

**IN THE COURT OF SH. YASHWANT KUMAR
PRINCIPAL DISTRICT & SESSIONS JUDGE, NORTH-
WEST DISTRICT, ROHINI COURTS, DELHI**

Crl. Appeal No. 210/2022
CNR No.DLNW01-011702-2022

Sh. Amit Kumar
S/o Sh. Sohanpal Singh
R/o H. No. C-57, Govindpuram
Ghaziabad, UP

....Appellant

Versus

Ms. Neha
D/o Sh. V.K. Pippal
R/o H. No. A-1/595, 3rd Floor
Sector-6, Rohini, Delhi-110085

....Respondent

Date of Filing : 25.11.2022
Date of Arguments : 30.01.2023
Date of Judgment : 30.01.2023

JUDGMENT

1. The appellant has filed this criminal appeal under Section 29 of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as “said Act”) against an order dated 09.11.2022 (hereinafter referred as “impugned order”) passed by Ld. MM-01 (Mahila Court), North-West District, Rohini, Delhi in a complaint case bearing Ct. Case No.13552/2020 titled 'Neha Pippal V. Amit Kumar & Ors.', whereby the Ld. MM closed the right of the respondent No.1- therein/appellant-herein to argue on interim application and application moved by him u/s 112 of Indian Evidence Act.

2. Aggrieved by the said impugned order, the appellant has preferred the present appeal on the grounds among others that during pendency of the application u/o 1 Rule 10 CPC, the

appellant could not file the WS/reply. The legal rights of the appellant cannot be infringed by way of impugned order dt.09.11.2022. It is mandatory requirement to grant one opportunity to the appellant to deposit Rs.3000/- cost and to allow the WS and other application and if opportunity to the appellant is not granted he will suffer irreparable loss and injury. The appellant has prayed to set aside the impugned order dt. 09.11.2022.

3. The respondent has not filed reply to the present appeal. However, this appeal has been opposed by the Ld. Counsel for the respondent.

4. I have heard the Ld. Counsel for the parties and I have also gone through the written submissions filed on behalf of the parties, the judgments relied upon by the Ld. Counsel for the parties and also the impugned order as well as the materials available on record.

5. Ld. Counsel for the appellant argued that the appellant could not deposit the cost of Rs.3000/- as he was unaware of imposing of the said cost by the Ld. MM. By way of impugned order, the legal rights of the appellant have been infringed. The appellant also could not file WS/reply as an application u/o 1 rule 10 CPC of the respondent-herein was pending before the Ld. Trial Court. One opportunity may be granted to the appellant to deposit the cost of Rs.3000/- according to the order of the Ld. MM. In support of his arguments, Ld. Counsel for the appellant has relied upon the judgments in the cases of State of Orissa Versus Madan Gopal Rungta 1951 Supreme Court Cases 1024; Calcutta Gas Company (Proprietary) Ltd. Vs. State of West Bengal & Ors.

AIR 1962 SC 1044 and Charanjit Lal Chowdhury Versus Union of India & ors. 1950 Supreme Court Cases 833.

6. Ld. Counsel for the respondent argued that appellant filed reply despite granting five opportunities and when his right to file reply was closed. The conduct of the appellant shows that he is adopting delay tactics before the Ld. MM. He is also not complying with the orders of the Ld. MM. No cogent reason is given by the appellant as to why he was not represented by counsel and also for his non-appearance before the Ld. MM. In support of his arguments, Ld. Counsel for the respondent has relied upon the judgments in the cases of Rajnesh V. Neha and Anr. (2021) 2 Supreme Court Cases 324 and Onkar Sharma V. The State of Himachal Pradesh & Ors. in Criminal Revision No. 180 of 2021 decided by Hon'ble Himachal Pradesh High Court on 20.12.2022.

7. In view of the facts and circumstances of the present case, impugned order dt. 09.11.2022 and materials on record, I am of the considered opinion that right of the respondent No.1- therein/appellant-herein to file WS and reply to the interim application was closed on 21.10.2021 and despite allowing his application u/s 151 CPC on 30.06.2022 to file WS, reply to interim application, income affidavit, he did not deposit the cost of Rs.3000/- imposed upon him. The appellant had sufficient time to file WS, reply to interim application, income affidavit and to deposit the cost of Rs.3000/- till 09.11.2022 i.e. more than four months but he failed to comply with the order dt.30.06.2022. Even, his counsel was not present for addressing arguments on interim application on 09.11.2022. The petition u/s 12 of the said Act was instituted before the Ld. MM in

December 2020. The respondent-herein/wife should not suffer due to conduct of the appellant-herein/respondent No.1-therein. The conduct of the appellant-herein shows that he is trying to delay the court proceedings. Therefore, considering the conduct of the appellant to delay the proceedings before the Ld. MM, the prayer made by the appellant in the present appeal is not acceptable. The judgments relied upon by the Ld. Counsel for the appellant are distinguishable from the facts and circumstances of the present case. Thus, this appeal is devoid of any merits and the same is accordingly dismissed. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case. Trial Court record along with the copy of this Judgment be sent back to the Ld. Trial Court. Appeal file be consigned to Record Room.

Announced in the open court (YASHWANT KUMAR)
today on 30th January 2023 Principal District & Sessions Judge
North-West, Rohini Courts, Delhi