

MEENA CHAUDHARY

A

v.

COMMISSIONER OF DELHI POLICE AND ORS.

(Civil Appeal Nos. 8439-8440 of 2009)

SEPTEMBER 18, 2014

B

**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
SHIVA KIRTI SINGH, JJ.]**

Protection of Women from Domestic Violence Act, 2005 – ss.12, 18, 19, 20, 22 and 23 – Suit filed by appellant for protection of share in the matrimonial household and interim maintenance – During pendency of the suit, appellant filed writ petition – High Court in its writ jurisdiction declined to examine the disputed questions of fact as regards the claim of appellant about the subsisting nature of her married life with respondent no.4, but directed him to pay interim maintenance to the appellant – Held: Unless and until the disputed questions of facts were determined one way or the other based on relevant legally acceptable material evidence, there was no scope for granting any other relief except the relief of interim maintenance, which the High Court had granted in a sum of Rs.25,000/- per month – The disputed questions of fact could not have been examined in the writ proceedings; rather it could be appropriately examined by the Magistrate – However, suit filed by appellant was dismissed while she was pursuing her remedies before the Supreme Court – Appellant is granted liberty to get the suit revived by filing appropriate application before the Magistrate.

C

D

E

F

Disposing of the appeals, the Court

G

HELD:1. Various claims of the Appellant as regards the subsistence of the marriage with Respondent No.4 as well as her other grievances involved determination of very seriously disputed questions of fact and unless and

H

A until such disputed questions of facts are determined one
 way or the other based on relevant legally acceptable
 material evidence, there is no scope for granting any
 other relief except the relief of interim maintenance, which
 the High Court decided to grant and ultimately granted
 B in a sum of Rs.25,000/- per month. [Para 9] [515-B-C]

2. A detailed enquiry would be required to be made
 by the appropriate forum in order to give an authoritative
 pronouncement as to the existence or otherwise of the
 C matrimonial relationship of the Appellant and
 Respondent No.4. Such seriously disputed questions of
 fact could not have been examined in the writ
 proceedings. [Para 12] [516-E-F]

3. The various disputed questions of fact which arise
 D for consideration in these appeals can be appropriately
 examined by the Additional Chief Metropolitan Magistrate,
 Patiala House Courts, New Delhi if the appellant's suit is
 revived and disposed of on merits. Since the said course
 would be an appropriate course to put an end to the long
 E drawn litigation as between the Appellant and
 Respondent No.4, the Appellant can be granted liberty to
 get the Suit revived by filing an appropriate application
 before the Chief Metropolitan Magistrate, Patiala House
 Courts, New Delhi. [Para 13] [517-C-E]

F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.
 8439-8440 of 2009.

From the Judgment & Order dated 06.05.2009 in Letters
 Patent Appeal No. 64 of 2009 and the order dated 18.05.2009
 G in Review Petition No. 205 of 2009 of the Division Bench of
 the High Court of Delhi at New Delhi.

Meena Chaudhary (Appellant-in-person)

H Pinky Anand, ASG, M.N. Krishnamani, Atul Jha, Sandeep,

Dharmendra Kumar Sinha, Mohan Prasad Gupta (For Anil Katiyar) for the Respondents. A

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. In the present appeals the Appellant, who is a Gynaecologist by profession and has appeared before us as a party-in-person, is aggrieved by the order of the Division Bench of the High Court of Delhi dated 06.05.2009 in LPA No.64/2009 along with CM Nos. 1801,4625 & 4770 of 2009. B C

2. The brief facts, which are required to be stated in order to appreciate and find a solution to eliminate the grievances of the Appellant, are that the Appellant got married to Respondent No.4 herein in the year 1973 and thereafter, a son and a daughter were born out of the said wedlock in the years 1974 and 1977, respectively. Differences stated to have arisen as between the Appellant and Respondent No.4 with regard to their matrimonial affair and according to the Appellant, Respondent No.4 deserted her in the year 1989. There were two matrimonial Suits initiated, one at the instance of the Appellant being Suit No.T.S. (M) No.7 of 1991, which was transferred to the Additional District Judge, Jorhat, Assam with a new number T.S. (M) No.10/91 and another at the instance of the 4th Respondent being matrimonial Suit No.4/1996. Both the suits were stated to have been dismissed. It is the further case of the Appellant that thereafter, the 4th Respondent claimed to have divorced her by relying upon an alleged divorce decree dated 29.09.1989 by consent from the Court of Bhutan and also another divorce decree dated 05.03.1999 granted by the Court in England at the instance of the Appellant apart from another divorce decree at Jorhat. The Appellant does not admit to the existence of any of the decrees relied on by the Respondent No.4. D E F G

3. Be that as it may, according to Respondent No.4, the H

A divorce as between the Appellant and Respondent No.4 had come into existence by virtue of the above decrees granted by the competent courts and that he was subsequently married to one Smt. Vidushi Shah in 1991 and that the present marriage was also upheld by the Delhi High Court by an order dated 25.01.2012 in Cri M.P. No.3845 of 2010. The Appellant contended that the marriage as between her and Respondent No.4 continued to subsist, that she was living in her matrimonial home at B-108, Hill View Apartments, Vasant Vihar, New Delhi from where she was forcibly evicted on 05.05.2008. It is the further contention of the Appellant that the said matrimonial home, being a joint family property, was acquired by her father-in-law, namely, Respondent No.4's father which was transferred by his mother in his favour after the demise of her husband and that subsequently Respondent No.4 was taking every effort to transfer the said property without the consent of other members of the family.

4. It is in the above stated background the Appellant filed a Suit No.51/2008 on the file of the Metropolitan Magistrate, Patiala House Courts, New Delhi under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be called as "the Act") claiming various reliefs, namely, protection orders under Section 18 of the Act, residence orders under Section 19 of the Act, monetary relief under Section 20 of the Act, compensation and damages under Section 22 of the Act, interim orders under Section 23 of the Act and order prohibiting Respondent No.4 from committing acts of domestic violence and from repeating the same and such other interim orders as the Court may deem fit, just and proper in the facts and circumstances of the case.

5. When the said Suit was pending, the Appellant moved the High Court by way of a writ petition against some Delhi Police officers as well as Respondent No.4 herein for issuance of a Writ of Mandamus to direct the police authorities to provide the Appellant full security of life, liberty and property

apart from direction to the police authorities not to obstruct her from using the residential premises bearing number B-108, Hill View Apartments, Vasant Vihar, New Delhi. The said writ petition was dismissed by the learned Single Judge. As against the said order of dismissal of the writ petition, the Appellant preferred LPA No.64/2009 and also filed miscellaneous applications being CM Nos.1801, 4625 & 4770 of 2009. The Division Bench after referring to the various facts relating to the marriage of the Appellant with Respondent No.4 and also the subsequent events held that the claim of the Appellant about the subsisting nature of her married life with Respondent No.4 is a highly contested issue, which involved very many disputed questions of facts as regards the alleged consent decree of divorce issued by the Courts of Bhutan, England, as well as the Court at Jorhat, including the claim of the Appellant that such orders were either forged or not valid for want of jurisdiction. The Division Bench further held that such disputed questions of facts will have to be examined only by an appropriate Court and cannot be examined and answered in the writ proceedings. Therefore, the Division Bench held that the Appellant having initiated proceedings under Section 12 of the Act which was pending on the file of the Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi in Suit No.51/2008, all the contentious issues can be thrashed out in the said proceedings. The Division Bench, however, taking note of the plight of the Appellant based on her grievances expressed, thought it appropriate to direct Respondent No.4 to pay to the Appellant interim maintenance of Rs.25,000/- per month till a decision on grant of ad-interim maintenance is taken in Suit No.51/2008 apart from directing payment of a sum of Rs.25000/- towards litigation expenses in Suit No.51/2008. On deposit of the said sum, the Appellant was also permitted to withdraw the said amount. The Division Bench also directed the learned Magistrate to decide the application for interim maintenance expeditiously and in any event within a period of three months from the date of the order, namely, 06.05.2009.

A
B
C
D
E
F
G
H

A 6. While the Appellant came forward with these appeals
against the said order of the Division Bench, Respondent No.4
also filed an appeal against the very same order in Civil Appeal
No.8190/2009 in so far as it related to direction for payment
of interim maintenance. When these appeals were heard on
B earlier occasions, the Appellant came forward with I.A. Nos.7-
8, 9-10, 11-12 and 13-14 of 2011. In I.A. Nos.7-8 of 2011, the
Appellant prayed for an urgent interim order of maintenance and
residence in a suitable form of a matrimonial home, an order
to secure compliance with Respondent No.4 by confiscating his
C passport and his current Commercial Pilot Licence and also
pass an order of sentence against Respondent No.4 for
Contempt of Court. I.A. Nos.7-8 of 2011 were dismissed by an
order of this Court dated 23.09.2011 as being misconceived.
This Court noted that the prayer 'a' made by way of an interim
D relief is the core issue to be determined in these appeals and
the other prayers do not arise for consideration in the main
appeal. It was also brought to the notice of the Court that the
main Suit, namely, Suit No.51/2008 itself was dismissed by the
Metropolitan Magistrate on 21.09.2011. That apart, whatever
E interim maintenance, which was directed to be paid by the
Division Bench, which worked out to a sum of Rs.9,00,000/-
up to the date of dismissal of the Suit, was also paid; once by
way of Demand Draft to the value of Rs.5,50,000/- on
01.06.2011 as reflected in this Court's order dated 01.06.2011.
F Mr. M.N. Krishnamani, learned Senior Counsel appearing for
Respondent No.4 stated that the balance amount was also duly
paid, which was not disputed by the Appellant before us. The
appeal preferred by Respondent No.4 (viz) C.A. No.8190/2009
was dismissed by this Court on 21.02.2014.

G 7. Keeping the above stated factors relating to the
grievances of the Appellant raised in Suit No.51/2008, as well
as, in the writ petition from which the impugned order came to
be passed by the Division Bench, we heard the Appellant-in-
H person at great length. In her submissions, the Appellant after

making detailed reference to the various factors in her written submissions noted by us in the earlier paragraphs, contended that the marriage as between her and Respondent No.4 continue to subsist even as on date, that she is entitled to share the matrimonial home at B-108, Hill View Apartments, Vasant Vihar, New Delhi, that the said property which was owned by her father-in-law came to be transferred in favour of her mother-in-law and that thereafter continued to remain as joint family holding in the hands of Respondent No.4 and as a lawfully wedded wife of Respondent No.4, she is entitled to share household in the said premises. According to her, Respondent No.4 cannot, therefore, forcibly evict her from the said premises and such action of Respondent No.4 needs to be restrained by the orders of this Court. She also contended that the reliance placed upon by Respondent No.4 on the order dated 25.01.2012 of the High Court of Delhi in Cri.M.P. No.3845 of 2010 by which Respondent No.4's subsequent marriage with Smt. Vidushi Shah was held as valid should also be declared as null and void. She further contended that her prayer for interim maintenance as provided under Section 26 of the Act should, therefore, be granted as prayed for in her miscellaneous petitions filed in LPA No.64 of 2009.

8. Mr. M.N. Krishnamani, learned Senior Counsel who appeared for Respondent No.4 also vehemently contended that the Appellant has not come with clean hands, that the decree of divorce granted by the Bhutan Court in the year 1989 was a consent decree, that the decree of divorce granted by the British Court was at the instance of the Appellant herself, that the third decree granted by the Court at Jorhat was also valid in law, that the Appellant herself, while making her claim for a share in the family properties against her brothers admitted the dissolution of marriage as between her and Respondent No.4 and, therefore, it is too late in the day for the Appellant to claim nearly after 20 years, in the year 2008, that she is the wife of Respondent No.4. The learned Senior Counsel further pointed

A out that the children, namely, the son and the daughter are 39
and 36 years old respectively and are well settled in England
and are practicing medicine and law and that the Appellant
herself is well placed. The learned Senior Counsel, in his written
B submissions, pointed out that the Appellant has got a built up
property bearing No.K-1467, Palam Vihar, Gurgaon measuring
836 sq. yards where she is running her clinic apart from earning
substantial rental income, that she purchased a property in
C Sainik Farms, Delhi in the name of her son which was
confirmed by her son who is living in United Kingdom and who
is a British Citizen, that the Appellant is in possession of Flat
No.1260, Sector-D, Pocket-1, Vasant Kunj since January, 2002
D which was provided to her by a medical company in view of
her services as a doctor, that she is also running a Women's
Medical Centre in her Palam Vihar House, that even as per her
own statement in paragraph 2.22 of CWP No.4023/2008 she
E had Rs.15,00,000/- with her in July, 2003 and that she also
stealthily removed valuables, jewellery and cash of Respondent
No.4 and his present wife worth more than Rs.20,00,000/- when
she forcibly entered into their living house when both of them
F were away on holidays outside India. The learned Senior
Counsel, therefore, contended that now as Suit No.51/2008 was
also dismissed on 21.09.2011 nothing survives in these
G appeals and they deserve to be dismissed.

F 9. Having heard the strenuous contentions of the Appellant
as well as the submissions of Mr. M.N. Krishnamani, learned
Senior Counsel appearing for Respondent No.4 and having
perused the various materials placed before this Court in these
appeals, we find that the substantial grievance of the Appellant
G relating to the subsistence of her marriage with Respondent
No.4, as well as, her prayer for grant of protection for share in
the matrimonial household as well as interim maintenance were
all subject matter of consideration in Suit No.51/2008, which
was filed by the Appellant before the Additional Chief
H Metropolitan Magistrate, Patiala House Courts, New Delhi. In

this respect, we fully concur with the conclusion of the Division Bench in the impugned order, wherein the Division Bench took the view that various claims of the Appellant as regards the subsistence of the marriage with Respondent No.4 as well as her other grievances involved determination of very seriously disputed questions of fact and unless and until such disputed questions of facts are determined one way or the other based on relevant legally acceptable material evidence, there is no scope for granting any other relief except the relief of interim maintenance, which the Division Bench decided to grant and ultimately granted in a sum of Rs.25,000/- per month. While issuing the said direction, the Division Bench gathered the details as to the income of Respondent No.4 by directing him to produce the salary certificate and other sources of income as well as the income tax returns for the assessment years 2007-08 and 2008-09, which was duly filed by Respondent No.4 before the Division Bench. Based on the above records, the take home pay of Respondent No.4 was noted as Rs.3,49,000/- per month.

10. Mr. Krishnamani, learned Senior Counsel appearing for Respondent No.4, however, pointed out that Respondent No.4 is now 65 years old, that he is now retired and is no longer working as a Commercial Pilot. We were also apprised of the position that during the pendency of these appeals, whatever arrears that were payable pursuant to the direction of the Division Bench by way of interim maintenance were also duly paid to the Appellant in the sum of Rs.9,00,000/- which was calculated up to the date of dismissal of Suit No.51/2008. We also wish to note that this Court explored the possibility of an out of Court settlement by an order dated 01.06.2011 and directed the parties to appear before the Mediation Centre of the Supreme Court on 18.07.2011. While facilitating the parties to go for mediation, this Court directed the proceedings pending between them before different Courts to remain stayed till 18.08.2011. Subsequently, since the efforts of the

A Mediation Centre did not fructify in a settlement and there was no order extending the stay granted by this Court on 01.06.2011 and since the Appellant did not appear before the learned Magistrate on the subsequent hearing dates it transpires that the Suit itself came to be dismissed on 21.09.2011.

B 11. We find from the records that the learned Magistrate by an order dated 10.08.2009 in compliance with directions of the Division Bench in the impugned order dated 06.05.2009, passed orders directing Respondent No.4 to pay a sum of
 C Rs.25,000/- per month by way of interim maintenance by holding that all other reliefs sought by the Appellant which are based on contentious issues will be considered later at an appropriate stage.

D 12. In the light of the above subsequent developments, we are also of the considered view that in these appeals it will not be appropriate to delve deep into the claim of the Appellant that her marriage continues to subsist or that the stand of Respondent No.4 that the relationship as between the Appellant and him got snapped as early as in the year 1989 as well as
 E in the subsequent divorce decree of the year 1999. In our view, a detailed enquiry would be required to be made by the appropriate forum in order to give an authoritative pronouncement as to the existence or otherwise of the matrimonial relationship of the Appellant and Respondent No.4.

F As rightly held by the learned Single Judge and as confirmed by the Division Bench, such seriously disputed questions of fact could not have been examined in the writ proceedings. It is also required to be noted that according to Respondent No.4, the Appellant owns properties in her name, which are very valuable
 G apart from the properties which she stated to have secured in the name of her son; who is a British Citizen; in a prominent locality in Delhi apart from the allegation that she is carrying on her professional activities through which she was able to get accommodation in a flat through a pharmaceutical company,
 H in which premises she presently lives, are all relevant facts and

the truthfulness of such facts, therefore, requires to be ascertained in the appropriate proceedings in order to grant or not to grant any relief to the Appellant. Unfortunately, the Appellant's Suit No.51/2008 came to be dismissed on 21.09.2011, while she was pursuing her remedies before this Court in these appeals.

13. We do not wish to go into the minute details as to who was at fault which resulted in the dismissal of the Appellant's Suit No. 51/2008, inasmuch as we feel that the various disputed questions of fact which arise for consideration in these appeals can be appropriately examined by the Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi if the said Suit is revived and disposed of on merits. Since in our considered opinion, the said course would be an appropriate course to put an end to the long drawn litigation as between the Appellant and Respondent No.4, we are convinced that the Appellant can be granted liberty to get the Suit revived by filing an appropriate application before the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi, in which event, the said Court can be directed to revive the proceedings taking into account the pendency of these appeals in which the Appellant was rigorously seeking for the redressal of her grievances. In this context, we take into account the fact that the Appellant was duly paid the arrears of interim maintenance ordered by the Division Bench in the impugned order, in all a sum of Rs.9,00,000/- which was duly paid by Respondent No.4 along with the sum of Rs.25,000/- towards litigation expenses.

14. In the light of our above conclusion, we hold that there is no merit in these appeals in challenging the order of the Division Bench and the appeals are disposed of as such. We, however, direct the Appellant that if she is so interested and keen, she may file an appropriate application before the Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi in Suit No.51/2008 for its restoration along with the

- A necessary application for condonation of delay in filing such application for restoration. In the event of such application being filed within four weeks from this date, the Additional Chief Metropolitan Magistrate Patiala House Courts shall take up the application for hearing and pass appropriate orders for restoration of the Suit in order to give one final opportunity to the Appellant to contest her claim on merits.

15. It is needless to state that Respondent No.4 should also be given due opportunity in the said Suit for resisting the claim of the Appellant. As per the order of the learned Chief Metropolitan Magistrate dated 10.08.2009, the said Court can decide all other claims of the Appellant on a later date which have been duly noted in paragraph 2 of its order dated 10.08.2009 while passing final orders in Suit No.51/2008. Since the said Suit came to be dismissed on 21.09.2011 and the interim maintenance directed to be paid by the Division Bench as per the impugned order, was pending disposal of an order for interim maintenance to be passed in Suit No.51/2008 and by an order dated 10.08.2009, the payment of interim maintenance was fixed in a sum of Rs.25,000/- and the Suit having been dismissed on 21.09.2011, the Appellant was not entitled for any interim maintenance beyond the month of September, 2009. Therefore, the sum of Rs.9,00,000/- already paid by the Respondent No.4 will be in full settlement of the interim maintenance payable for the period up to 21.09.2011 when the Suit came to be dismissed.

16. Since we have now granted an opportunity to the Appellant to seek for restoration of the Suit in order to be decided on merits, if and when the Appellant files necessary application within four weeks as directed in this order, the direction for interim maintenance as per order dated 10.08.2009 shall get revived on filing of such application and shall be continued to be paid by Respondent No.4 at the same rate of Rs.25,000/- per month till Suit No.51/2008 is disposed of on merits. We also direct the learned Chief Metropolitan

Magistrate, Patiala House Courts, New Delhi to decide Suit No.51/2008 after its restoration expeditiously and preferably within four months from the date of such restoration and till final orders are passed in the said Suit No.51/2008, the payment of interim maintenance at the rate of Rs.25,000/- shall be continued to be paid by Respondent No.4 to the appellant. With the above directions, the appeals stand disposed of. Accordingly, the applications for impleadment are also dismissed. No costs.

Bibhuti Bhushan Bose

Appeals disposed of.