

## Priya Bhatia vs Amit Bhatia on 16 September, 2020

**Author: Jyoti Singh**

**Bench: Jyoti Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CONT. CAS (C) 1129/2019

PRIYA BHATIA

..... Petitioner

Through Mr. Rajesh Kumar Tarun, Advocate.

versus

AMIT BHATIA

..... Respondent

Through Mr. Gaurav Gupta, Advocate with  
Respondent in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH  
ORDER

% 16.09.2020 Hearing has been conducted through Video Conferencing.

1. Present petition has been filed under Sections 10, 11 & 12 read with Section 2 (B) of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India for initiating contempt proceedings against the Respondent for willful disobedience of the order passed by the Trial Court on 08.02.2018 awarding an ad-interim maintenance in the sum of Rs. 20,000/- p.m. to the Petitioner herein who is the wife of the Respondent.

2. Learned counsel for the Petitioner points out that despite the order, the ad-interim maintenance of Rs. 20,000/- p.m. has not been paid and the Respondent is only paying a sum of Rs. 5,000/- per month to the Petitioner. He submits that as on date, a sum of Rs. 6,60,000/- is due to the Petitioner as arrears towards interim maintenance.

3. He further points out that the Respondent had approached this Court by way of Crl.Rev. Petition No. 900/2018 challenging the order dated 08.02.2018. Revision petition was disposed of by the Court directing the Respondent to pay Rs. 5,000/- p.m. to the Petitioner as against the sum of Rs. 20,000/- p.m. granted by the Trial Court.

4. Petitioner herein challenged the said order before the Supreme Court in SLP (Crl.) No. 10573/2019. Vide order dated 03.12.2019 Supreme Court has stayed the impugned order dated 27.09.2019 passed by the High Court in Crl.Rev. Petition No. 900/2018, and thus the order of the

Trial Court is operative and the Respondent is liable to pay interim maintenance at the rate awarded by the Trial Court.

5. Learned counsel for the Respondent on the other hand argues that there is no willful disobedience or non-compliance of the order passed by the Trial Court. He submits that the Trial Court had awarded an ad-interim maintenance of Rs. 20,000/- p.m. to the Petitioner herein, however, the High Court by an order dated 27.09.2019 in Crl.Rev. Petition No. 900/2018 has reduced the ad-interim maintenance to an amount of Rs. 5,000/-, which the Respondent is continuing to pay till date, without any default. He further submits that the order of the Trial Court has merged in the order of the High Court dated 27.09.2019 by the Doctrine of Merger and once the Supreme Court has stayed the order dated 27.09.2019, the implication is that the order of the Trial Court is also stayed.

6. Learned counsel for the Respondent also draws the attention of the Court to the Trial Court's order and submits that it was only on account of the heavy pendency that ad-interim maintenance of Rs. 20,000/- p.m. was granted so that the Petitioner in the meantime does not suffer. He submits that the intention was not to grant such an exorbitant amount of interim maintenance.

7. Learned counsel relies on the judgement of the Supreme Court in Civil Appeal No. 599/2003 titled Chandi Prasad v. Jagdish Prasad, to contend that in so far as the Doctrine of Merger is concerned, there is no difference between an order which is reversed on modification or confirmed. He submits that learned counsel for the Petitioner is not only misrepresenting but misleading the Court by reading into the order of the Supreme Court as if the order of the Trial Court still operates.

8. Learned counsel has also drawn the attention of the Court to page 6 of the list of dates and events and paragraphs 8 & 10 of the contempt petition wherein the Petitioner has mentioned that the order of the Trial Court has been upheld by the Supreme Court. The argument is that the SLP (Criminal) No.10573/2019 is still pending in the Supreme Court and, therefore, for the Petitioner to contend that the order has been upheld is a misreading of the order and an attempt to mislead the Court.

9. I have heard the learned counsels for the parties.

10. I may point out at this stage that on the last date of hearing as well as today before the start of hearing, the Court had given an opportunity to the Respondent to resolve the matter and to pay the interim maintenance, as per the directions of the Trial Court. The counsel for the Petitioner had even suggested to the Respondent, who is present in Court, that the Petitioner was willing to withdraw the present petition in case the Respondent agrees to clear the arrears in instalments.

11. Mr. Amit Bhatia is present in court pursuant to the directions passed by this Court. Both Mr. Amit Bhatia as well as learned counsel for the Respondent, however, are not willing to accept the offer of the Petitioner to clear the arrears in instalments and insist on arguing that the Trial Court order is stayed and therefore, the maintenance awarded is not payable. It is submitted that despite the stay order the Respondent is gracious enough to continue paying Rs.5,000/- p.m. to the Petitioner.

12. I have carefully perused the order of the Trial court. Relevant part of the order reads as under:-

"Heard and perused the record. Since there is heavy pendency in the Court and the disposal of the interim maintenance application is going to take the time and the delay is causing hardship to the petitioner no.1, who is a housewife while the respondent has admitted in his affidavit of income that his monthly income is Rs. 1,35,856/-. In the circumstances, the respondent is directed to pay a sum of Rs. 20,000/- p.m. as ad-interim maintenance to the petitioner, from the date of filing of application for grant of interim maintenance in the court i.e. 16.01.2017, by the 10th day of each Calendar month till the disposal of interim maintenance.

Respondent is also directed to clear the arrears of maintenance within two months."

13. The said order was assailed by the Respondent in Crl. Rev. Petition No. 900/2018, relevant part of which reads as under:-

"4. Learned counsel for the petitioner undertakes that the petitioner shall continue to pay the maintenance of Rs.77,000/- towards the children. He also agrees to pay Rs.5,000/- to the respondent, as an ad-interim measure without prejudice to his rights and contentions.

5. It shall be open for the trial court, while awarding final maintenance, to grant adjustment of Rs.5,000/- agreed to be paid as ad-interim measure to the respondent.

6. It is clarified that the above orders are without prejudice to the rights and contentions of the parties."

14. The order of the Supreme Court in SLP (Crl.) No. 10573/2019 reads as under:-

"Petition(s) for Special Leave to Appeal (Crl.) No(s).10573/2019 (Arising out of impugned final judgment and order dated 27-09- 2019 in CRLRP No.900/2018 passed by the High Court of Delhi at New Delhi).

PRIYA BHATIA

Petitioner(s)

VERSUS

AMIT BHATIA

Respondent (s)

(FOR ADMISSION and I.R. and IA No.177740/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT) Date: 03-12-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN HON'BLE MR. JUSTICE NAVIN SINHA For Petitioner(s) Mr. R.K. Tarun, Adv.

Mr. Mushtaq Ahmad, AOR For Respondent(s) UPON hearing the counsel the Court made the following ORDER Issue notice.

In the meantime, the impugner order shall remain stayed. It shall, however, be open for the Family Court to determine the quantum of final maintenance uninfluenced by the order of the High Court."

15. Having carefully perused the various orders, I do not find force in the contention of the Respondent that the order of the Trial Court has merged in the order of the High Court and since the Supreme Court has stayed the order of the High Court, in accordance with the Doctrine of Merger the order of the Trial Court has also been stayed. Supreme Court, vide its order dated 03.12.2019, has only stayed the order of the High Court dated 27.09.2019. In my view, this does not imply that the Respondent is not obliged to comply with the order of the Trial Court. On the contrary, once the High Court order reducing the amount of maintenance has been stayed, the order of the Trial Court is reinforced.

16. Respondent has admittedly failed to pay the interim maintenance of Rs.20,000/- p.m., awarded by the Trial Court, and in my prima facie view, there is willful disobedience and non-compliance of the order of the Trial Court dated 08.02.2018.

17. Issue show cause notice to the Respondent why contempt should not be initiated against him, returnable on 12.10.2020.

18. Reply be filed by the Respondent within a period of two weeks from today. Rejoinder, if any, be filed within one week thereafter.

JYOTI SINGH, J SEPTEMBER 16, 2020/yo