

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

% **Reserved on : 11th October, 2021**
Decided on : 29th October, 2021

+ **CM(M) 213/2021**

MAMTA BHARDWAJ Petitioner
Through: Mr. L.K. Singh with Ms. Saira
Parveen, Advocates
versus

VINOD KUMAR BHARDWAJ & ANR. Respondents
Through: Mr. Sanjeev Salhan, Advocate

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. The present petition under Article 227 of the Constitution of India impugns the order dated 5th March, 2020 passed by the Additional District Judge-1 (South East), Saket Courts, New Delhi in civil suit bearing No.CS-DJ-1684 of 2017, whereby the application filed by the petitioner wife under Section 26 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'DV Act') has been dismissed.

2. Notice was issued in the petition on 6th April, 2021. The counsel for the petitioner wife has filed written submissions along with judgments in support of his submissions. However, the counsel for the respondent husband has preferred not to file any written submissions. Arguments on behalf of the parties were heard on 11th October, 2021, when the judgment was reserved.

3. Facts in brief leading to the present petition are set out hereinbelow:
 - 3.1 The petitioner wife had filed a suit under the Hindu Adoptions and Maintenance Act, 1956 as an indigent person, claiming maintenance before this Court. The said suit was transferred to the Family Courts and vide judgment dated 28th March, 2018 of the Principal Judge, Family Courts, Shahdara, Karkardooma, Delhi in HAMA No. 01 of 2017, the petitioner wife was awarded maintenance @ Rs.10,000/- per month w.e.f. 13th March, 1997. It is the case of the petitioner wife that the aforesaid amount of maintenance has not been paid to her by the respondent husband and she has filed execution proceedings in respect of the same before the Family Court.
 - 3.2 On 9th November, 2017, the civil suit bearing No.CS-DJ-1684 of 2017 was filed by respondent husband against the petitioner wife seeking damages of Rs.20,00,000/- along with interest @ 24% per annum and for *pendente lite* and future interest on account of malicious prosecution. The suit was premised on the discharge of the respondent husband in a criminal complaint lodged by the petitioner wife against the respondent husband under Sections 498A and 406 of the Indian Penal Code, 1860.
 - 3.3 The petitioner wife filed an application under Section 26 of the DV Act in the said civil suit seeking a direction to the respondent husband to pay a sum of Rs.10,000/- per month as interim maintenance and Rs.1,00,000/- towards litigation expenses.

3.4 The said application was dismissed by the Trial Court vide the impugned order dated 5th March, 2020, observing that the said application had been filed for execution of the order dated 28th March, 2018 of the Family Court, in respect of which execution has already been filed on behalf of the petitioner wife and therefore, the civil court could not become an executing court for the amount of maintenance already awarded in favour of the petitioner wife.

4. The counsel appearing on behalf of the petitioner wife assails the impugned order on the grounds that, (i) the impugned order failed to appreciate that the application under Section 26 of the DV Act was not filed towards execution of the earlier maintenance order dated 28th March, 2018 granted in favour of the petitioner wife; (ii) the said application was an independent application in terms of Section 26 read with Sections 20(1)(d) and 23 of the DV Act; (iii) in terms of Section 26(3) of the DV Act, the petitioner wife had duly informed the civil court of the factum of maintenance awarded in her favour vide the order dated 28th March, 2018; (iv) the grievance raised by the petitioner wife fell within the definition of 'domestic violence' as defined under Section 3 of the DV Act being 'economic abuse' as per Explanation I to Section 3 of the DV Act; and (v) as per the judgment of the Supreme Court in **Rajnish Vs. Neha and Anr.** (2021) 2 SCC 324, the maintenance awarded under DV Act is in addition to the maintenance awarded to the aggrieved woman under any other statutes.

5. The counsel appearing on behalf of the respondent husband has also relied upon the judgment of the Supreme Court in **Rajnish** (supra), wherein it has been held that though there is no bar to seek maintenance both under

the DV Act and other statutes, it would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. Therefore, it is contended by the counsel for the respondent husband that the impugned order of the Trial Court does not warrant interference as it would be inequitable to direct the respondent husband to pay maintenance to the petitioner wife, in addition to the maintenance already granted vide the order dated 28th March, 2018.

6. At the outset, a reference may be made to the relevant provisions of the DV Act, which are set out as under:

“2. Definitions. – In this Act, unless the context otherwise requires, –

(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

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(g) “domestic violence” has the same meaning as assigned to it in section 3;

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*(k) “monetary relief” means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, **to meet the expenses incurred** and the losses suffered by the aggrieved person as a result of the domestic violence;*

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(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and

against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

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3. Definition of domestic violence. — *For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it —*

*(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and **economic abuse**; or*

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Explanation I.—For the purposes of this section,—

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(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any

other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

7. From a reading of the above provisions, the position which emerges is as follows:

- (i) The petitioner wife is covered under the definition of ‘aggrieved person’ under Section 2(a) of the DV Act, whereas the respondent husband would be covered under the definition of ‘respondent’ under Section 2(q) of the DV Act.
- (ii) The definition of domestic violence under Section 3 of the DV Act includes ‘economic abuse’, which includes deprivation of economic or financial resources, to which the aggrieved person (petitioner wife) is entitled under any law, whether payable under an order of the Court or which the aggrieved person requires out of necessity. Necessity would include household necessities as well as *stridhan*, property, etc.
- (iii) In terms of Section 26, the relief available under Sections 18 to 22 of the DV Act can also be sought in any legal proceedings before, *inter alia*, a civil court by the aggrieved person. It is further provided in Section 26(2) of the DV Act that the relief under Section 26 of the DV

Act can be in addition to and along with any other relief that the aggrieved person may have sought in other legal proceedings, whether civil or criminal. However, as per Section 26(3) of the DV Act, in the event that a relief has been obtained by the aggrieved person in any proceedings other than those under the DV Act, the aggrieved person shall be bound to inform the same to the court.

- (iv) Section 20 of the DV Act empowers the Magistrate to direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person as a result of the domestic violence, including economic abuse. The monetary reliefs would, *inter alia*, include maintenance for the aggrieved person, which could be in addition to an order of maintenance passed under any other law for the time being in force.
 - (v) Under Section 23 of the DV Act, the Magistrate is entitled to pass interim orders, which would imply that monetary relief may be granted on an interim basis.
 - (vi) On a conjoint reading of Sections 20 and 23 with Section 26 of the DV Act, it can be concluded that monetary relief, including maintenance for the aggrieved person, to meet the expenses incurred as a result of the domestic violence, including economic abuse, may be granted on an interim basis in any legal proceedings before, *inter alia*, a civil court.
8. In the light of the aforesaid provisions of the DV Act, the petitioner wife would be entitled to invoke the provisions of Section 26 read with

Section 20 of the DV Act to seek monetary relief, including maintenance, which would be in addition to the maintenance granted to her vide the order dated 28th March, 2018. Admittedly, the petitioner wife had disclosed in her application under Section 26 of the DV Act, the factum of the maintenance, which had already been awarded in her favour vide the order dated 28th March, 2018.

9. Since both parties have placed reliance on the judgment of **Rajnish** (supra), it is deemed relevant to analyse the observations of the Supreme Court in the said case. The Supreme Court in **Rajnish** (supra) while approving the judgments of the High Court of Bombay in **Vishal Vs. Aparna**, 2018 SCC OnLine Bom 1207 and the High Court of Delhi in **R.D. Vs. B.D.** 2019 SCC OnLine Del 9526, has observed in light of the question of overlapping jurisdictions for grant of maintenance that Section 20(1)(d) of the DV Act makes it clear that the maintenance granted under the DV Act would be in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (Cr.PC) and any other law for the time being in force. It was observed by the Supreme Court that the legislative mandate envisages grant of maintenance to wife under various statutes. There is no bar to seek maintenance both under the DV Act and Section 125 of the Cr.PC or the Hindu Marriage Act, 1955 or the Hindu Adoption and Maintenance Act, 1956. The only obligation imposed on the wife would be to disclose the earlier maintenance being granted to her in the previously instituted proceedings so that the quantum of maintenance in the subsequent proceedings could be fixed taking into account the maintenance already

awarded in favour of the wife in any previously instituted proceedings. The directions passed by the Supreme Court are set out below:

“61. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding.

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128.1. (i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

128.2. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

128.3. (iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.”

10. In light of the above, the impugned order by the Trial Court is clearly erroneous inasmuch as it dismisses the application filed by the petitioner wife under Section 26 of the DV Act only on the basis that it has been filed towards execution of the maintenance already granted to the petitioner wife vide the order dated 28th March, 2018. The Trial Court has failed to appreciate that the aforesaid application was an independent remedy invoked by the petitioner wife under the provisions of the DV Act. The

petitioner wife is also not seeking any modification or variation of the order dated 28th March, 2018 by way of the application under Section 26 of the DV Act. Furthermore, no inquiry has been made by the Trial Court with regard to the merits of the said application in terms of the provisions of the DV Act.

11. Accordingly, the impugned order is set aside. In light of the observations made hereinabove, the matter is remanded back to the Trial Court to decide the application filed by the petitioner wife under Section 26 of the DV Act on merits. Needless to state that the amount of compensation already awarded to the petitioner wife vide judgment dated 28th March, 2018 would be taken into account by the Trial Court while granting relief under Section 26 read with Section 20 of the DV Act in light of the provisions of the DV Act and the directions of the Supreme Court in *Rajnish* (supra).

OCTOBER 29, 2021
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AMIT BANSAL, J.

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