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

+ **CRL.M.C. 1036/2020 & CRL.M.A. 4141/2020,**
CRL.M.A. 5558/2020

GURVINDER SINGH KOHLIPetitioner
Through: Mr. C. Mohan Rao, Senior
Advocate with Mr. S.B.
Singh and Mr. Lokesh
Sharma, Advs.

versus

HARBANS KAUR KOHLIRespondent
Through: Mr. Viraj Dattar, Senior
Advocate with Ms. Koplin
Kaur, Mr. Siddharth
Arora, Mr. Gaurav Kumar
and Ms. Jasleen Kaur,
Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **18.03.2025**

1. The present petition is filed against the order dated 24.01.2020 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), West District, Tis Hazari Courts, Delhi in Criminal Appeal No. 76/2017.
2. By the impugned order, the learned ASJ, in the appeal filed by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 ('**DV Act**'), directed the petitioner to pay a sum of ₹50,000/- as interim maintenance to the respondent, and upheld the order dated 08.02.2017 passed by the learned Metropolitan Magistrate ('**MM**').
3. The respondent who is the mother of the petitioner had filed a petition under Section 12 along with an application under Section 23 of the DV Act against the petitioner, and his wife alleging that she was persistently subjected to mental, physical



and emotional abuse at the hands of the petitioner.

4. The learned MM by the order dated 08.02.2017 after considering the number of immovable properties as mentioned by the petitioner in his income affidavit and the standard of lifestyle as maintained by him, directed the petitioner to pay a sum of ₹50,000/- to the respondent as interim maintenance including her medical and travelling expenses from the date of filing of the application till further orders.

5. The learned Senior counsel for the petitioner submits that the petitioner is suffering from cancer, and is not in a position to pay ₹50,000/- as interim maintenance. He submits that the complaint instituted under the DV Act is only a counter blast to the probate petition filed by the petitioner for the grant of probate of the will dated 25.11.2004 executed by his late father. He submits that the petitioner neither misbehaved with the respondent nor did he neglect her. He submits that no instance of domestic violence was *prima facie* proved against the petitioner.

6. He submits that the respondent has refused to reside with the petitioner out of her own volition, and is residing with the petitioner's sisters in Canada. He submits that the respondent is also availing pension from the Canadian government on account of her obtaining a permanent resident status in Canada. He submits that while the factory premises situated in Naraina Industrial Area C-109/2 Ph-1 is in the possession of the petitioner, the same is not yielding any sum of money. He submits that the petitioner himself is old and ailing, and the payment of ₹50,000/- as interim maintenance is not feasible.

7. The learned Senior counsel for the respondent disputes the receipt of pension from the Canadian government. He submits that the respondent is a widow lady having no independent



source of income, and is completely dependent on her daughters for her sustenance.

8. I have heard the counsels and perused the material on record.

9. It is pertinent to noted that Section 23 of the DV Act empowers the Magistrate to grant interim maintenance if the application *prima facie* discloses that the petitioner is committing an act of domestic violence, has committed an act of domestic violence or may commit an act of domestic violence against the aggrieved person.

10. In the present case, the learned MM *vide* order dated 08.02.2017 noted that from the allegations levelled by the respondent in her petition under Section 12 of the DV Act, it *prima facie* appeared that she is an “aggrieved person” as per the definition under Section 2(a) of the DV Act, and is consequently entitled to interim relief. The learned MM noted that while the petitioner claimed to be earning a meagre sum of ₹20,000/- per month, however, as per his own affidavit, the petitioner admitted to having various immovable assets and real estate to his name. It was noted that the petitioner held accounts with various banks, stayed at a three star accommodation and also owned an Iphone. It was noted that given the status of the parties, it could not be expected that the petitioner was earning only ₹20,000/- per month, and his income must range in lakhs of rupees. Consequently, the learned MM, upon a consideration of the number of immovable properties attributed to the petitioner’s name, and the standard of his lifestyle, directed him to pay a sum of ₹50,000/- as interim maintenance to the respondent including her medical and travelling expenses from the date of filing of the application till further orders. The petitioner was also directed to



clear the arrears of maintenance within four months from the date of the order.

11. By the impugned order, the learned ASJ dismissed the appeal filed by the petitioner under Section 29 of the DV Act. It was noted that the petitioner was under a moral as well as a legal duty to maintain his aged mother. It was noted that for the grant of maintenance, the DV Act only demanded the satisfaction of the Magistrate that the application *prima facie* disclosed that the accused is committing, has committed or may commit an act of domestic violence. It was noted that the multiple complaints of domestic violence lodged by the aged mother against her son itself sufficed to reach a *prima facie* satisfaction that the petitioner is committing/has committed or may commit an act of domestic violence on her mother.

12. The learned ASJ appreciated that the properties owned/ jointly owned by the petitioner are worth crores in rupees, and the same cannot be possible unless the petitioner had substantial income and disposable money in hand. It was noted that given the lifestyle maintained by the petitioner, the learned MM rightly disbelieved that the income of the petitioner was a meagre sum of ₹20,000/- per month. It was noted that the income of the petitioner could rightly be assessed to range in lakhs of rupees per month, and that the income tax returns do not reflect the correct status of the income of the petitioner.

13. This Court has perused the material on record. The provision relating to grant of interim maintenance is provided under Section 23 of the DV Act which delineates the power of the Magistrate to pass interim orders. The only requirement for grant of interim maintenance as materialised under Section 23 of the DV Act is that the application has to *prima facie* disclose that



the aggrieved person has suffered/is suffering or may suffer domestic violence.

14. It is pertinent to note that the petitioner does not dispute that he is embroiled in certain litigations with his mother in relation to certain properties. The same, in the opinion of this Court, to some extent demonstrates domestic violence. It has been contended that the respondent has voluntarily refused to reside with the petitioner, and is instead residing with her daughters in Canada. The said argument in the opinion of this Court is without merit. A mother who is not residing with her son when the parties are embroiled in litigation, cannot be construed to mean that the respondent is not voluntarily residing with the petitioner.

15. It is the contention of the petitioner that the other properties allegedly stated to be in the possession/ownership of the petitioner are already subject matter of various litigations between the parties. It is further the case of the petitioner that he himself is old and undergoing treatment of cancer, and the payment of interim maintenance to the tune of ₹50,000/- is not feasible.

16. While the petitioner disputes the possession/ownership of the other properties, he does not dispute the possession of the factory premises situated at Naraina Industrial Area C-109/2 Ph-1. It is the petitioner's case that the said property, however, is not yielding any amount. Petitioner has not disputed that the said property is worth approximately ₹20 crores. Even if the case of the petitioner is taken at its highest, and it is accepted that the property is presently not yielding any amount, the same can definitely be put to good use.

17. It is pertinent to note that the petitioner's father has since



expired. While this Court is not ignorant of the fact that the petitioner himself is old, he is still under an obligation to provide for his aged mother. The moral and legal obligation of the petitioner to maintain the respondent is *de hors* the ensuing litigations between the parties. Merely because there exist multiple ongoing litigations between the parties does not obliterate the fact that the respondent is the petitioner's mother, and multiple litigations do not absolve him from the duty to take care of his mother's welfare.

18. It is trite law that deprivation of financial resources is also a form of 'economic abuse' under the DV Act, Section 3(iv) defines economic abuse as:

"economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household."

19. Further, the application for interim relief under Section 23 of the DV Act, by its very nature, does not require any formal proof of cruelty or violence to the aggrieved. Once the Magistrate is *prima facie* satisfied that the accused is committing, or has committed or may commit an act of domestic violence, the



aggrieved is entitled to interim relief.

20. Much emphasis has been placed on the fact that the respondent is a permanent resident of Canada, and is availing pension from the Canadian government. The same has been disputed by the respondent. Whether the respondent is in receipt of pension or not is a subject matter of trial, and the veracity of the contention of the petitioner cannot be tested at this stage. In the opinion of this Court, interim maintenance for a sum of ₹50,000/- is not an exorbitant amount.

21. In view of the aforesaid discussion, this Court does not find any infirmity in the impugned order, and the same cannot be faulted with. The petitioner is directed to clear the arrears of interim maintenance within a period of three months from the date of this order.

22. It is not disputed that the impugned order is only in relation to grant of interim maintenance. The defences raised by the parties, along with the allegations and counter allegations, would be the subject matter of trial, and would have to be decided after the parties have led their evidence.

23. The learned Trial Court is directed to pass the final order uninfluenced by the observations made in this order. The learned Trial Court is requested to expedite the completion of trial within a period of six months from date.

24. In view of the above, this Court finds no reason to interfere with the impugned order, and the petition is dismissed in the aforesaid terms. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

MARCH 18, 2025

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