

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

Date of decision: 25th January, 2022

IN THE MATTER OF:

+ **CRL.M.C. 3500/2021**

VISHAL KUMAR

..... Petitioner

Through Mr. G L Verma, Mr. J K Nayyar and
Mr. Ajay Sharma, Advocates

versus

SMT. SONAM KHALOTRA

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner seeks to challenge the order dated 01.02.2021 passed by the learned MM (Mahila Court-02), Patiala House Court, New Delhi fixing the interim maintenance in favour of the respondent herein under Section 23 of Protection of Women from Domestic Violence Act, 2005 for a sum of Rs.25,000/- per month which includes monthly expenditure, rent allowance, medical expenses, travel expenses etc. from the date of the complaint and the order dated 1.12.2021 passed by the learned ASJ-04, Patiala House Court rejecting an application for preponment of the appeal/stay of the order dated 01.02.2021 fixing the above mentioned maintenance.

2. The facts, in brief, leading to the filing of the instant petition are as under:

- a) The marriage of the petitioner and the respondent was solemnized on 05.03.2018 at Jammu. The petitioner was working in Hyderabad and, thereafter, the parties were staying in Hyderabad. The material on record discloses that some differences arose between the parties. Thereafter, the petitioner and the respondent have been residing separately since December, 2018.
- b) The respondent herein filed an application under Section 12, 18 and 19 of the Protection of Women from Domestic Violence Act, 2005 praying for protection orders. In the said application, the respondent herein also prayed under Section 23 of the Protection of Women from Domestic Violence Act, 2005 for interim maintenance.
- c) It is pertinent to mention here that the petitioner filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in Jammu, and the respondent filed a complaint under Section 498/406/34 IPC at Delhi.
- d) The learned MM while considering the application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 came to the conclusion that the respondent is staying in Delhi and, therefore, this Court has the jurisdiction to entertain the application. On the basis of material on record, the learned MM also held that there was sharing of domestic relationship in a shared household which would entitle the respondent herein for relief under the Protection of Women from Domestic Violence Act, 2005.
- e) Income affidavits were filed by the parties. The learned MM, on the basis of income tax returns, found that the petitioner has earned approximately Rs.18 lacs in the year 2018-19, a sum of Rs. 12 lacs in

the year 2019-20 and a sum of Rs. 21,000/- in the year of 2020-21. After considering the income tax returns and other documents, the income of the petitioner was assessed Rs.80,000/- per month. This was done after taking into consideration that the petitioner has earned only Rs.21,000/- in the year 2020-21. The learned MM held that no doubt that the petitioner must be facing certain financial crisis due to COVID-19 but the respondent must also be facing the same financial crisis. On the basis of the above discussion, the learned MM fixed the interim maintenance for a sum of Rs.25,000/- per month to the respondent herein vide order dated 01.02.2021.

f) The said order dated 01.02.2021 has been challenged in an appeal by the petitioner herein. The said appeal is under consideration. Material on record indicates that an execution petition was filed and notice has been issued in the said petition. The petitioner filed an application for stay of the order dated 01.02.2021 and 17.11.2021 passed by the learned MM-02, Patiala House Courts, New Delhi and for the preponement of hearing of appeal on the ground that the execution petition has been filed by the respondent/wife. The learned ASJ-04, Patiala House Court, New Delhi, was not inclined to grant stay of the order dated 01.02.2021 and 17.11.2021, and to prepone the hearing of the appeal, and therefore, dismissed the said application vide order dated 01.12.2021.

3. Learned counsel for the petitioner states that the petitioner has lost his job. It is further stated by the learned counsel for the petitioner that the petitioner had qualified for the post of Panchayat Accounts Assistant conducted by J & K Service Selection Board. He states that the respondent

had written letters to J & K Service Selection Board informing them about the cases pending against the petitioner to ensure that the petitioner does not get the job. He states that the petitioner is unemployed and living with his parents at Jammu whereas the respondent is a practising Doctor at a clinic in New Delhi. He states that there is nothing on record on the basis of which the learned MM could come to the conclusion that the petitioner is earning a sum of Rs.80,000/- per month. He states that the past income tax returns cannot be a guide for the learned MM to make a guess work and come to the conclusion that the petitioner is roughly earning a sum of Rs.80,000/- per month.

4. Heard learned counsel for the petitioner and perused the material on record.

5. The contention of counsel for the petitioner that the petitioner was not appointed to the post of Panchayat Accounts Assistant only because of the complaint of the respondent has not been substantiated and there is nothing on record which would indicate that factor. It is the only *ipse dixit* of the petitioner. The income tax returns are a safe guide to assess the income of the petitioner.

6. The Apex Court in Rajnish vs. Neha, (2021) 2 SCC 342 has held that an able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family.

7. The interim maintenance for a sum of Rs.25,000/- has been fixed by the learned MM (Mahila Court-02), Patiala House Courts, New Delhi *vide* order dated 01.02.2021. The petitioner has filed an appeal against the order dated 01.02.2021 passed by the learned MM (Mahila Court-02), Patiala

House Courts, New Delhi which is under consideration. The learned Appellate Court has given valid and cogent reasons in the order dated 01.12.2021 as to why it is unable to prepone the hearing of the appeal. The learned Appellate Court is justified to state that merely because an execution petition has been filed by the respondent/wife, the hearing of the appeal need not be preponed. This Court is of the opinion that there is no perversity in such an approach of the learned ASJ-04, New Delhi District, Patiala House Courts, New Delhi. The next date of hearing of the case is 09.02.2022.

8. After having filed the appeal against the order dated 01.02.2021, it is not open for the petitioner to challenge the very same order in the instant petition. The challenge to the said order, therefore, cannot be entertained. As far as the order dated 01.12.2021 is concerned, the learned ASJ has given valid and cogent reasons as to why the hearing has not been preponed.

9. This Court, therefore, does not find any reasons to interfere with the order dated 01.02.2021 and 01.12.2021.

10. Accordingly, the petition is dismissed along with all the pending application(s), if any.

JANUARY 25, 2022

S. Zakir

SUBRAMONIUM PRASAD, J