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Chander Arya vs.monika Arya

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SooperKanoon Citation : sooperkanoon.com/1217368

Court : Delhi

Decided On : Aug-27-2018

Appellant : Chander Arya

Respondent : Monika Arya

Advocate for Pet/Ap. : Mr. Sunil Chaudhary, Ms. Preeti

Judgement :

$~51 + IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

27. h August, 2018 CRL.M.C. 1211/2018 and Crl. M.A. 4434-4435/2018 CHANDER ARYA .....

... Petitioner
Through: Mr. Sunil Chaudhary and Ms. Preeti, Advocates versus MONIKA ARYA CORAM: HON'BLE MR. JUSTICE R.K.GAUBA ORDER (ORAL) ..... Respondent Through: Mr. Arun Mahajan, Advocate 1. The petitioner and the respondent herein were concededly married to each other on 02.09.2006 and out of their cohabitation a girl child took birth on 15.07.2007. It is the case of the petitioner (husband) himself that the respondent (wife) had left the matrimonial home on 25.11.2009, this being subject matter of daily diary entry no.22 recorded in the local police station. The parties have been estranged from each other ever since. The respondent/wife had filed a petition (No.5550614/2016), inter alia, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the

Domestic Violence Act) against the petitioner in January 2013, thereby seeking various reliefs including maintenance allowance for self and also for the minor child of the parties who concededly has Crl. M.C. No.1211/2018 Page 1 of 5 been in her care, custody and control. On the application of the respondent/wife, the Metropolitan Magistrate, by order dated 18.08.2017, in the petition directed the petitioner to pay Rs.50,000/- p.m. as maintenance for her and for the minor child of the parties, this to take care of their needs for food, clothing, household expenses, rented accommodation and other amenities of life, the order having been made effective from the date of filing of the petition till final adjudication thereupon.

2. The petitioner / husband had challenged the said order in the court of Sessions by appeal (CA25617) which was disposed of by judgment dated 06.01.2018 whereby the directions for payment of maintenance allowance were reduced partially to Rs.40,000/- p.m.

3. The petitioner approached this court under Section 482 of the Code of Criminal Procedure, 1973 to bring another challenge to the said orders of the two courts below.

4. The petition at hand is resisted by the respondent. It was submitted that though the execution petition has been pending, the petitioner has failed to abide by the order of interim maintenance, he having offered small amounts, which are not adequate to take care of the needs of the respondent / wife or the minor child of the parties. During the course of hearing, suggestions for some amicable resolution of the matter by partial reduction by way of interim arrangement also came up but the petitioner rejected the said suggestions outright, his broad submission being that he does not have any income of his own, he is himself dependent on his mother, his Crl. M.C. No.1211/2018 Page 2 of 5 father who had a business during his lifetime having passed away, the business of the father having since closed down.

5. The Metropolitan Magistrate had called upon the petitioner to discover the relevant facts on oath by filing his affidavit. A copy of the said affidavit has been filed on record with the petition. It is indeed incongruous that the petitioner on one hand describes his mother to be a person dependent on him and at the same time

in his affidavit he would claim that even his own expenditure are borne by his mother. The petitioner has been living in a double storeyed house (No.185-P) built on a plot of land admeasuring 291.67 sq. yds. in Sector-7, Urban Estate, Gurugram, Haryana. He undoubtedly had a right, title and interest in the said residential property. But then, just around the time the parties to this litigation were on the verge of separation, he appears to have executed documents relinquishing his share in the said property in favour of his mother. He relies on the decision of a permanent and continuous Lok Adalat held at Gurugram in civil case no.651 decided on 11.01.2010. By this ruling of the permanent Lok Adalat on the basis of a compromise, the petitioner relinquished his share in the said house no.185-P, Sector-7, Urban Estate, Gurugram and, as a consequence thereof, his mother who he claims to be his dependent and also his benefactor, became the owner.

6. As per the case of the respondent/wife, the petitioner is a man of means, earning Rs.5,00,000/- p.m. approximately from various businesses. She would describe him to be a director of Om Arya Hospitality Pvt. Ltd., Jadu Ki Chadi company, One Pacific India Pvt. Crl. M.C. No.1211/2018 Page 3 of 5 Ltd. and CHM Construction Holding Pvt. Ltd. She refers to documents indicating the petitioner to have participated in various exhibitions, wherein he had invited internships in the business of Jadu Ki Chadi since February 2017. The petitioner, while resisting the prayer for maintenance allowance would, however, claim that he has been struggling to set up business - the business in the name and style of Graty Apparel Pvt. Ltd. having shut down and the business of Om Arya Hospitality Pvt. Ltd. not being operational since 2015. He would further explain that Jadu ki Chadi was merely an idea which was floated but since rejected, he having run into overdues to the extent of Rs.9,00,000/-. According to him, the other two companies One Pacific India Pvt. Ltd. and CHM Construction Holding Pvt. Ltd. belong to his sisters and that he does not derive any financial benefit thereof. The documents though undoubtedly show his stake in the said companies.

7. The documents on record include the copy of the passport of the petitioner indicating certain foreign travels during relevant period. The documents also include income tax returns for the assessment year 2008-2009 to 2012-2013. Though in the first said income tax return, he declared zero income, the

subsequent ITRs reflect income ranging from Rs.2,36,955/- to Rs.3,07,180/-. The income tax returns for the anterior period or the period subsequent thereto have been scrupulously withheld.

8. Having heard both sides and having perused the record, this court agrees with the view taken by the courts below primarily to the Crl. M.C. No.1211/2018 Page 4 of 5 effect that the petitioner has tried to withhold the requisite information about his actual income. His broad claim that he was jobless and himself wholly dependent financially on his mother cannot per se be believed.

9. It is inconceivable that a person who lives in a double storeyed house built over a plot of land of decent size, whose name is associated with a number of private companies, all apparently held within the family, a person who was leading a life of comfort and luxury including by frequent travels abroad, would not be having any income of his own to support his estranged wife and the child living with the said wife.

10. In the above facts and circumstances, the view taken by the courts below at the stage of interim order does not call for any interference. The petition and the application filed therewith are dismissed. R.K.GAUBA, J.

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