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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 07.01.2025

CRL.M.C. 4406/2019

..... Petitioner

versus

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Satakshi Sood, Adv.

For the Respondent : Mr. Sandeep Bhuraria, Adv.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed questioning the order dated 28.02.2019 (hereafter '**impugned order**') passed by the learned Special Judge (PC Act), Saket Courts, New Delhi in CA No. 30/2019 titled *Sanjay Walia vs. Smt. Neelam Walia*.

2. By the impugned order, the learned Appellate Court, in the appeal filed by the respondent under Section 29 of the Protection of Women from Domestic Violence Act, 2005, ('**DV Act**') modified the order of the learned Metropolitan Magistrate ('**MM**') dated



18.12.2018. The learned MM, *vide* order dated 18.12.2018 assessed the monthly income of the respondent to be ₹1,00,000/- per month, and directed the respondent to bear the college fees of the younger son, and pay a sum of ₹25,000/- per month to the petitioner from the date of filing of the case till the disposal of the present case.

3. The learned Appellate Court, by the impugned order, directed the parties to negotiate an arrangement whereby the petitioner is to give the property in her possession on rent to the respondent. It was noted that the respondent who was paying rent of ₹27,000/- per month to a third person for running his business from rented premises shall be able to save such amount, and pay ₹25,000/- to the petitioner as maintenance as directed by the learned MM. It was further noted that the property of the petitioner would be taken care of in terms of occupancy and maintenance, and the petitioner instead of being dependent on the respondent for maintenance would become an independent person having her own independent source of income through rent. Aggrieved by the same, the petitioner has filed the present petition.

4. The learned counsel for the petitioner submitted that the learned Appellate Court erred in modifying the order passed by the learned MM. She submitted that the learned Appellate Court ought not to have directed the parties to enter into a contract in the nature of lessor and lessee thereby altering the domestic relationship of the parties for the purpose of maintenance.



5. She submitted that the learned Appellate Court, by the impugned order, has in a way created a pre-requisite for the purpose of petitioner's entitlement to maintenance. She submitted that such pre-requisite for the purpose of entitlement to maintenance has no force in the eyes of law.

6. She submitted that the right of the petitioner to receive maintenance could not have been made conditional upon the execution of a rent agreement, a relationship that is *prima facie* contractual in nature. She submitted that even otherwise the property of the petitioner is a commercial property, and in ordinary market, is capable of being let out for more than just ₹25,000/- per month. She submitted that but for the hindrances created by the respondent, the property is not being easily let out. She submitted that the petitioner has no independent source of income, and prayed that the respondent be directed to pay interim maintenance.

7. *Per contra*, the learned counsel for the respondent submitted that the present petition is not maintainable since the petitioner was directed to explore possible efforts to arrive at a settlement as directed by the learned Appellate Court. He submitted that the petitioner having failed to do so has not approached this Court with clean hands and the present petition accordingly be dismissed.

Analysis

8. Section 23 of the DV Act deals with the provision relating to the power of the Magistrate to grant interim maintenance. Further



Section 29 of the DV Act deals with the provision relating to appeal.

Section 23 and 29 of the DV Act reads as under:

23. Power to grant interim and ex parte orders.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper. (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

9. It is relevant to note that Section 23 of the DV Act empowers the Magistrate to grant interim orders if the application *prima facie* discloses that the respondent 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. Consequently, any woman who proves that she has suffered domestic violence at the hands of her spouse/ partner, is entitled for interim relief.

10. In the present case, the learned MM noted that the application preferred by the petitioner under Section 12 of the DV Act contained detailed allegations of domestic violence against the respondent. It was noted that the monetary relief granted is done for the aggrieved to



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meet the expenses incurred and cases suffered by her as a result of domestic violence. It was further noted that the intent of interim order was to provide immediate assistance to the wife within the limited and permissible boundaries of law.

11. The learned MM noted that the respondent is running a computer and accessories store and is having a steady source of income. It was noted that a perusal of the bank statement of the respondent showed that there were regular deposits and withdrawals in his account. It was noted further that the respondent had recently purchased a car, and had immovable properties in his name. The learned MM, therefore, noting that the petitioner had no independent source of income, and was dependent on her parents, and considering the documents on record, assessed the monthly income of the respondent to be ₹1,00,000/- per month, and awarded interim maintenance to the tune of ₹25,000/- per month to the petitioner, and also directed the respondent to bear the college fees of the younger son.

12. The learned Appellate Court, in an appeal preferred by the respondent, modified the order dated 18.12.2018 passed by the learned MM and directed the parties to negotiate an arrangement whereby the petitioner gave on rent her property to the respondent. It was noted that the petitioner in her affidavit of income had mentioned that she possessed a 123 sq. ft shop bearing No. 110 Kundan House, Nehru Place and that the same was given to the petitioner by her parents. It



was noted that while the parties were contesting who was the actual owner of the said property, the fact remained that the said property was in the name of the petitioner and in her exclusive possession. It was also noted that the said property lay vacant, and that the parties took contradictory stands as to why the said property remained vacant. It was further noted that the said property was situated at a prime location in Delhi, and lay unutilised.

13. For this reason, the learned Appellate Court directed the parties to negotiate an arrangement whereby the petitioner gave the property on rent to the respondent and observed as reproduced hereunder:

“The parties therefore, should negotiate an arrangement whereby the respondent gives on rent the property to the appellant. The appellant who is paying the rent of Rs,27,000/- to a third person for running his business from such rented premises shall be able to save the amount and shall be able to pay Rs. 25000/- to the respondent as maintenance/rent as directed by the Ld. Trial Court. The property of respondent will be taken care of in terms of occupancy and maintenance and she instead of being dependent for maintenance on her husband will become an independent person having her own income through rent. The order of Ld. Trial court is modified to above extent with a direction to the parties to work upon the manner herein above mentioned.”

14. The main thrust of the argument of the petitioner is that the learned Appellate Court erred in directing the parties to come to an arrangement whereby the petitioner gave her property on rent to the respondent. This Court finds merit in the contention of the petitioner. The Court, while granting an award of maintenance, cannot pass an



order in a manner that would compel the wife to perform an act as a condition precedent to her entitlement to maintenance.

15. 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 by the wife has to *prima facie* disclose that she has suffered domestic violence at the hands of her spouse/partner. While the veracity of the case of the wife would be tested during the course of trial, interim relief can be granted merely upon the satisfaction that the application by the wife *prima facie* disclosed the commission of domestic violence. Consequently, the learned MM, noting the *prima facie* commission of domestic violence had directed the respondent to pay interim maintenance to the tune of ₹25,000/- to the petitioner.

16. The learned Appellate Court, in the appeal filed by the respondent under Section 29 of the DV Act does not dispute the entitlement of the petitioner to grant of interim relief. The learned Appellate Court, however, obligated the parties to enter into an arrangement whereby the petitioner gave her property on rent to the respondent. Such directions, in the opinion of this Court, could not have been passed by the learned Appellate Court. The Court only had to decide the *prima facie* entitlement of the wife to the maintenance and its quantum. The only requirement for grant of interim relief under



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the DV Act is that the application by the wife ought to *prima facie* disclose the commission of domestic violence. The learned Appellate Court, therefore, in an appeal preferred against the order passed by the learned Magistrate, had only to pass an order in regard to the correctness or otherwise of the order challenged. Undisputedly, the Appellate Court, while hearing an appeal, exercised the same power as available with the Court of Original Jurisdiction and, thus, can pass any order as may be permissible or required under Section 23 of the DV Act. The Appellate Court, however, cannot embark upon the inherent jurisdiction so as to entitle it to pass such order that would have the effect of altering the relationship between the parties and would make the order of compensation conditional upon such changed relationship.

17. The aggrieved wife cannot thus be compelled to enter into a contractual arrangement whereby she is placed under an obligation to rent her property to the respondent, and thereby have her own independent source of income through rent. The learned Appellate Court, by compelling the petitioner to enter into an arrangement with the respondent to rent out her property to him, has thus travelled beyond the scope of Section 29 of the DV Act.

18. In the light of the foregoing discussion, the impugned order is set aside. This Court deems it expedient to restore the appeal filed by the respondent and remand the matter to the learned Appellate Court for hearing the appeal afresh.



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19. In view of the above, the impugned order is set aside and the Criminal Appeal bearing CA No. 30/2019 titled *Sanjay Walia vs. Smt. Neelam Walia* is restored at the stage as obtaining on 28.02.2019 for its consideration afresh.

20. A copy of this judgment be sent to the learned Principal District & Sessions Judge (South), Saket Courts, New Delhi for placing the appeal before the concerned Appellate Court for further proceedings.

AMIT MAHAJAN, J

JANUARY 7, 2025