

Neeraj Chandra vs Nupur Mahajan on 3 December, 2020

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CrI.M.C. No. 2372/2020

NEERAJ CHANDRA

Through:

..... Petition
Mr. Puneet Mittal, Sr. Adv
Ms. Payal Juneja, Mr. Gurm
Kumar, Mr. R.P. Singh and
Mr. Abhishumat Gupta, Adv

versus

NUPUR MAHAJAN

Through:

..... Responde
Ms. Shobha Gupta & Mr. Atul
Advocates

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 03.12.2020 (Through Video Conferencing) Initial submissions have been made on behalf of the petitioner. The petitioner has sought the setting aside of the impugned orders dated 19.10.2020 of the learned Additional Sessions Judge-05 in CrI.Appeal No. 271/2018 and stay of the execution of the order dated 11.4.2018 in CC No. 6587/17.

Vide order dated 11.4.2018 in CC No. 6587/2017, the petitioner herein was directed to pay a sum of Rs.75,000/- per month to the complainant and her minor children from the date of institution of the petition till the disposal of the case. Through the submissions that have been made on behalf of either side it is brought forth that the CrI.M.C. No. 2372/2020 page no.1 of 5 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.12.2020 18:02:26 This file is digitally signed by PS to HMJ ANU MALHOTRA.

said CC No. 6587/17 is still pending. The challenge to this order dated 11.4.2018 by way of an appeal Cr.A.No. 271/2018 as filed by the petitioner herein as appellant thereof is also pending before the Appellate Court of the learned Additional Sessions Judge-05, South East for the date 20.3.2021. Vide order dated 19.10.2020 the learned Additional Sessions Judge-05 has declined the prayer made by the appellant i.e., the petitioner herein seeking a stay of the impugned order/execution proceedings with it having also been observed to the effect that despite directions on the date prior to the date 19.10.2020 whereby the Appellate Court had stayed the execution proceedings subject to the payment of sum of Rs.5,00,000/- within a period of 5 days, the only amount paid was Rs.50,000/- and in the circumstances, the prayer seeking the waiver of the said direction of the

learned MM was disallowed.

Placed on record as Annexure P-9 is the order dated 24.9.2020 of the learned Additional Sessions Judge-05, in Cr.Appeal 271/2018 whereby both parties were directed to file their respective affidavits regarding the amount of interim maintenance due and paid. It has been submitted on behalf of the petitioner that the said affidavit was filed dated 2.10.2020 annexed as annexure P-10 to the petition at page 93 of the present petition to state to the effect that the appellant had paid a sum of Rs.33,16,269/- to the respondent and her two children w.e.f. May, 2017 till 25.9.2020 with the computation in relation thereto attached as Annexure 'A'. The said Annexure 'A' to the said affidavit is not placed on record. Crl.M.C. No. 2372/2020 page no.2 of 5 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.12.2020 18:02:26 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Learned counsel for the respondent submits that the said affidavit does not depict and comply with the directions dated 29.4.2020 of the learned Additional Sessions Judge -05 South East, specifying to the effect that affidavits were to be filed with regards to the amount of the maintenance paid in the matter, which is apparently correct as borne out through the contents of the affidavit dated 2.10.2020 itself.

It has been submitted on behalf of the respondent that in compliance of the said directions the affidavit dated 17.10.2020 of the respondent has been filed specifying to the effect that the petitioner has paid a sum of Rs.21,50,000/- as against the total amount of Rs.36,00,000/- which had become due in the last 40 months.

Apparently, the appeal Crl.Appeal No. 271/2018 is pending for the date 20.3.2021 before the learned ASJ-05. Vide order dated 24.9.2020, the First Appellate Court had stayed the execution proceedings before the learned Trial Court till the next date of hearing subject to the payment of Rs.5,00,000/- to be paid. It is submitted on behalf of the petitioner that the petitioner would be willing to deposit the said sum of Rs.5,00,000/- in terms of the order dated 24.9.2020 but it is sought that the said amount of deposit of Rs.5,00,000/- be considered as the amount to be deposited for the hearing of the appeal during pendency of the appeal subject to which the execution proceedings be stayed.

The said prayer is opposed on behalf of the respondent with submissions made on behalf of the respondent that a sum of Crl.M.C. No. 2372/2020 page no.3 of 5 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.12.2020 18:02:26 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Rs.11,00,000/- be deposited by the petitioner and that the matter be relegated back to the learned Trial Court for the hearing of CC No. 6587/2017 which is instituted in the May, 2017.

On behalf of the petitioner it is however urged that the petitioner seeks redressal before the Appellate Court against the impugned order dated 11.4.2018 of the learned Trial Court.

On a consideration of the submissions that have been made on behalf of either side without any observations on the merits or demerits of Crl.A.271/2018 which is pending before the learned ASJ-05 South-East and without any observations on the merits or demerits of CC No. 6587/2017 pending before the learned MM-02, South East, Delhi, subject to the deposit of the sum of Rs.7,00,000/- by the date 10.12.2020 by the petitioner, in the Court of the learned Additional Sessions Judge-05 in the Crl.Appeal No. 271/2018 the execution proceedings qua CC No. 6587/17 shall be stayed. However, taking into account that Crl.Appeal No. 271/2018 assails the order dated 11.4.2018 of the learned Trial Court in relation to the payment of interim maintenance, on a petition under Section 12 of the Domestic Violence Act, the learned Additional Sessions Judge-05 South East, is directed to prepone the date of hearing of the appeal from the date 20.3.2021 with directions to dispose the said appeal by the date 20.3.2021 without default.

It is further directed that out of the sum of Rs.7,00,000/- being deposited by the petitioner, a sum of Rs.5,00,000/- is allowed to be released to the respondent.

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A copy of this order be sent to the learned Additional Sessions Judge-05, South East through the District & Sessions Judge to ensure compliance thereof.

A copy of this order be also sent to the learned Metropolitan Magistrate-02, South East, in relation to CC No. 6587/2017.

Nothing stated herein shall however amount to an expression on the merits or demerits of the appeal Crl.A.271/2018 nor of CC No.6587/2017 pending before the learned Courts concerned that would take place.

The petition is disposed of.

ANU MALHOTRA, J DECEMBER 03, 2020/SV Crl.M.C. No. 2372/2020 page no.5 of 5 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:04.12.2020 18:02:26 This file is digitally signed by PS to HMJ ANU MALHOTRA.