

Sonia Mann Vs. State and anr.

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Court : Delhi

Decided On : May-22-2009

Reported in : 160(2009)DLT385

Judge : S. Muralidhar, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 18, 19, 20, 22 and 24; [Protection of Women from Domestic Violence Act, 2005](#); Indian Penal Code (IPC) - Sections 34, 323, 343 and 498A

Appeal No. : Crl. M.C. Nos. 1586 and 1806 of 2008

Appellant : Sonia Mann;gaurav Mann

Respondent : State and anr.;sonia Mann

Advocate for Def. : Jaideep Malik, APP., ; N.S. Dalal, Adv. for R-2 in Crl. M.C. No. 1586 of 2008, ;

Advocate for Pet/Ap. : Ujjwal Jha,; Ujjwal Jha,; Naveen Sharma and;

Judgement :

S. Muralidhar, J.

1. These three petitions arise out of the common set of facts and are being disposed of by this common order.

2. Crl. M.C. No. 1586 of 2008 by Sonia Mann seeks to challenge an order dated 12th March 2008 passed by the learned Additional Sessions Judge ('ASJ') disposing of an appeal filed by Respondent No. 2 Gaurav Mann thereby upholding an order dated 7th November 2007 passed by the learned Metropolitan Magistrate ('MM') in Complaint Case No. 79 of 2007 awarding Rs. 10,000/- per month as interim maintenance to Sonia Mann but modifying it to the extent that it was held to include a sum of Rs. 4,000/- available to her under Section 24 of the [Hindu Marriage Act, 1955](#) ('HMA').

3. Crl. M.C. No. 1806 of 2008 by Gaurav Mann challenges both the orders dated 7th November 2007 passed by the learned MM as well as the order dated 12th March 2008 passed by the learned ASJ. Among the contentions raised is that the learned ASJ failed to take note of the fact that after 7th November 2007 Sonia Mann was permitted to reside in House No. 135/9 village Kishangarh, Mehrauli, New Delhi and therefore there was no justification in the order of the learned MM, as confirmed by the learned ASJ, restraining Gaurav Mann and his parents from selling House No. 135/9 village Kishangarh, Mehrauli, New Delhi.

4. Crl. M.C. No. 1840 of 2008 is by Ishwar Singh and Barfo Rani, the father-in-law and mother-in-law respectively of Sonia Mann, challenging the order dated 7th November 2007 in Complaint Case No. 79 of 2007 seeking restoration of possession of the House No. 135/9 village Kishangarh, Mehrauli, New Delhi.

5. The facts in brief are that the marriage of Sonia Mann and Gaurav Mann took place on 25th November 2003 and a female child was born to them on 16th November 2004. It is stated that in 2005 Gaurav Mann shifted to Faridabad. On 10th February 2006 Gaurav Mann filed a petition for divorce in the court of the learned Civil Judge, Faridabad.

6. According to Sonia Mann, she was subjected to cruel treatment by Gaurav Mann and his parents and she was compelled to file a criminal case resulting in registration of FIR No. 254 of 2006 under Sections 343/498A/323/34 IPC at Police Station Vasant Kunj on 3rd May 2006.

7. Sonia Mann filed a complaint under the [Protection of Women from Domestic Violence Act, 2005](#) ('PWDVA') which was numbered as CC No. 79 of 2007 in the court of learned MM on 5th May 2007. She prayed for the passing of a protection order under Section 18, a residence order under Section 19, monetary relief under Section 20 and compensation for damages under Section 22 of the PWDVA. She also sought interim orders restraining the Respondents i.e. Gaurav Mann, Ishwar Singh and Barfo Rani and four other relatives, all shown to be resident of House No. 135/9 village Kishangarh, Mehrauli, New Delhi (hereinafter 'the property'), from selling or alienating the property. The specific prayer was that Respondents should be directed 'not to disturb and dispossess the applicants and also not to dispose of the assets such as property owned by them in Delhi which stand in the name of the Respondents.'

8. A reply to the complainant case was filed on behalf of Respondents Gaurav Mann, Ishwar Singh and Barfo Rani and others before the learned MM in which it was contended that Ishwar Singh and Barfo Rani have been residing separately in a rented accommodation at E-192, Uttam Nagar, New Delhi. Likewise, Respondent No. 4 Samira, the married sister of Gaurav Mann was having a grown up child and was residing separately at Gurgaon in Haryana. It was stated that Gaurav Mann and Sonia Mann have been living separately since 5th February 2006 and there is no scope for the reunion. It was stated that Sonia Mann had left the matrimonial home at Faridabad along with the minor daughter on her own on 9th February 2006. Later she had stormed into the property in question with her parents, relatives and some anti-social elements. They manhandled Ishwar Singh and Barfo Rani who were present there at that time. The two of them i.e. Ishwar Singh and Barfo Rani then were compelled to shift to a rented house.

9. On 25th April 2006 a writ petition was filed by Sonia Mann alleging that she had been confined in the property against her will. This Court directed the Deputy Commissioner of Police [South-West] to enquire into the matter and file a status report. The status report filed by the DCP indicated that Sonia Mann had been living at 135/9, Kishangarh, Vasant Kunj, New Delhi along with her daughter and therefore there was no question of her being confined in that house against her will. It was stated that she was 'living in one of the rooms for some time and no

other person was present in that building at that time.' The DCP stated that after being satisfied that there was no case of forcible confinement of Sonia Mann 'I left the spot leaving SDPO/Delhi Cantt on the spot to make further local inquiry.' The said writ petition was accordingly disposed of after the said status report was filed.

10. It was stated by Gaurav Mann in his reply dated 25th May 2007 filed before the learned MM that 'Sonia Mann had every right of the residence in the matrimonial home and the answering respondent fully honour this right of her. Her peaceful residence in her matrimonial house has not been and will not be disturbed.' It was added that Gaurav Mann 'is duty bound to protect and to provide a good environment to the child for her proper upbringing and to the petitioner/application being the mother of the child. So safety and security of these two will always be a concern for them... The answering Respondent No. 1 still feels duty bound to protect the petitioner/application from anybody else subject to his limits.' It was added by Gaurav Mann 'that she is always at liberty to take a house on rent (in commensurate with the status) which shall be paid by the answering Respondent No. 1.'

11. In the reply of the remaining Respondents it was stated that they were 40 to 60 km, away from the place where Sonia Mann was living and therefore they were not concerned in any way with the disputes concerning Sonia Mann, her husband and her in-laws.

12. A perusal of the trial court record reveals that as regards the property in question a rough site plan was placed on record by both sides. On their part the Respondents filed a hand drawn rough sketch of the property along with other properties at Khasra No. 2727/1674 and House No. 135 of Mohan Lal. A floor plan of the property in question was also filed with a portion thereof marked in red which was under the occupation of Sonia Mann.

13. This Court has heard the submissions of Mr. N.S. Dalal, learned Counsel appearing for the Petitioner Gaurav Mann, Ishwar Singh and Barfo Rani and Shri Ujjwal Jha, learned Counsel appearing for Sonia Mann.

14. It is submitted on behalf of Ms. Sonia Mann that the learned ASJ was not justified in reducing the amount of Rs. 10,000/- for the maintenance of the Petitioner as well as her young daughter by Rs. 4,000/- which was awarded to her as interim maintenance under Section 24 of the HMA. It was submitted that an order under Section 24 HMA could not be disturbed in an appeal under the PWDVA. The question of maintainability of the petition by Ishwar Singh and Barfo Rani, without exhausting the remedy of a statutory appeal, is also raised.

15. The grievance on behalf of Gaurav Mann, Ishwar Singh and Barfo Rani was that Sonia Mann was already in possession of a certain portion of the property in question. Therefore there was no justification in restraining Gaurav Mann, Ishwar Singh and Barfo Rani and the other Respondents in the complaint case from alienating or disposing of the remaining portion of the property in question. In the alternative, it was stated that they cannot in any way be denied possession of the remaining portion of the property which was not in her occupation. It was pointed out that for herself and minor child, Sonia Mann does not require to be in possession of the entire property. As regards maintenance, it is pointed out that although the learned MM did take note of the order for interim maintenance to the extent of Rs. 4,000 per month under Section 24 HMA, he questioned this aspect when finally determining the interim maintenance at Rs. 10,000/- per month.

16. It may be mentioned here that pursuant to the orders passed by this Court on 15th April 2009, the arrears of maintenance directed by the impugned order dated 12th March 2008 passed by the learned ASJ was paid by Gaurav Mann to Sonia Mann.

17. The rival submissions have been considered as regards the amount of interim maintenance to be paid, the order dated 7th November 2007 passed by the learned MM did take note of the fact that under Section 24 HMA the court had awarded Sonia Mann a sum of Rs. 4,000/- as alimony pendente lite. However in arriving at the final figure this was not taken note of. In para 8 it was noticed that Sonia Mann had claimed expenses of Rs. 27,500 per month of which Rs. 5,000/- was towards food, clothes, medicines etc., Rs. 7,500/- towards household expenses, Rs. 10,000/- towards school fees and other expenses towards the

maintenance, upkeep maintenance and clothing etc. of the child and Rs. 5,000/- towards personal expenses. In para 10 of the order after noticing that Rs. 8,000/- per month under the head of food, clothes, etc. would be appropriate, it was held that a sum of Rs. 1,000/- towards school fees of the child and Rs. 1,000/- towards summary expenses of the child would be sufficient. Accordingly, the Respondent Gaurav Mann was directed to pay Rs. 10,000/- per month as monetary compensation. It appears to this Court that after noticing that temporary alimony of Rs. 4,000/- was already directed to be paid to Sonia Mann under Section 24 HMA, the learned MM did not account for it while computing the final figure. In the circumstances the directions passed by the learned ASJ by the impugned order dated 12th March 2008 modifying the order of the learned MM to the extent that it was directed that the sum of Rs. 10,000/- would include Rs. 4,000/- per month to be paid under Section 24 HMA by Gaurav Mann to Sonia Mann, was the correct order to be passed in these facts and circumstances. To this extent the order of the learned ASJ does not call for any interference.

18. Turning to the question to the property in question, the learned MM has in para 7 observed as under:

7. The petitioner has also sought residence order under Section 19 of the Act. She has asked for a direction to allow her to enter the portion of the shared household where she resides and restraint against the respondents from dispossessing her from the shared household. The respondents have admitted her claim to the shared household and therefore, the respondents are restrained from obstructing the entry or exit of the petitioner from the portion of the shared household wherein she resides. They also restrained from dispossessing her from the shared household.

19. In his appeal before the learned ASJ, Gaurav Mann had submitted that there is no justification for said restraint order. Sonia Mann is already in occupation of certain rooms in the property. By the impugned order dated 12th March 2008 the learned ASJ only dealt with the question of maintenance after noticing that by an order dated 4th January 2008 it had been recorded that the only grievance of the Appellant Gaurav Mann concerned maintenance. This does not appear to be

correct. The memorandum of appeal is filed by Gaurav Mann includes grounds questioning the residence order. As regards maintainability of the petition by Ishwar Singh and Barfo Rani, it is seen that Gaurav Mann did file the statutory appeal although his parents did not. When it is plain that any order in the petition by Gaurav Mann is likely to affect the rights of his parents to the property, it is not considered appropriate to relegate Ishwar Singh and Barfo Rani to the statutory remedy of an appeal at this stage only with a view to awarding multifarious proceedings.

20. In the petition filed by Ishwar Singh and Barfo Rani it is pointed out that the property in question belonged to them. In relation thereto, Sonia Mann had already filed a separate civil suit for permanent injunction which was pending. In the circumstances, no order could have been passed by the learned MM under the PWDVA. Reliance was placed upon the judgment of the Supreme Court in S.R. Batra v. Taruna Batra : (2007)3SCC169 to contend that Sonia Mann could not claim a right to residence in the property not belonging to her husband but to her in-laws. Moreover, the parties were last residing in Faridabad.

21. From the photocopy of the site plan of the property in question which is at page 433 of the trial court record and which is annexed hereto at mark 'A', it is seen that a kitchen, two rooms and two toilets on the left side of the property when viewed from the front common passage is under the occupation of Sonia Mann. Learned Counsel for the Respondents himself, on instructions has marked out the portion which according to them can continue to remain in possession of Sonia Mann during the pendency of this petition. This is of course without prejudice to their rights and contentions. This portion is shaded by horizontal lines (as well as red in the original). It is accordingly directed that this portion marked by the horizontal lines will continue remaining in the possession of Sonia Mann and the minor child during the pendency of the Complaint Case No. 79 of 2007 in the court of the learned MM.

22. However in order to effectuate this part of the order, the entrance to one room adjoining the kitchen on the left side rear of the property will have to be shut. Likewise, the front room on the right side which has one of the doors opening out

into the portion under the occupation of Sonia Mann and the minor child as indicated will also have to remain shut. The half portion of the common area will also have to be clearly delineated by some appropriate means. In order to effectuate these arrangements it is directed that the trial court will appoint a court commissioner to go to the site and ensure that the aforementioned arrangement is put in place in the presence of the parties with whatever assistance such court commissioner further requires. The expenses, if any, in making the changes in the property to the above extent will be borne by the Respondents. It is made clear that within a period of three weeks from today and in any event not later than 15th June 2009 the aforementioned portion will be clearly demarcated. The possession of the remaining unshaded portion will be handed over to the Respondents by the court commissioner in the presence of both parties on or before 15th June 2009 and a report thereof will be filed before the trial court. The common private passage in the property is shaded by vertical lines (and in blue in the original) in the enclosed site plan 'A'. This will be kept open for use by both parties.

23. There is one main gate opening out in this common passage. Sonia Mann is permitted to place locks on this main gate so that she controls the entry and exit therefrom. After 15th June 2009, when the possession of the unshaded portion is given to the Respondents they will not access the portion under the occupation of Sonia Mann but use the other gate as indicated in the site plan 'A'. This arrangement also will continue till the disposal of CC No. 79 of 2007 before the learned MM.

24. The case will now be placed before the court of the learned MM on 28th May 2009 for directions. The learned MM will appoint a suitable court commissioner, affix his or her fees which will be paid by both Sonia Mann as well as Respondents in equal share and ensure that the above time bound directions are strictly complied with.

25. Given the nature of the disputes, it is desirable that the learned MM should dispose of the main complaint case CC No. 79 of 2007 within a period of six months from today and in any event not later than 1st December 2009.

26. With these directions all these petitions are disposed of. The impugned order dated 12th March 2008 passed by the learned ASJ will stand modified to the above extent.

27. A certified copy of this order along with its enclosure will be sent along with the trial court record forthwith to the learned MM concerned. Order dasti to the parties.

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