an application for condonation of delay, nor any objection was taken on 04.07.2012 by the Decree Holder when the Execution Petition was disposed of as satisfied, there could be no revival of the Execution Petition.

10. The aforesaid Order dated 28.08.2012 was challenged by way of an **Appeal** before the Ld. Additional Sessions Judge, Delhi who vide Order dated 18.12.2012 granted liberty to the Appellant herein to seek its remedy before the appropriate forum in accordance with law. Accordingly, the Appeal was dismissed as withdrawn.

11. Thereafter, the Appellant herein (plaintiff in the suit) filed the Civil Suit for recovery of Rs.2,78,800/- before the Additional Principal Judge: Family Court in CS No. 3/2014 by claiming the said amount to be a “*debt*” on account of arrears of maintenance. The Appellant herein claimed that the Respondent admittedly, is liable to pay arrears of maintenance w.e.f 25.02.2008 @ Rs.5,000/- per month. It was claimed that the Respondent was evading the payment of maintenance simply on account of the procedure prescribed under Section 125(3) Cr.P.C; however, this does not absolve him of his admitted liability with respect to the arrears in payment. It is therefore submitted that the appellant was entitled to the amount as under:

Amount of Maintenance w.e.f 25.02.2008	Rs.2,90,000/-
Interest on unpaid amount @ 12% per annum w.e.f 07.01.2010	Rs.73,800/-



Less: Amount paid till date	Rs.85,000/-
Total Due	Rs.2,78,800/-

12. Thus, a total sum of Rs.2,78,800/- with interest @ 9% per annum from the date of institution of the suit till its realization was sought by way of the civil suit.

13. The **respondent herein (defendant in the suit)** contested the suit by filing a **Written Statement** wherein objections were taken that the suit did not disclose any cause of action. The respondent had duly complied with the Order dated 04.07.2012 wherein he paid a sum of Rs. 60,000/- in view of the Execution Petition filed under Section 125(3) Cr.P.C by the appellant and his mother for recovery of maintenance amount.

14. It was also claimed that the suit was also liable to be dismissed due to deficiency in the payment of Court Fees. Further, it was contended that the suit was barred by law as, Section 125(3) Cr.P.C provides a limitation period of one year for recovery of maintenance from the date it becomes due as held by the Hon'ble Supreme Court in Amarendra Kumar Paul v. Maya Paul, (2009) 8 SCC 359. Moreover, maintenance amount had already been paid and the execution petition was satisfied. Therefore, nothing remains due.

15. The Learned Additional Principal Judge, Family Court framed the issues on 25.07.2013 as under: -

- “1) *Whether the plaintiff is entitled to the relief of recovery with interest, as prayed? OPP*
- 2) *Relief.*”

16. On 01.11.2014, the following additional issue was framed: -



“Whether the present suit is barred under the law?”

17. **The Learned Additional Principal Judge, Family Court observed in the impugned judgement** that though the appellant was seeking arrears of maintenance with effect from 25.02.2008, the payment of Rs.60,000/- before the learned Metropolitan Magistrate was made on 04.07.2012 and therefore, the period of limitation would commence from 04.07.2012. Thus, the suit was not barred by limitation.

18. In regard to the entitlement for recovery of the suit amount, it was held that a Family Court cannot be used as an Executing Court to recover the arrears of maintenance that was allowed by the learned Metropolitan Magistrate. The appropriate remedy available to the appellant was by way of an Execution of the Order granting maintenance which it availed. If he was not satisfied or aggrieved by the Order, an appeal against the Order made in the Execution Petition, was the remedy which has been availed though without success.

19. Since the Petitioner herein not met any success in his challenge to the Order of learned Metropolitan Magistrate recording the satisfaction of the decree in the application for the restoration of the Execution Petition and also withdrew its Appeal against the said Order, it was held that the appellant was trying to seek a remedy under the Code of Civil Procedure, 1908 (*hereinafter referred to as “CPC”*) which was not otherwise available to him under Section 125 Cr.P.C. The suit of the appellant was, therefore, dismissed.

20. Aggrieved by the said dismissal of the suit, the present appeal has been preferred.



21. **Submissions heard.**

22. The first aspect considered by the Family Court was the determination of whether the suit was barred by limitation. The learned Additional Principal Judge, Family Court had observed that the maintenance was claimed under Section 125 Cr.P.C w.e.f 25.02.2008. The petition was allowed vide Order dated 04.07.2012 and payment of Rs.60,000/- had been made on 04.07.2012 in the Execution Petition. This implied that the cause of action arose from 04.07.2012 when the maintenance amount as due, was determined while the suit was instituted on 05.01.2013, which was well within the limitation. This finding of the learned Additional Principal Judge, Family Court is not under challenge by either party.

23. The **main ground of challenge** in the present Appeal is with respect to the findings of the Family Court on the non-maintainability of a Civil Suit for recovery of arrears of maintenance granted under the Maintenance Order by the Metropolitan Magistrate as the only remedy available is to seek Execution of such an Order.

24. To put the controversy in the right perspective, and for the sake of ferreting out the crux of the issue in appeal, it may be reiterated that the Petition under Section 12 D.V. Act claiming maintenance was filed by the Smt. Nirmal Bajaj on behalf of her, the then minor son who is the appellant in the present case. The claim was allowed vide Order dated 07.01.2010, by awarding a sum of Rs.5,000/- per month from the date of institution of application i.e. 25.02.2008, payable by the respondent. An Execution Petition for recovery of the arrears of maintenance was filed on



23.05.2012, in satisfaction of which Rs.60,000/- as maintenance from 26.05.2011 to 25.05.2012 i.e. one year immediately preceding the date of filing the Execution Petition in terms of Section 125(3) Cr.P.C was paid by the respondent. Consequently, the recovery of maintenance for the prior period from 25.02.2008 to 25.05.2011, was denied.

25. In light of these turn of events, when the remedy of execution against the Judgement Debtor has turned out to be a mare's nest to cure the predicament of the appellant, it is for this Court to consider whether the appellant, a minor at that point in time, could be disenfranchised from his basic entitlement to maintenance from 25.02.2008 till 26.05.2011 or whether this maintenance from 2008 onwards could be claimed by virtue of a Civil Suit.

26. The aforesaid deliberation would not be possible without examining the tenets of Section 125 Cr.P.C which pertain to order of maintenance. One may question why a provision for maintenance, which is essentially a civil right, should find place in the Code of Criminal Procedure. The rationale being that criminal law seeks to address the crimes committed in a society to maintain law and order. Financial sustenance becomes a big concern for women and children who are completely dependent on the husband. Fighting court battles for maintenance in an already destitute state can turn out to be arduous to the victims, rendering the fight to be a futile exercise. Thus, the objective of introducing Section 125 Cr.P.C was to prevent penury and vagrancy, which many a times, become a reason of commission of offence.



27. The Apex Court in Chaturbhuj vs. Sita Bai, (2008) 2 SCC 316 succinctly described the intent behind introducing Section 125 Cr.P.C as an impetus for social justice especially enacted to protect women and children, rooted in Article 15(3) and reinforced by Article 39 of Constitution of India. It is meant to achieve a larger social good by deterring vagrancy and destitution. A speedy remedy for providing food, clothing and shelter to a deserted wife was inserted to give effect to her fundamental rights and to ensure the natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid objectives were highlighted in the case of Savitaben Somabhai Bhatiya vs. State of Gujarat (2005) 3 SCC 636 as well.

28. In the case of Bhuwan Mohan Singh vs. Meena (2015) 6 SCC 353 the Apex Court reiterated the social objective of Section 125 Cr.P.C and explained the extent of sustenance that a husband is obligated to provide thus: -

“2. Section 125 Cr.P.C was conceived to ameliorate the agony, anguish and financial suffering of a woman who leaves her matrimonial home for the reasons specified in this section and to make some suitable arrangement for her to sustain herself and also her children, if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else.In a proceeding of this nature the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see



that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created wherein she is compelled to resign to her fate and think of life “dust unto dust”. It is the sacrosanct duty to render the financial support and there cannot be any escape for the husband except where the court finds that the wife is not entitled to get maintenance on legally permissible grounds”.

29. The aforesaid observations of the Apex Courts, therefore, are a guiding light to comprehend that the provisions of maintenance for wife, dependent parents and children, aside from being a legal right, is also a social and moral obligation imposed on the husband which cannot be easily avoided. It is in this context that Section 125 Cr.P.C granting maintenance and consequent remedies to make such maintenance Orders to be a reality, needs to be interpreted.

30. Once the maintenance is determined under Section 125(1) Cr.P.C., the question that follows is regarding the process of implementing the said Order to recover any arrears of maintenance. One of the modes for recovery is provided under the proviso to Section 125(3) Cr.P.C which states that *no warrant shall be issued for the recovery of any amount due under this Section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.* The most obvious query at this stage is whether the maintenance that may have become due prior to one year from the date of application as specified in the provision is also recoverable.

31. This aspect came up for consideration before the Hon’ble Supreme Court in the case of Poongodi & Anr. vs. Thangavel (2013) 10 SCC 618. The facts in the said case were para materia to the present case. The



maintenance for the period of one year in terms of Section 125(3) had been allowed to be paid in execution, while the arrears of maintenance for the previous years were declined. The Apex Court held that “*Section 125(3) Cr.P.C does not create a legal embargo on the entitlement to claim arrears of maintenance*”. It merely provides a procedure for recovery of maintenance by construing it as a levy of fine and ordering the detention of the defaulter in custody. This punitive remedy would not be available to a claimant who has not approached the Court within a period of one year commencing from the date when the maintenance become due and payable. **However, if the remedy under Section 125 Cr.P.C was not available to the victim, the ordinary remedy to recover the amount of maintenance as a civil action, shall be available.**

32. A similar view was taken by the Kerala High Court in Praveen vs. Sabitha & Anr. 2017 SCC OnLine Ker 3670 wherein it was held that Section 125 Cr.P.C does not create any bar to the entitlement of the claimant to the arrears of maintenance and the ordinary remedy by way of Civil Suit to recover the amount/ arrears of maintenance would still be available.

33. The aforementioned view can also be derived from the distinction drawn by the Apex Court in Kuldip Kaur vs. Surinder Singh And Another 1989 SCC (Cri.) 171 between “**mode of enforcement**” and “**mode of satisfaction**” of a liability. It was observed that the liability can be satisfied only by making payment of the arrears, while the “mode of enforcement” may include sentencing. A person who is sent to jail does not get absolved of its liability to pay monthly allowance, but it is only a



coercive mechanism to compel the person to discharge his liability. A sentence of jail is not a substitute for recovery of the amount of monthly allowance which has become due.

34. Further, in Shantha alias Usha Devi And Another vs. B.G. Shivananjappa (2005) 4 SCC 468 it was explained that the liability to pay maintenance under Section 125 Cr.P.C, is in the nature of a continuing liability. The nature of the right to receive maintenance and the concomitant liability to pay was also noticed by the Apex Court in its decision in Shahada Khatoon vs. Amzad Ali (1999) 5 SCC 672. It is a settled proposition of law that the law of limitation merely extinguishes the mode of recovery through the Court and not the liability itself, there still remains a continuing liability to pay the arrears in maintenance even after the right to recover such arrears under Section 125 Cr.P.C is extinguished.

35. Therefore, in the present case the liability to pay maintenance continues which may be recovered by any other available modes. The question which now confronts this Court is whether there is any other remedy available to the appellant to recover this amount.

36. Undoubtedly, as discussed above, payment of maintenance to wife and the dependent children is in discharge of the social obligation of the husband which gets crystallized into a defined amount when the Order granting maintenance is made. The learned Metropolitan Magistrate here granted Rs.5,000/- per month for the appellant from the date of application i.e. 25.02.2008 vide his Order dated 07.01.2010. The mode of execution under Section 125(3) has become unavailable for the period prior to May,



2011. It would be appurtenant now to consider whether the arrears in maintenance becomes a ‘debt’ for the recovery of which a civil suit can be filed.

37. The word ‘**debt**’ is derived from the Latin “*Deber*” meaning to “*owe debitum*” meaning something owed. It is a common law word of technical meaning; but has no fixed legal meaning, and it does not have a fixed or invariable signification. It takes shades of meaning from the occasion of its use, and color from accompanying use, and it is used in different statutes and Constitutions in senses varying from a “**very restricted**” to a “**very general**” one. The word implies the existence of a “debtor”, “legality of the obligation”, the “existence of a consideration”, and “execution of performance” by the creditor.

38. The legal concept of ‘**debt**’ as stated by **Blackstone** in his classical Commentaries on the Laws in England reads as under: -

*“a sum of money due by certain and express agreement: as, by a bond for a determinate sum; a bill or note; a special bargain; or a rent reserved on a lease; where the quantity is fixed and specific, and does not depend upon any subsequent valuation to settle it. **The non-payment of these is an injury, for which the proper remedy is by an action of debt**, to compel the performance of the contract and recover the specific sum due. This is the shortest and surest remedy; particularly where the debt arises upon a speciality, that is upon a deed or instrument under seal. So also, if I verbally agree to pay a man a certain price for a certain parcel of goods and fail in the performance, an action of DEBT lies against me; for this is also a DETERMINATE contract; but if I agree for no settled price, I am liable not to an action of debt, but to a special action, according to the nature of my contract.”*



39. It thus needs to be determined if the non-payment of maintenance or alimony falls within the definition of ‘debt’. The legal concept of **“alimony”** has been explained by **Black Stone** in his Commentaries as follows: -

“Suit for Alimony:

The next species of matrimonial cause is a consequence drawn from one of the ‘two former’, which is the suit or ALIMONY, a term which signifies maintenance; which suit the wife may have against her husband, if he neglects or refuses to make her an allowance suitable to their station in life. This is an injury to the wife, which is redressed by assigning to her a competent maintenance and compelling the husband to pay it.”

40. Despite the wide and simplistic meaning of ‘**debt**’ that can be adopted, one is bound to be weary and reluctant in implying the non-payment of maintenance or alimony as a breach of contract amounting to a ‘**debt**’. The basis for such reluctance has been inferred in the case of Hemavathiammal vs. Kumaravelu Mudaliar ILR 1967 KAR 188 wherein it was observed that award of alimony or maintenance does not arise from any contract express or implied, but from the relationship of marriage and the alimony of maintenance is awarded not in payment of debt but in performance of a general duty of the husband to support his wife, made specific and measured by the decree of the Court.

41. Guided by the observations made in the aforesaid judgment it is evident that while the maintenance *per se* does not have its roots in any contractual obligation and is thereby not a “**civil debt**”, but once it is determined and concretized by any Order or a Decree, it becomes a definite amount payable to the wife, children and parents, thus acquires



the character of a “**debt**”, which can be recovered by way of a civil suit. This conclusion can be buttressed by the observations of the Supreme Court in the case of Poongodi & Anr. vs. Thangavel (supra), wherein it was held that when the maintenance may not be recoverable under Section 125 (3) Cr.P.C, the ordinary remedy to recover the amount of maintenance by a Civil action, shall be applicable.

42. Pertinently Section 9 of the Code of Civil Procedure, 1908 gives jurisdiction to the Civil Court to try all suits of civil nature except those which are expressly or impliedly barred by law. This jurisdiction of the Courts to try all suits of civil nature is very expansive as is evident from the language of Section 9 C.P.C.

43. Therefore, the exclusion of jurisdiction of Civil Court must be provided in clear and unequivocal terms. Many Statutes provide an entire mechanism for dealing with the *lis* under the Statute and in such cases, the *lis* can be adjudicated only within the framework as specified in the Statute and there is a strong presumption that Civil Court would not have jurisdiction in such matters. However, the Apex Court in the case of S. Vanathan Muthuraja Vs. Ramalingam alias Krishnamurthy Gurukkal & Ors. 1997(6) SCC 143 observed that as the Rule of Construction, every presumption would be made in favour of the existence of a right and a remedy in a democratic set up governed by Rule of Law and the jurisdiction of the Civil Courts should be assumed except in cases of an express or implied bar. The fundamental test for ascertaining exact extent to which the jurisdiction of Civil Court is excluded is by an implied bar is ***by examination of the remedies and the scheme of the particular Act to***



find out the intendment becomes necessary and the result of the inquiry may be decisive to sustain the jurisdiction of a civil court. When the legislature entrusts a Tribunal or body with the jurisdiction while there is no specific mechanism provided for certain rights, the jurisdiction of Civil Court cannot be read to be ousted.

44. Conspicuously, no such express or implied bar on the jurisdiction of the Civil Court can be inferred from Section 125 Cr.P.C as the scope and purpose of this section is not to recover maintenance or dues, but prevent vagrancy. Since the object of Section 125 Cr.P.C embodies only the social obligation of a husband towards his wife, parents and children, it becomes a “debt” only when the amount payable to the dependant/wife is crystallized by way of a judgment or a decree. Once a definite amount becomes due and payable, it becomes a “**legal debt**”, therefore, the recovery of which can be sought by way of a Civil Suit.

45. We, in view of above discussion and settled position of law, find that a Civil Suit for recovery of maintenance which acquires the character of a “debt” once a final Order is made under Section 125 Cr.P.C, is maintainable. The impugned judgment is, therefore, set aside and the appellant is hereby entitled to maintenance as under: -

Amount due w.e.f. 25.02.2008 till the date of	
filing of the Suit	: Rs. 2,90,000/-
Less – amount already paid by the respondent:	Rs.85,000/-

Total amount due towards arrears of maintenance: Rs.2,05,000/-

46. The suit of the appellant is decreed for a sum of Rs. 2,05,000/- (Rupees Two Lakh Five Thousand only) along with *pendent lite* and



future interest @ 5% per annum till the date of realization. The respondent shall be at liberty to seek the set off of the amount which may have been paid by him during this period over and above the sum of Rs.85,000/- which has already been adjusted.

47. Decree Sheet be prepared accordingly. The appeal is, therefore, allowed.

48. Pending applications, if any, also stands disposed of

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

AUGUST 23, 2023/va