

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.M. (M) No.525/2013**

Decided on : 3rd March, 2015

SMT SEEMA@SWATI Petitioner
Through: Ms. Monika Arora, Advocate.

Versus

SH SHYAM TANDON Respondent
Through: Ms. Meenakshi Lekhi, Mr. Harish
Pandey & Mr. Jitendra Tripathi, Advs.

WITH

+ **C.M. (M) No.883/2013**

SH SHYAM TANDON Petitioner
Through: Ms. Meenakshi Lekhi, Mr. Harish
Pandey & Mr. Jitendra Tripathi, Advs.

Versus

SMT SEEMA@SWATI Respondent
Through: Ms. Monika Arora, Advocate.

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J.

1. These are two petitions filed by the petitioner under Article 227 of the Constitution of India assailing the order dated 1.10.2012 by virtue of

which the petitioner/wife [in C.M. (M) No.525/2013] has been granted an ad interim maintenance of Rs.35,000/- per month during the pendency of the divorce petition apart from litigation expenses to the tune of Rs.60,000/-. The second petition [C.M. (M) No.883/2013] has been filed by the respondent/husband challenging this very order. The wife wants enhancement while as the husband wants setting aside of the said order.

2. I have heard the learned counsel for the petitioner/wife as well as Ms. Meenakshi Lekhi, the learned counsel for the respondent/husband on the merits of the matter.

3. The main contention of the learned counsel for the petitioner has been that the learned trial court has failed to exercise its jurisdiction under Section 24 of the Hindu Marriage Act by not granting ad interim maintenance @ Rs.95,000/- per month keeping in view the status of the respondent as well as the monthly income of the respondent/husband from his business activities. The learned counsel for the petitioner/wife has also drawn the attention of the court to the various immovable properties owned by the respondent/husband apart from his business interest and the fact that the respondent had filed Income-Tax Return to show his monthly income of Rs.5,50,000/- per month in the year 2003-

2004 which in any case would have increased over a period of time and not decreased. While as the petitioner/wife has been paid only a paltry sum of Rs.35,000/- per month for the purpose of maintaining herself although she had prayed for making a provision for her dwelling house also.

4. Ms. Meenakshi Lekhi, the learned counsel for the respondent/husband has tried to justify the ad interim maintenance order having been passed in favour of the petitioner on the basis of the cross-examination of the petitioner herself where she is purported to have admitted that her monthly expenses for running the household are to the tune of Rs.35,000/- to Rs.40,000/- and, therefore, it has been essentially contended that the grant of ad interim maintenance by the learned Additional District Judge was perfectly in line with the cross-examination of the petitioner though it was conducted after the impugned order having been passed. Though the respondent/husband has filed an independent petition for setting aside the impugned order but complete setting aside of the impugned order was never pressed by Ms. Lekhi.

5. I have carefully considered the submissions of the respective sides and have gone through the record. Before dealing with the respective

contentions of the parties, it may be pertinent here to give brief background leading to the passing of this order.

6. It is not in dispute that marriage between the parties took place on 8.7.1991 according to Hindu rites and ceremonies. The respondent/husband has filed a divorce petition seeking dissolution of marriage under Section 13-1 (1a) & (1b) of the Hindu Marriage Act, 1955, that is, on the ground of cruelty and desertion. During the pendency of the aforesaid divorce petition, the petitioner/wife filed an application for grant of ad interim maintenance. It was stated in the application that the petitioner has studied upto 9th standard and she had to leave her studies on account of her marriage. It was stated that she does not own any movable or immovable property nor is she having any independent source of income. It was alleged by her that she has only one savings bank account bearing No.424816 in Bank of India, Janpath Branch, New Delhi where also the money is being deposited by the respondent/husband of and on. She has stated that she has jewellery articles which consist of one pair of gold *kara*, earring and a nose pin. Apart from that she does not have any other jewellery article. There is one farm house owned by her on the Noida Expressway for which the

funding is stated to have been done by the respondent himself, who is stated to be in possession of the title deeds also.

7. The petitioner has stated that presently she is living in a rented accommodation along with her two brothers at H. No.1780, Pratap Gali, Chuna Mandi, Pahar Ganj, New Delhi-110055. The petitioner has also stated that so far as the respondent is concerned, he is a man of means and owns following properties :-

- “I) Property No.5, Tansen Marg, New Delhi, having market value of Rs.10 crores or above.
- II) Residential apartment in the area of Golf Link, New Delhi valued at Rs.15 crores approximately.
- III) One shop/commercial space in Noida Export Promotion Zone valued at Rs.3 crores approximately.
- IV) Shop No.4284, Main Bazar, Pahar Ganj, New Delhi valued at Rs.4 crores approximately.
- V) Shop No.4286, Main Bazar, Pahar Ganj, New Delhi valued at Rs.4 crores approximately.
- VI) Office space at Amba Vatta Complex, Mehrauli, New Delhi worth Rs.5 crores.
- VII) Farm house situated at Noida Express Highway, UP developed by DPL Farms having an area of 2000 square yards purchased by the non-applicant in the name of the applicant. The title deeds as well as its possession are with the non-applicant.

VIII) Three bed room flat at second floor of property No.5/90, East Patel Nagar, New Delhi worth Rs.3 crores.

IX) One luxury car make Toyota Camary valued at Rs.21 lacs approximately. One SUV make Toyota Innova and a small car Hyundai i10.”

8. It is also alleged that the respondent/husband is running business of jewellery and has been filing his returns which show that his monthly income is Rs.5,50,000/-. The petitioner has also dealt with the aspect of voluntary disclosure of black money having been made by the respondent to the tune of Rs.2 crores apart from searches which were conducted in the year 2003-2004 by the Directorate of Revenue Intelligence and/or by the Enforcement Directorate at his residence leading to the recoveries of various monies.

9. She has stated that as she has no independent source of income, she may be given a monthly maintenance @ Rs.95,000/- apart from making a provision for her residence and grant of litigation expenses to the tune of Rs.1,10,000/-.

10. The respondent has filed his reply and denied the factum of owning moveable or immovable properties. He has stated that he is only an employee of a jewellery concern wherefrom he gets monthly income of

approximately Rs.25,000/-. He has denied the voluntary disclosure purported to have been made by him or the searches having been conducted at his residence. He has stated that his monthly income is a sum of Rs.87,000/- approximately which includes salary of Rs.25,000/- per month plus interest income and other income also. It has been stated by the respondent that the petitioner is a patient of Schizophrenia and suffers from acute depression disorder which has resulted in filing of the present petition for divorce. He has tried to justify the grant of maintenance to the petitioner to the tune of Rs.35,000/- as sufficient in order to meet her expenses. So far as the business of the respondent is concerned, it has been stated by him that he has suffered losses because of which he had to take up the employment.

11. The learned trial court, after hearing the arguments, found holes in the story put forward by the respondent and observed that the stand taken by the respondent is not truthful. It has also been observed by the court that the respondent is contradicting his own statement with regard to his income and as a matter of fact, he has not been giving his true income so that an appropriate order could be passed. In this regard, the learned trial court has specifically referred to the fact that the respondent is living in a

Golf Links property which he has mortgaged with the bank for worth Rs.10 crores; he has a commercial stall allotted to him at Greater Noida and the fact that he is reflecting his monthly income as more than Rs.5 lacs per month in the Income-Tax record. Despite these observations having been passed by the court, the trial court has granted a meager sum of Rs.35,000/- as monthly ad interim maintenance to the petitioner/wife apart from litigation expenses of Rs.60,000/-.

12. I have gone through the order passed by the learned Additional District Judge. There is no dispute about the fact that reading of the order passed by the learned Additional District Judge clearly shows that the respondent has not been truthful in revealing his correct income and it is only a false statement made by the respondent that he has suffered losses in the business and because of which he had to take an employment @ Rs.25,000/- per month. It is also not correctly reflected by the respondent as to how he is earning other monies by way of interest or otherwise, which according to him, add up his monthly income to the tune of Rs.87,000/-. This clearly shows that the respondent is not forthcoming with regard to his actual income before the court so that an appropriate order with regard to ad interim maintenance could be passed.

13. Reply of the respondent with regard to the factum of his owning immoveable properties is equally vague. The petitioner has specifically made an averment giving the details of the properties owned by the respondent. The respondent has not specifically denied that he does not own any of these properties. On the contrary, the details of the properties furnished by the petitioner clearly shows that all these properties are prime properties which are not only owned but must be a source of substantial amount of monies and income for the respondent which is also not being reflected correctly before the court or rather the earnings from these properties is being withheld from the court. The petitioner's stand is truthful inasmuch as she has stated that even a farm land has been purchased in her name which she could have claimed to be her own but she has very candidly stated that the funding for the said farm house, which is nearly 2000 square yards is done by the respondent himself. The residential address of the respondent in Golf Links further confirms that he is a man of means and of status so far as the finances are concerned and, therefore, taking his income to be Rs.5,50,000/- per month on the basis of his Income-Tax Returns was perfectly justified by the learned

Additional District Judge. However, while granting maintenance to the petitioner, the learned Additional District Judge has fallen into a serious error of granting only a sum of Rs.35,000/- per month which happens to be almost 1/15th of his monthly income of Rs.5,50,000/-. This part of the order which grants only a sum of Rs.35,000/- to the petitioner, after taking the amount of earnings of the respondent to a sum of Rs.5,50,000/-, has caused immense injustice to the petitioner apart from the fact that the learned Additional District Judge has failed to exercise his jurisdiction to grant ad interim jurisdiction in accordance with the well-settled principles of law enumerated in number of judicial pronouncements. I do not feel the necessity of citing any case law on the subject which is replete with instance where the wife has been given the maintenance ranging from 1/5th to 1/3rd depending on the income of the husband, status of the parties and the standard of living to which the wife is accustomed after marriage.

14. The petitioner admittedly had married the respondent in the year 1991. The divorce petition has been filed in the year 2010. The respondent has not disputed that he is living in Golf Links, therefore, the petitioner had naturally been accustomed to the living standard which the

respondent was maintaining. Obviously, the very fact that he was living in Golf Links with the present petitioner clearly shows that the petitioner is entitled to the same standard of living which she was entitled to live along with the respondent before the respondent filed the divorce petition on whatever grounds. If that is taken as a basic standard of living, the petitioner is entitled to live in an accommodation of a comparable standard which certainly is not Chuna Mandi in Pahar Ganj which is a down town slum area in comparison to an up-market posh area of Golf Links. This in itself would entitle the petitioner to a sizeable amount of money to take the house on rent in Golf Links or in its immediate vicinity like Sunder Nagar, Jor Bagh or Defence Colony, etc., therefore, this factor has been omitted to be considered by the learned Additional District Judge.

15. The respondent has also not disputed specifically any of the immovable properties owned by him and thus, that is also a source of his income apart from showing that he is a man of status.

16. The petitioner is also entitled to various other facilities in order to maintain herself, namely, health care, medicines, day-to-day upkeep, etc. Keeping in view all these facts, I feel that the demand of the petitioner to

have ad interim maintenance @ Rs.95,000/- per month especially in the light of the fact that the respondent himself had admitted his monthly income to be Rs.5,50,000/-, comes less than 1/5th of his monthly income and what has been granted to her is much less than that.

17. The contention of Ms. Lekhi, the learned counsel for the respondent that the petitioner has herself admitted in her cross-examination that she entails an expense of Rs.35,000/- to Rs.40,000/- per month or even Rs.50,000/-, is no ground to deny the maintenance @ Rs.95,000/- per month by way of ad interim maintenance. The reason for this is that while exercising supervisory jurisdiction by the High Court under Article 227 of the Constitution of India, it does not have to take into consideration only the subsequent facts. It only has to take into consideration the fact and the circumstances in the background of which the order was passed. At the time when the order was passed in the month of October, 2012, the respondent had not cross-examined the petitioner inasmuch as her statement even was not even recorded. Therefore, the cross-examination of the petitioner at this point of time, which is a matter of record, cannot be taken into consideration in order to justify an order which has been passed almost more than two years back.

18. This kind of analogy does not persuade the court with the submission made by Ms. Lekhi. I, therefore, feel that the petitioner has been grossly subjected to injustice by passing an order on ad interim maintenance @ Rs.35,000/- only. As a matter of fact, it has resulted in failure of justice because the learned trial court has failed to exercise the jurisdiction according to settled principles of law which is vested in it. She ought to have been granted full maintenance claim by her, which is to the tune of Rs.95,000/- per month apart from litigation expenses to the tune of RS.1,10,000/-. The petitioner has in comparison been granted a sum of Rs.35,000/- per month as ad interim maintenance and litigation expenses to the tune of Rs.60,000/-.

19. The next question which would arise is the date from which this ad interim maintenance must be paid at an enhanced rate of Rs.95,000/- per month. Obviously, when the maintenance order is passed, be that ad interim, it has to relate back to the date from the date of the application. In the instant case, the order has been passed on 1.10.2012 and obviously, the application must have been filed much earlier, therefore, the petitioner is entitled to differential amount between Rs.95,000/- per month and

Rs.35,000/- per month from the date of application till 28.2.2015 within a period of one month from today. So far as the differential in the litigation expenses is concerned, that shall also be paid within a period of one month from today which is to the tune of Rs.50,000/-.

20. The next question which arises for consideration is that the respondent has shown that the petitioner is admitting in her cross-examination that her monthly expenses are only to the tune of Rs.35,000-40,000/- per month. If that be so, that can be a consideration for the respondent to seek modification of an ad interim order which the court will consider in its proper perspective after inviting the reply from the petitioner/wife but that can be done by the learned trial court only when an application in this regard is filed by the respondent/husband.

21. At this point of time, the court is not inclined to accept that as a plea for scuttling the ad interim maintenance of the petitioner on that subsequent fact. It is also not clear as to in what context the petitioner has admitted in her cross-examination, the quantum of expenses incurred by her, whether it takes care of her residence, medical expenses also or not. All these aspects can be considered by the trial court if and when an application seeking modification of the order of the ad interim

maintenance is filed before the trial court which, I hope and trust, would be considered without being influenced by any of the observations which have been passed in the present order. But one precondition is made for consideration of that application, that is, before any such application is entertained on behalf of the respondent seeking modification of an ad interim maintenance order passed by this court, the petitioner shall be paid all the arrears accruing to her from the date of the application in terms of the present order including the litigation expenses and once these arrears are paid then only an appropriate application in this regard can be filed by the respondent/husband and if filed, it will be considered by the trial court in accordance with law. The learned trial court without being influenced by any of the observations passed by this court in this order, will deal with the same in accordance with law.

22. With these observations, the trial court order is modified and the petitioner is granted an ad interim maintenance @ Rs.95,000/- per month and the litigation expenses to the tune of Rs.1,10,000/- as prayed by her till the time the trial court considers an application filed by the respondent herein. The arrears, if any, on account of the ad interim maintenance and the litigation expenses, shall be cleared within a month from today.

23. In view of the aforesaid directions, both the petitions are disposed of.

24. Expression of any opinion made hereinbefore shall not be deemed to be an expression on the merits of the case.

25. A copy of this order be sent to the learned trial court for information and necessary action and a copy be also given *dasti* to the learned counsel for the parties.

V.K. SHALI, J.

MARCH 03, 2015
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