2024:DHC:2275

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

Date of decision: 19.03.2024

\+ **CRL.REV.P. 158/2022**

SACHIN SINGH ..... Petitioner

Through: Mr.Prashant Mendiratta, Ms.Somyashree, Mr.Sanchit Saini and Ms.Tanya Bhutani, Advs.

versus

MASTER AVYAN THROUGH HIS MOTHER NIMISHA KUMAR ..... Respondent

Through: Mr.Ashok Kumar Singh, Mr.Rajesh Jindal and Mr.Kundan Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 8082/2024

1. This application has been filed by the petitioner praying for a direction for a stay on the execution petition filed by the respondent, being Execution Petition No.135/2022, during the pendency of the present petition.

2. With the consent of the learned counsels for the parties, the petition itself is being taken up today for final hearing, therefore, this application is rendered infructuous. The same is, accordingly, disposed of. The next date of hearing, that is, 08.04.2024 stands

cancelled.

CRL.REV.P. 158/2022 & CRL.M.A. 5192/2022

3. This petition has been filed challenging the Order dated 21.12.2021 (hereinafter referred to as 'Impugned Order') passed by the learned Judge, Family Court, East District, Karkardooma Courts, Delhi (hereinafter referred to as 'Family Court') in Maintenance Petition, being Mt. No.206/2018, titled ***Master Avyan v. Sachin Singh***, directing the petitioner herein to pay *interim* maintenance of Rs.40,000/- per month to the respondent herein from the date of filing of the application before the learned Family Court till the disposal of the maintenance petition and, thereafter, to pay the said amount regularly from the month of January, 2022.

4. The petitioner and the mother of the respondent were married on 14.12.2006. From the said wedlock, the respondent was born on 02.06.2014. Due to the marital discord between the petitioner and the mother of the respondent, the petitioner claims that the mother of the respondent left the matrimonial home in the month of March, 2015. The mother of the respondent also filed a number of complaints against the petitioner, resulting in the registration of an FIR against the petitioner. She also filed a complaint under the Protection of Women from Domestic Violence Act, 2005.

5. In the year 2018, the respondent, through his mother, filed the petition under Section 125 Cr.P.C. claiming maintenance. An application was also filed on behalf of the respondent seeking *interim* maintenance from the petitioner. The said application has been

allowed by the learned Family Court by way of the Impugned Order.

6. The learned counsel for the petitioner submits that the learned Family Court has failed to appreciate that, in her affidavit of assets and income dated 27.09.2018, the mother of the respondent has herself disclosed her net income to be Rs.1.70 lacs per month, after payment of tax. He submits that, in spite of the same, the learned Family Court in the Impugned Order has proceeded on the basis that the income of the mother of the respondent is approximately Rs.1 lac per month.

7. He further submits that, in the same affidavit, the mother of the respondent had also disclosed the income of the petitioner as only Rs.1.75 lacs per month. In spite of the same, the learned Family Court has determined the monthly income of the petitioner as Rs.3.18 lacs per month for the purposes of determining the maintenance payable to the respondent.

8. The learned counsel for the petitioner further submits that the learned Family Court has failed to appreciate that there would have been a gradual increase in the income of the petitioner. He submits that merely because the income of the petitioner had increased to Rs.3.18 lacs as on the date of passing of the Impugned Order, it would not justify maintenance being awarded at the same rate for the past, that is, from the date of the filing of the application. There has to be a gradual increase in the maintenance amount as well.

9. He further submits that the maintenance application was filed by the mother of the respondent out of vengeance and only to settle the *inter se* property disputes between her and the petitioner. He has explained the same by reading from the petition the following:

"7. That the impugned order has been passed by the Learned Family Court without considering the fact that the respondent/mother is using the minor as a pawn in the litigation in order to get her illegal demands fulfilled from the petitioner. In fact, it is the respondent/mother who has made the entire dispute to be a property dispute with the petitioner. It is the case of the petitioner that the mother is only bent upon acquiring immovable properties. The Learned Trial Court was apprised of this fact that it is in fact a property dispute which is sought to be given color of a matrimonial dispute. The entire dispute is with regard to the following three properties:-

> *(a). A-820, Tower 4 Chhajarsi (Indirapuram), Gautam Budh Nagar, Uttar Pradesh which is jointly owned by Petitioner, father of the Petitioner and the respondent/mother (hereinafter referred to as "Ashiana Upwan Property"). The said property was purchased in September, 2007 at the cost of Rs.51.5 Lakhs. The home loan for the said property was taken for Rs.39.45 Lakhs from HDFC Bank in September, 2007 for a tenure of 20 years. Later on the said loan was shifted to SBI in the year 2009 for a total sum of Rs.23.5 Lakhs. The EMI of Rs.54,441/- per month for first 36 months (3 years) and Rs.34,403/- per month for balance 204 months i.e. 17 years were to be paid. The respondent/mother subsequently made a bulk payment of Rs.10 Lakhs towards reduction of principal amount and consequently EMI was reduced to Rs.20,000/- per month. This happened somewhere around 2009, however, at the same time, the father of the petitioner continued to transfer Rs.30,000/- per month to the*

respondent/mother's account from September, 2007 till January, 2012 although the Emi was around Rs.20,000/- per month. From February, 2012, the petitioner started transferring Rs.30,000/- per month to respondent/mother's account and he continued to do so till 2015. After that the petitioner got the loan transferred to his sole account for the said Ashiana Upwan property and he continued to pay the same. The loan was eventually paid off somewhere in the year 2021 by the petitioner. The petitioner paid off the balance principal amount of Rs.14.5 Lakhs somewhere in October, 2021 and closed the loan for the said property. Even in 2019, the petitioner had paid a sum of Rs.4.5 Lakhs towards pre-payment of the loan. The possession of the said house was received in the year 2009 and the said house has been on rent since 2009 and the entire rent which is approximately Rs.24,000/- per month is being pocketed exclusively by the respondent/mother. Earlier, the rent was around Rs.20,000/- and now it is around Rs.24,000/. The rent earlier has been fluctuating between Rs.20,000/-to Rs.25,000/- per month. The said property has always been let out since 2009 and the rent is being exclusively taken by the respondent/mother although the petitioner and his father have the right of 2/3rd rent from the said property.

(b). Unit KM 06-906, Jaypee Greens, Kosmos, Tower 6, Sector 129 and 134 Noida which is in joint name of Petitioner and the respondent/mother. The said property was purchased in June, 2010 at a cost ofRs.33 Lakhs. Amount of Rs.25 Lakhs was taken as loan from HDFC Bank for purchase of

the said property. All the EMIs of the repayment of the loan for purchase of the said property have been paid exclusively by the petitioner. The loan was pre-paid and closed in the year 2017 by the petitioner. The said house is ready for possession since 2015, however, respondent/mother is malafidely not coming forward to receive the possession thereby causing huge rental loss to the petitioner. To cause more financial loss to the petitioner, the builder has raised a bill of penalty of Rs.5,50,000/- for delaying the taking over of the possession of the said property. The registration of the house cannot be carried out till the time the petitioner and the respondent are physically present to get the registration carried out.

(c). Property no. 1104, 11 Floor, 3c Lotus Panache, Tower- 15, GH 05 Sector 110, Noida, U.P. which is in the joint names of the petitioner and the respondent/mother. The said property was purchased in the year 2012 in joint names of petitioner and respondent. Loan of Rs.61.85 Lakhs was taken from HDFC Bank. The EMIs were paid by the respondent/mother. The builders are not completing the project. The respondent realizing that the builder has defaulted, has stopped paying the EMIs of the loan since 2018 and the loan has become NP A. It is affecting the credit rating of the petitioner adversely. The petitioner was never interested in purchasing this property and he is so obsessed to buy a bigger house, then she can take a loan on her own name and repay the same and he does not want this property. The respondent insisted that petitioner's name will have to be put in the title documents because his name will have

to be put as a joint borrower and only then HDFC would give such huge loan since already there were two EMIs payable for other two properties. The clear understanding between petitioner and respondent was that the respondent would pay EMIs of the loan for purchase of this property while the petitioner would pay the EMIs properties mentioned at serial No. (a) and (b) above and he was paying for household expenses any which ways.

From 2007 to 2015, the salary of the respondent had ranged from Rs.35, 000/- per month to Rs.1,00,000/- per month. It was not possible for her to repay the loans till the time she was living with the petitioner from her meager salary. So, the petitioner had agreed to pay for the houses mentioned at serial No.(a) and (b) above but respondent subsequently insisted on purchasing house mentioned at serial No. (c) as well. The petitioner was not in agreement for the same saying that he cannot go beyond budget and this was the root cause of the problem. The petitioner was not happy with the insistence of purchase of this property mentioned at serial No. (c). So in order to pay the EMI of Rs.60,000/- for the property mentioned at serial No. (c), she was saving her entire salary as well as the rent of Ashiana Upwan Property and the excess amount of Rs.1 0,000/- per month being taken from the father of the petitioner from 2009 till 2012 and thereafter from 2012 to 2015 from the petitioner. The respondent was able to make the bulk payment of Rs.1 0 Lakhs for Ashiana Upwan Property only because she was saving part of her income since all household expenses were being incurred by the petitioner.

> *From 2006 to 2009, the respondent saved her entire salary as she did not have to bear any expense for rent or household expense as the same were being borne exclusively by the petitioner.*
>
> *The respondent/mother has been filling false and frivolous cases against the Petitioner and his old parents in order to harass them and usurp the aforementioned properties."*

10. On the other hand, the learned counsel for the respondent submits that as far as the property, that is, Ashiana Upwan Property is concerned, the same was lying vacant for a considerable period; and it was only recently let out and, that too, on a monthly rental of Rs.17,000/-. He submits that the mother of the respondent also has to pay amounts for maintenance of the said property as also towards the property tax.

11. He further submits that the petitioner is, in fact, today earning more than Rs.5 lacs per month and the respondent, through the mother, is in the process of filing an application seeking enhancement of the *interim* maintenance amount. He submits that there is no reason for this Court to interfere with the Impugned Order.

12. I have considered the submissions made by the learned counsels for the parties.

13. The learned Family Court, in Impugned Order, has observed that from the affidavits of assets and income filed by the respective parties, it is evident that the income of the petitioner is approximately Rs.3.18 lacs per month. From the own showing of the petitioner, the petitioner is also investing heavily in properties. The *interim*

maintenance is not awarded in favour of his wife but in favour of his child. Therefore, the *inter se* disputes and property claims between the petitioner and his wife, that is, the mother of the respondent, cannot be made subject matter of the *interim* maintenance application. These have to be separately dealt with in their *inter se* litigations and in appropriate proceedings. The said property disputes cannot be made subject matter of the maintenance application/petition in relation to the respondent.

14. In ***Neha Tyagi v. Lieutenant Colonel Deepak Tyagi***, (2022) 3 SCC 86, the Supreme Court has held as under:

> *"**6.** However, at the same time, the respondent husband cannot be absolved from his liability and responsibility to maintain his son Pranav till he attains the age of majority. Whatever be the dispute between the husband and the wife, a child should not be made to suffer. The liability and responsibility of the father to maintain the child continues till the child/son attains the age of majority. It also cannot be disputed that the son Pranav has a right to be maintained as per the status of his father. It is reported that the mother is not earning anything. She is residing at her parental house at Jaipur. Therefore, a reasonable/sufficient amount is required for the maintenance of her son including his education etc. which shall have to be paid by the respondent husband, irrespective of the decree of dissolution of marriage between the appellant wife and the respondent husband. The amount which was being paid pursuant to the order passed by the Army authorities on 15-11-2012 has also been stopped by the respondent husband since December 2019."*

15. In the present case, from the reading of the Impugned Order,

and this also remains uncontroverted, it is evident that the parties maintain a good standard of living. The respondent is stated to be studying in the Delhi Public School, Noida. Keeping in view the entire circumstances and the facts of the case, no fault can be found in the Impugned Order, which awards *interim* maintenance at the rate of Rs.40,000/- per month in favour of the respondent/child to be paid by the petitioner.

16. The claim of the petitioner that the income of the petitioner would have increased gradually or that the mother of the respondent had claimed a lesser amount as the income of the petitioner, also do not come to the aid of the petitioner. The own affidavit of the assets and income of the petitioner, which has also been taken note of by the learned Family Court in the Impugned Order, showed that in his ITR for the year 2020-21, an income of Rs.43,27,270/- had been disclosed, while for the year 2021-22, an income of Rs.51,55,376/- had been disclosed. By the income for the Financial Year 2021-22, the monthly income of the petitioner would be more than Rs.4 lacs per month. In spite of the same, the learned Family Court seems to have averaged out the income by determining it at Rs.3.18 lacs per month. I find no fault in the said assessment by the learned Family Court. Even otherwise, and as noted above, taking into account the nature of investments made and the income of the petitioner (even assuming the same to be on lower side as claimed by the counsel for the petitioner), the interim maintenance awarded by the Impugned Order is found just and reasonable and as not warranting any interference from this Court.

17. In view of the above, I find no merit in the present petition. The

same is, accordingly, dismissed. The pending application also stands disposed of.

18. The learned counsel for the petitioner submits that warrants of arrest have been issued against the petitioner for ensuring compliance with the Impugned Order.

19. It is directed that in case the petitioner makes the deposit of the arrears within a period of two weeks from today, the warrants of arrest issued by the learned Family Court for executing the Impugned Order, shall stand set aside. In case the amount is not deposited/paid by the petitioner to the respondent within the above period, the order issuing warrants passed by the learned Family Court shall be enforced without further reference to this Court.

NAVIN CHAWLA, J

MARCH 19, 2024/ns/AS

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