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

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Reserved on: 23.09.2022
Pronounced on: 02.11.2022

+ **CRL.M.C. 3818/2022 & CRL.M.A. 15951/2022 (stay)**

JAGDISH PABREJA

..... Petitioner

Through: Mr. Amulya Dhingra,
Advocate.

versus

SHALU PABREJA

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Article 227 of Constitution of India read with Section 482 Code of Criminal Procedure Code, 1973 filed by petitioner assails the orders dated 25.04.2022 and 26.05.2022 (“impugned orders”) passed by learned MM, Mahila Court (West) Tis Hazari Courts, Delhi (“Executing Court”) in Execution No. 124/2019.

2. The Executing Court, *vide* order dated 25.04.2022, held that the order granting interim maintenance passed on 22.03.2019 is operational from the date of filing the application under Section 23 of Protection of Women from Domestic Violence Act, 2005 (“DV Act”) which was

moved on 24.06.2013. The petitioner herein was further directed on 26.05.2022 to pay Rs.1,00,000/- out of the arrears of Rs.3,18,000/- by 06.06.2022.

3. Brief facts leading to the filing of instant petition, as disclosed in the petition, are detailed as under:

3.1. As the relationship between the petitioner/husband and respondent/wife became estranged, a case under Domestic Violence Act, 2005 was filed by the wife in the year 2011, and *vide* order dated 22.03.2019 on application filed by wife seeking interim maintenance, maintenance was granted to her.

3.2. The wife had filed several applications for grant of interim maintenance taking contradictory pleas and seeking contradictory reliefs. She also did not address arguments on the initial application seeking interim maintenance despite several opportunities given to her. Thereafter, the matter had been listed for evidence *vide* order dated 13.01.2015. Another application was filed by the wife on 16.12.2016 seeking interim maintenance.

3.3. The wife had been residing in the house of her mother-in-law i.e. mother of the petitioner herein, however in compliance of Judgment and Decree passed on 10.11.2017 by Civil Judge-04 (West) Tis Hazari Courts, Delhi in Civil Suit filed by mother-in-law of the respondent, the respondent had vacated the said house. After vacating the said house, the wife again filed another application dated 20.11.2017 for grant of interim maintenance and order of residence.

3.4. After hearing arguments on the application dated 16.12.2016 an interim order on maintenance was passed on 22.03.2019, thereby awarding interim maintenance of Rs.3,000/- each to the respondent and the minor child, totaling Rs.6,000/- per month from the date of filing of the application. The learned Trial Court held that this amount includes the rental charges for the suitable accommodation as well, if any, from the date of her vacation from the matrimonial home. It was also ordered that the school, conveyance and stationery and uniform expenses of the minor child will be borne by the petitioner separately.

3.5. Thereafter, an execution petition no. 124/2019 claiming an exaggerated and incorrectly calculated amount of Rs. 5,28,000/- from the date of 23.12.2011 till 22.04.2019 was filed. The petitioner/husband filed objection to the execution petition on 22.08.2019 stating that the amount has been wrongly and erroneously calculated on the incorrect basis from the date of filing of the petition under Section 12 of DV Act.

3.6. The wife filed another application on 21.12.2020 i.e., after 19 months for seeking clarification of the time period about the applicability of interim order dated 22.03.2019. The petitioner filed his reply to the said application and the learned Trial Court while dealing with the objections filed by the petitioner herein in the execution proceedings disposed of the objections and held that the order dated 22.03.2019 is operational from the date of filing of the application under Section 23 of DV Act i.e., 24.06.2013.

3.7. During the execution proceedings on 26.05.2022, the learned Trial Court directed the petitioner to pay Rs.1,00,000/- out of arrears of Rs.3,18,000/-. The petitioner paid Rs. 1,00,000/- on 06.06.2022 through Bankers Cheque bearing No. 056803 dated 03.06.2022 in the name of wife/respondent, with application for praying that the said amount of Rs. 1,00,000/- being retained on court record and release to the respondent only subject to the outcome of the appeal which the petitioner was contemplating to file, but the learned Trial Court dismissed the said application and released the said amount of Rs. 1,00,000/- to the respondent.

4. Learned counsel appearing on behalf of the petitioner has made the following submissions:

4.1. The order dated 25.04.2022 passed by the Executing Court is not only arbitrary, without jurisdiction, based on conjecture and surmise and bad in law, but is also in violation of settled principles of law and is liable to be set aside.

4.2. Impugned order was passed without jurisdiction as the court had become *functus officio* after passing the order of maintenance and as an Executing Court, in the execution petition, no clarification could have been given to the effect that interim maintenance would be payable from 24.06.2013. Executing Court had no jurisdiction to review or revise or entertain its own order without prayer being made in that regard by any of the parties.

4.3. Executing Court could not have passed the interim order w.e.f. 24.06.2013 by ignoring the order dated 13.01.2015 wherein it is recorded that the wife does not require maintenance.

4.4. By granting interim maintenance from the date of application dated 24.06.2013, the Executing Court committed an error as at that time the interim relief sought was for handing over duplicate keys of the main entrance gate of the house of her mother-in-law where the wife was residing at that time.

4.5. The Trial Court noted in its order dated 22.03.2019 that there are three applications being applications dated 24.06.2013, 16.12.2016 and 20.11.2017 filed by the wife but no date of application was specified in the operative part of the order, and this aspect could have only been clarified by the court who had passed the interim relief and not by the Executing Court.

4.6. Respondent prayed for residence order for the first time in interim application dated 20.11.2017 in view of Decree and Judgement dated 10.11.2017 passed by the learned Civil Judge. Executing Court incorrectly granted the rent amount for suitable accommodation w.e.f. 24.06.2013 since at that time the respondent was neither entitled to nor had prayed for residence order as she was residing in her mother-in-law's house without paying any rent.

4.7. Executing Court could not have modified or revised its own order without any prayer after a lapse of 3 years. Executing Court failed to appreciate that an application seeking clarification of operation of the interim maintenance order dated 22.03.2019 is still

pending and instead of deciding the same, the impugned order was passed arbitrarily and without jurisdiction.

4.8. Executing Court held that the order dated 22.03.2019 will be operative from 24.06.2013, though the respondent had filed the execution for realization of Rs. 5,28,000/- calculated from the date of filing of the main DV petition in 2011 and not from the date of 24.06.2013.

4.9. Executing Court did not give any reasons for modifying the operation of interim maintenance order retrospectively from 24.06.2013, except that interim maintenance application is to be allowed from the date of application.

4.10. Impugned orders have been passed in haste and without giving sufficient opportunity to the petitioner to avail any legal remedy against these orders.

4.11. Impugned order dated 25.04.2022 is also bad in law in view of Section 362 Cr.P.C., which prohibits the court from changing or modifying the order once it has been signed, except where provided by law.

4.12. Executing Court illegally directed the petitioner to pay Rs. 1,00,000/- *vide* order dated 26.05.2022 despite request being made by the petitioner/Judgment Debtor for giving time to appeal against these orders.

5. I have gone through the submissions and perused the documents annexed with the present petition.

6. It will be relevant for this Court to look into as to whether the determination/clarification by the Executing Court with respect to 'date of filing of application' in the impugned order was permissible in light of settled law or not.

7. Section 47 of the Code of Civil Procedure, 1908 provides for the questions to be determined by the court executing decree, and the same is reproduced as under:

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

* * * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation 1.-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

8. The Hon'ble Supreme Court in *Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and Ors., (1970) 1 SCC 670* has held as under:

A Court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties

9. As also held in *Deepa Bhargava & Anr v. Mahesh Bhargava & Ors [2008 (16) SCALE 305]*, an executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is.

10. However, the Apex Court in *Topanmal Chhotammal v. Kundomal Gangaram, AIR 1960 SC 388* had observed that in case of any ambiguity in a decree, the executing court would be entitled to interpret the same in terms of the pleadings and the judgment. The said observation is as under:

"At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the judgment."

11. In *Bhavan Vaja v. Solanki Hanuji Khodaji Mansang (1973) 2 SCC 40*, the Apex Court while elaborating the aforesaid proposition, observed as under:

"20. It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the court, often has to ascertain the

circumstances under which those words came to be used. That is the plain duty of the execution court and if that court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. Evidently the execution court in this case thought that its jurisdiction began & ended with merely looking at the decree as it was finally drafted. Despite the fact that the pleadings as well as the earlier judgments rendered by the Board as well as by the appellate court had been placed before it, the execution court does not appear to have considered those documents. If one reads the order of that court, it is clear that it failed to construe the decree though it purported to have construed the decree...”

(emphasis supplied)

12. The question as to whether the Executing Court is entitled to look into the judgment to determine the question regarding executability of decree, in case decree is silent also came up for consideration before the Privy Council in *Bank of Bihar Ltd. v. Sarangdhar Singh [1948 (Vol. 61) LW 747]*. The Privy Council observed that it is permissible to look into the judgment also while considering the executability of the decree.

“The rule is well established that an execution Court cannot go behind the decree and question its correctness; but when the decree is silent, as in the present case, and gives no indication as to what property should be sold in execution, it is permissible for the Court to look into the judgment in order to find out whether upon any issue properly raised and determined as between the parties interested the property brought to sale has been held to belong to the judgment-debtor.”

13. As per legal propositions discussed hereinabove, when an ambiguous decree is passed, it is the duty of the executing court to interpret the decree and for this purpose the court is entitled to look into

the pleadings and the judgment. This Court is, therefore, of the opinion that discretion vests in the Executing Court to interpret the decree to resolve the ambiguity with regard to the date from which the husband was liable to pay maintenance to the wife.

14. In the present case, the ambiguity in the decree was as to which application filed by the wife i.e., respondent herein was referred to by the Trial Court while ordering the interim maintenance from the “date of filing of the application”. The relevant part of order granting interim maintenance is reproduced below:

“18. Hence, considering the income of respondent no. 1, as clear from certificate as Rs. 15,000/- and additional income of Rs. 6,000/- from part time job and in the absence of any income proof of respondent no. 1 by the petitioner. it is clear that he is earning Rs. 21,000/- per month, I hereby award interim maintenance @ Rs. 3,000/- per month each in favour of the petitioner and her child (totaling to Rs. 6,000/- per month) from the date of filing of the application. This amount includes the rental charges for the suitable accommodation as well, if any from the date of her eviction from the matrimonial house. The school expenses would be paid separately by the respondent no.1 in the school itself along with conveyance, stationary and uniform charges...”

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15. The Executing Court, in the impugned order, clarified that the said date of application was 24.06.2013. The observation of Executing Court is as under:

5. Vide order dated 22.03.2019 interim maintenance has been awarded to the petitioner (DB herein) from the date of filing of the application. It is pertinent to mention that the said order has been moved on the interim application filed by the petitioner under section 23 (2) of the DV Act for grant of

interim maintenance. It is submitted by the Learned counsel of the decree holder that the first separate application for grant of interim maintenance was filed on 24.06.2013 but the interim relief has been prayed for in the main petition dated 23.12.2011 and thereafter, three more applications have been filed for the same relief. The order is very clear that the same is applicable from the date of filing of the application i.e 24.06.2013 when .the application under section 23 (2) of the Protection of Women from Domestic Violence Act seeking for interim relief has been filed and not as suggested by Learned counsel of JD.

6. It is a settled law that maintenance is awarded from the date on which the application is made before the concerned Court and the right to claim maintenance must date back to the date of filing the application as the rationale of granting maintenance from the date of application find its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband.

7. Hence, the order is operational from the date of filing the application under Section 23 of DV Act moved on 24.06.2013. Accordingly, the objection moved on behalf of JD stands dismissed.

16. It is the case of petitioner, which also finds mention in the impugned order, that various applications seeking interim maintenance and other reliefs were filed over a period of time, including applications filed on 24.06.2013, 13.01.2015, 16.12.2016 and 20.11.2017. Before this Court, it was argued on behalf of petitioner that interim relief sought under application dated 24.06.2013 was for handing over duplicate keys of the main entrance gate of the house of her mother-in-law where the wife was residing at that time. It was further averred that vide order dated 13.01.2015, it has been recorded by the Trial Court

that the wife did not require maintenance at that point of time. Attention of this Court was also drawn to the fact that the amount awarded as interim maintenance by the Trial Court includes the rental charges for the suitable accommodation as well, if any from the date of her eviction from the matrimonial house, and since the said eviction had taken place pursuant to an order dated 10.11.2017 and the relief qua residence was sought by the wife only under application dated 20.11.2017, the same could not have been awarded from 24.06.2013.

17. In the present petition, an application under section 20 and 23 of DV Act seeking interim maintenance dated 16.12.2016, and an application dated 20.11.2017 seeking order of residence along with disposal of earlier interim maintenance application has been annexed. Other applications seeking interim reliefs filed on 24.06.2013 and 13.01.2015 have not been placed on record, in view of which, averments on behalf of petitioner cannot be verified.

18. The counsel for petitioner had argued that no relief regarding any clarification on the aspect of “date of application” was sought in the execution petition, and a separate application was filed for the same. But the Executing Court did not consider the specific application filed by the decree holder in this regard and the objections thereto filed by the petitioner, and the same still remains pending. It was argued that in doing so, the Executing Court without any prayer been made in execution petition, suo motu issued clarifications in the impugned order.

19. A perusal of record shows that the impugned order has been passed in the Execution petition no. 124 of 2019 filed on behalf of the

wife/decreed holder. In the said petition, the only relief sought was payment of Rs.5,28,000/-, from the period 23.12.2011 to 22.04.2019 for total 7 years 4 months @ Rs. 6,000/- per month. Objections to this petition were filed before the Executing Court by the petitioner. Thereafter, a separate application was filed on 21.12.2020 on behalf of decreed holder seeking clarification from the executing court as to from what date the payment of maintenance was to be made. Objections to the same were also filed by the petitioner. However, a perusal of the impugned order dated 25.04.2022 reflects that the said order has been passed in the Execution petition no. 124 of 2019, after considering the objections filed by the petitioner to the execution petition, wherein the Executing Court went on to clarify that order of the Trial Court will be applicable from the date of application filed on 24.06.2013.

20. The question regarding date of filing of application is quite significant in this case since several applications were filed over a period of five years seeking similar or overlapping reliefs by the wife/respondent as per the changing circumstances in her matrimonial life, and any error in determination of the correct date shall have an effect on the amount to be paid or liability to be incurred by the petitioner in pursuance to order of the trial court.

21. The date of payment of rent and amount of rent are also significant to be determined in the case. In view of observations made in preceding para no. 17 of this order, the exact date and amount of rent payable should be specified by the learned Court in view of the order dated 13.01.2015 and relief sought by wife on 24.06.2013.

22. In the given situation, the Executing Court ought to have considered the application seeking clarification filed by the wife/decreed holder and also the objections filed thereto by the petitioner, and then should have decided the same. However, as observed in preceding paras, it appears that the said application and objections filed to the application have not been considered by the Executing Court.

23. In view thereof, the matter is remanded back to the Executing Court with a direction that the application filed by the wife/decreed holder seeking clarification and the objections filed by the petitioner/judgment debtor be considered by the Executing Court.

24. The present petition stands disposed of in the above terms. Pending application i.e. CRL.M.A. 15951/2022 also stands disposed of.

SWARANA KANTA SHARMA, J

NOVEMBER 2, 2022/zp

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