

IN THE COURT OF MS. NEELOFER ABIDA PERVEEN
ADDL. SESSIONS JUDGE : (CENTRAL DISTRICT)
TIS HAZARI COURT:DELHI

Decided on: 15.5.2020

CA No. 409/19 of 17.10.2019

Sh. Mukhtar Ali
S/o Late Mustaq Ali
R/o 992, 3rd floor,
Gali Muftiwalan,
Teraha Behram Khan,
Delhi-110002

.....Appellant

Versus

Mrs. Asma Mukhtar
W/o Sh.Mukhtar Ali
R/o 992, 3rd floor,
Gali Muftiwalan,
Teraha Behram Khan,
Delhi-110002

.....Respondent

JUDGMENT

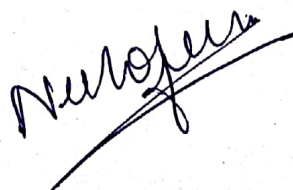
This order decides the present Appeal preferred under section 29 of the Protection of Women from

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Domestic Violence Act, 2005, (hereinafter referred to as the Act) against order dated 9.9.2019, passed by the court of Ms. Ambika Singh Ld. MM Mahila Court-01, Central, Delhi in Complaint Case No. 513618/16.

2. Vide the order impugned the Ld. MM determined a sum of Rs. 15000/ pm towards interim maintenance for the wife, the respondent herein, as well as the minor children payable by the husband, the petitioner herein, on a monthly basis till the pendency of the complaint instituted under section 12 of the Act by the wife against the husband for monetary compensation alongwith other reliefs under the various provisions of the Act, while disposing the interim application under section 23 of the Act, filed by the wife against the husband-respondent no.1 to the complaint.

3. The order awarding interim maintenance to the wife is assailed by the husband on the grounds inter alia that the three children of the parties were being maintained by the husband petitioner and the record also reflects the



same as the children were interviewed by the court and it is on the record that the children sleep at their fathers place and it is the father who is bearing all their expenses and that the interim maintenance is awarded in complete disregard of the facts disclosed from the record of the case itself. That the respondent is in the age bracket of almost 60 years of age and has no source of income except the rental income of Rs. 8000/- from one property that he owns jointly with his brother, and that the respondent wife on the other hand is employed as an Anganwari worker at a handsome salary and not a meager salary of Rs. 2500/- as disclosed by her in the affidavit of assets. That the complainant wife has not come with clean hands and has suppressed material facts and sources of income from the court and is therefore not entitled to any relief from the court and that it is the wife who has of her own volition abandoned the matrimonial relationship and her children and is therefore not entitled to receive any kind of compensation or any other relief as claimed against the respondent husband. That different yardsticks have been applied by the court while appreciating the status and

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liabilities of the parties.

On the contrary it is contended for the respondent that the order impugned is fair and is passed upon a judicious application of mind and deserves to be upheld and affirmed and that the interim maintenance is determined after considering the income expenditure and status of the parties and is infact on the lower side as the cost of living has increased manifolds. That the children of the parties are being looked after by the mother and that the paltry sum being received as Anganwari worker is not sufficient to meet the rising expenditures on daily requirements of the complainant and that of the children and that it is the moral and legal responsibility of the petitioner-husband to maintain his wife and children. The respondent has relied upon the following judicial pronouncements-

1. Shalu v. Sandeep Soni, 228 (2016) DLT 257
2. S.P.Chengalvaraya Naidu v. Jagannath, 1994 AIR 853

4. Oral arguments were addressed and further opportunity to file written submissions if any was also

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granted to the parties however written submissions were not received on the record. Record of the Ld. Trial Court as requisitioned is also received and perused.

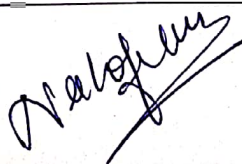
5. Record reveals that the respondent herein instituted a complaint under section 12 of the Act, arraigning her husband , two brothers in law and one sister in law as the four respondents seeking protection orders, residence orders, monetary relief and compensation in terms of sections 18,19,20 and 22 of the Act alleging that she has been physically assaulted by the accused on several occasions on trivial issues in respect of which complaints were made by her from time to time and continuously subjected to cruelty, harassment and ill treatment and that to save their marriage after a failed Talaq attempt her parents had given Rs. 2 lac to her husband from which he had purchased one shop being run by him for sometime and now rented out fetching Rs.12000/- pm, and that he has another shop at Turkman Gate and is running a hosiery wholesale business. She was forced to take up job as Anganwari worker by her husband on his repeated

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demands of getting money from her parents. That she fears for her life and safety at the hands of her husband and inlaw family members who have threatened to implicate her and her parental family members including her Bhabhis who live abroad in false cases and to defame her. That she has not been provided with items of daily use by her husband and he has always kept her and her children half fed and half clothed.

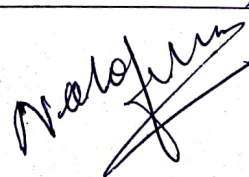
Alongwith the complaint under section 12 of the Act, there is filed an application under section 23 of the Act for ex-parte order in terms of the relief sought under the main petition on the same facts and grounds as are raised therein.

6. The respondent filed reply controverting each and every allegation levelled in the complaint and alleging that the complainant is presently employed as Stock Incharge at Anganwari and getting salary of Rs.40,000/- to Rs.50,000/- per month and that she also writes articles in different newspapers such as Mid Day and Asian Age as she had earlier worked as Sub Editor of the



said Newspapers. Besides she has FDRs of Rs.7 to 8 Lacs, bank balance, bank locker and is also owner of entire floor measuring 400 sq.yards of property bearing no.3082, Pratap Street Behind Golcha Cinema, Delhi Gate, New Delhi and that she has not approached the court with clean hands.

7. Settlement efforts were made by the Ld. Trial Court observing that the parties are residing under one roof and parties were referred to mediation for amicable resolution of the dispute. Both the parties filed their respective affidavit of income assets and expenditure. The respondent filed an application for directions to the complainant to furnish details of accounts and assets. On 5.6.2018, parties were directed to produce the eldest son for interaction by the court in order to ascertain the current custody of the children as both the parties had raised rival contentions , the complainant asserting that the children are being maintained by her and they go to their fathers house for sleeping only, and the respondent husband had claimed that he is taking care of the children.



The complainant was also directed to file her last three years bank account statement. Two of the children of the parties were interviewed by the Court on 4.8.2018, and it is revealed that during the night time they are residing with their father and when they return from school they stay with their mother and have food with their mother and it is their father who is meeting all the expenses towards their school fees, clothing and food. As directed by the court the respondent husband filed his bank account statement and the complainant wife also after availing several opportunities placed on record her bank account statement.

8. The Ld. Trial Court has awarded maintenance @ Rs.15000/- per month in favour of the complainant and minor children from the date of the filing of the petition till its disposal taking stock of the status of the parties and taking into account their respective income affidavits while considering that respondent no.1 I.e. the husband holds a Masters Degree, has immovable property in his name, maintains three bank accounts and thereby

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reflecting the income estimate put across by the husband as the children are studying in reputed private schools and noting that the complainant has stated that she does not have any independent source of income.

9. Adverting to the affidavit of assets filed by the complainant, the complainant 43 years of age has disclosed herself to be a post graduate and presently employed as Anganwari teacher by the Delhi Government but the date of the employment has not been mentioned however gross income including salary, DA, incentives, bonus, perks has been affirmed on affidavit to be Rs.2500/- and net income as also Rs.2500/-. While disclosing her financial assets, she revealed one bank account number with current balance figure at Rs.1500/-, the complainant herself described the status of the parties as lower middle class.

From the affidavit of assets filed on record by the respondent no.1 husband, it is reflected that the parties were married on 17.10.1998 and that the age of the husband as on the date of signing of the affidavit I.e.



29.11.2016 was 59 years, that he also holds a Masters degree but no professional qualification as such and his monthly income is Rs.8000/- derived from rent of shop measuring 6 x 16 Laxmi Nagar, Delhi. Besides the said shop on rent, he is owner in equal share with his brother of Flat no.992, 3rd floor, Muftiwalan, Teraha Behram Khan, Delhi, he holds three bank accounts by way of financial assets and one LIC Policy in the name of the eldest son, he holds mobile phone make Nokia worth Rs.2000/- and one motorcycle I.e. now rendered scrap.

10. It is further revealed that the eldest son of the parties is studying in Delhi Public School, Mathura Road, Delhi, younger son at GDS, DAV Sr.Secondary, Pusa Road and the youngest daughter in Queen Marry, Tis Hazari, Delhi. All the three schools are private schools however, as per the affidavit furnished by the husband, the husband is meeting with 25% of the school fees of DPS, Mathura Road and 75% is being reimbursed by the Department for the Welfare of the Minorities and the younger son and the youngest daughter are studying in reputed private schools



under EWS Category Quota.

11. The children were interviewed by the court and it is reflected on the record that it is the husband who is maintaining the children and meeting with all the expenses in respect of the children. As the complainant wife is not providing for and the children are not in the exclusive care and custody of the complainant wife, at this stage, on the basis of the record itself there arose no occasion for awarding maintenance to the wife for the children, as the sum of Rs.15000/- towards interim maintenance includes expenses for the maintenance of the three children of the parties also. It is demonstrated on the record in the course of the proceedings that it is appellant husband who is meeting with all the expenditures. There is therefore no justification for awarding of any amount by way of maintenance for the children to the wife when all the expenses including educational expenses are being met with by the appellant – father and not the mother.

12. There is another error apparent on the face of it in



the order impugned as while considering all the facts and circumstances relevant for arriving at the quantum of maintenance, it has been erroneously noted that the complainant has stated that she does not have any independent source of income. The complainant admittedly is a Anganwari worker under the Delhi Government. The complainant has solemnly affirmed her gross salary including DA and incentives as Rs.2500/- per month however also acknowledged that she is employee of Delhi Government. It has to be taken with a pinch of salt that the Delhi Government is paying its employees less than the minimum wages and such paltry a sum as Rs.2500/- p.m.including DA and incentive. The complainant upon directions by the court filed her bank account statement and a perusal of the statement reveals several deposits of substantial amounts in the sum of Rs.50,000/-, Rs.40,000/-, Rs.75,000/- whereas in the account statement filed on record by the husband the transactions are of meager amounts. The appellant-husband was about 62 years of age even at the time of the passing of the order impugned with diminishing financial

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prospects and remote possibility of addition of sources of income in the future and the only source of income that has come on record is by way of rent from a shop owned by him, though it is alleged by the appellant-wife that he runs wholesale hosiery business which allegation is to stand the test of trial.

13. The complainant in her affidavit of assets has given her address as 992, 3rd floor, Gali Muftiwalan, Teraha Behram Khan i.e the premises owned in equal shares by the respondent-husband with his brother. The complainant-wife is therefore living in the property owned by the appellant-husband. It is the appellant-husband who is meeting with all the expenses in respect of the children. The complainant-wife is herself gainfully employed as an employee of the Delhi Government, the appellant-husband in the age bracket above 62 years of age with only one source of income apparent from the record. Some leverage has to be accorded to the Courts for drawing of inferences and assumptions when arriving at a more realistic figure of income and assets of the parties at the interim stage as

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the parties to the proceedings more often than not do not come clean and withhold sources of income and assets however to pre-empt arbitrariness, all inferences and conclusions are necessarily to fall within the ambit of, hedges^{no} around, supported and founded upon^{no} the record.

In the case at hand, even the complainant herself has not been fair to the court and has not volunteered all sources of income, bank account details and other financial, movable, immovable assets. It is only subsequently admitted that there is some policy in respect of which returns are being credited in her another account and that besides the bank account details mentioned in the affidavit of assets, other accounts are also held in her name. The complainant has also not filed on the record her salary slip or any other document in respect of the remuneration received from Delhi Government as Anganwari worker.

14. The order of the Ld. MM. awarding Rs.15000/- towards maintenance to the complainant-wife for herself as well as for the three children of the parties is therefore not justifiable by any yardstick and the Ld. Trial Court has

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proceeded on erroneous assumptions contrary to the record. The order of the Ld. Trial Court therefore cannot be sustained and is set aside as such. In the facts and circumstances of the case at hand, taking into consideration the admitted status of the parties as that of lower middle income group, taking into consideration that the complainant-wife is gainfully employed under the Delhi Government as Anganwari worker, taking into consideration that the wife is living in the property owned by the appellant-husband and the three children of the parties are being maintained by the appellant-husband and as though the children are studying in private schools but under EWS Category Quota, and as no other source of income except rental income has come on record in respect of the appellant-husband in the age bracket of above 62 years of age,^{22.} In the totality of the facts and circumstances of the present case, in my humble opinion it would be equitable if the interim maintenance is awarded at Rs.5000/- to the complainant-wife, the respondent herein to be paid by the appellant-husband (respondent no.1 to the complainant²²), on monthly basis till the

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pendency of the present proceedings from the date of institution of the petition with the direction that the husband-Respondent no.1 to the complainant shall continue to meet with all expenditure including towards education, food and clothing of the children. It is directed that any amount already paid towards maintenance shall be adjusted accordingly.

Trial Court Record be sent back with copy of judgment. Appeal file be consigned to record room.

**Announced in the open Court
on this 15th day of May, 2020**


(Neelofer Abida Perveen)
Additional Sessions Judge : (Central)
Tis Hazari Court:Delhi