

Singh. Being co-sharers in the property they have every right to seek declaration and they would be deemed to be in joint possession of every inch of land.

39. Consequently in considered opinion of this Court, no fault can be found in the judgments and decrees passed by the Courts below, accordingly this appeal is dismissed.

Appeal dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: M.M.S.Bedi, J.

CRM-M No. 13667 of 2015

Decided on: 28.11.2015

Puneet Chopra

Petitioner

Versus

Urvashi and another

Respondents

Present: Ms.Payal Mehta, Advocate for the petitioner.

Mr.Namit Gautam, Advocate for the respondents.

A. Code of Criminal Procedure, 1973 (2 of 1974), Section 125 – Interim Maintenance – Final order of Maintenance – Interpretation of -- Interim maintenance @ Rs.15,000/- per month from the date of application – Rs.20,000/- as maintenance awarded from the date of final order -- Principle of merger of interim order into final order would mean that interim relief granted to a party will cease to exist on the day when the final order is passed and that from the date final order is passed, the rights conferred upon a party would be enforceable as per the final order -- It does not mean that the interim order would be nullified on passing of the final order.

(Para 8-13)

B. Interpretation of Judgment of High Court and Supreme Court -- While interpreting the judgment of Supreme Court by a High Court, the facts and circumstances of the case in which the order is passed; have to be carefully scrutinized while following the dictum.

(Para 10)

Cases referred:

1. Prem Chandra Aggarwal and another Vs. U.P. Financial Corporation and others 2009(6) S.C.R.931 (Civil Appeal No.2769 of 2009 decided on 23.04.2009).

JUDGMENT

M.M.S.BEDI, J. (ORAL) –

1. Petitioner who is husband has sought the quashing of order dated 07.03.2015 passed by Judicial Magistrate, 1st Class, Ludhiana whereby his objections have been dismissed. Respondents, wife and daughter of the

petitioner were granted maintenance @ Rs.20,000/- w.e.f. the date of the order. Challenge to the impugned order dated 27.03.2015 is on the ground that the final order shall have the effect of nullifying the interim order dated 12.06.2012 passed in favour of respondents granting interim maintenance w.e.f. 05.01.2012 @ Rs.15,000/- per month.

2. Learned counsel for the petitioner has mainly challenged the execution and recovery of amount of arrears of interim maintenance for the period prior to 22.07.2014 which has neither been paid by the petitioner in total nor could be executed till date. Learned counsel for the petitioner has stated that whatever interim maintenance has been paid by the petitioner during period from June, 2012 to July, 2014 may be retained by the respondent-wife but no additional amount can be imposed.

3. Learned counsel for the petitioner has raised arguments on the basis of the observations made in the judgment of Apex Court in **Prem Chandra Aggarwal and another Vs. U.P. Financial Corporation and others 2009(6) S.C.R.931 (Civil Appeal No.2769 of 2009 decided on 23.04.2009)** wherein it has been observed that when final order has been passed by the High Court obviously all interim orders passed by the High Court in the same writ petition cease to exist automatically.

4. After hearing learned counsel for the petitioner and going through the record, it appears that grievance of the petitioner is not against the order dated 22.07.2014 but the grievance is against the right of the respondent-wife to recover any amount ordered as interim maintenance w.e.f. 05.01.2012 @ 15,000/- per month from the date of application.

5. As the facts are not disputed, the only controversy which is to be settled in the case is whether the petitioner is not liable to pay any amount of interim maintenance from 05.01.2012 till 22.07.2014 when final order was passed granting Rs.20,000/- per month from the date of order. Learned counsel for the petitioner besides relying upon the judgment in Prem Chandra Agarwal's case (supra), seeks to derive benefit of the language of Section 125 (2) Cr.P.C. wherein a discretion has been given to the Magistrate to the effect that the Magistrate can allow the maintenance w.e.f. the date of the order or from the date of application.

6. Learned counsel submits that as the Magistrate has not mentioned in the final order that the wife would be entitled to any maintenance prior to the date of final order, the recovery of any amount of interim maintenance prior to the date of order i.e. 22.07.2014 would be improbable.

7. I have heard learned counsel for the petitioner and respondents and carefully gone through the record.

8. There is no dispute regarding legal proposition that Magistrate exercising powers under Section 125(2) Cr.P.C. is entitled to specify the date from which the applicant would be entitled for maintenance. It is not in controversy that Magistrate has got a power to grant interim maintenance w.e.f. any date during pendency of the proceedings under Section 125 Cr.P.C. There is also no dispute regarding legal position that the interim order merges into final order and the interim orders cease to exist when final order is passed but the said principle of law cannot be applied in the present case to nullify the relief which has been granted to the wife as interim maintenance @

Rs.15,000/- per month from 05.01.2012 i.e. the date of application. The principle of merger of interim order into final order would mean that interim relief granted to a party will cease to exist on the day when the final order is passed and that from the date final order is passed, the rights conferred upon a party would be enforceable as per the final order. It does not mean that the interim order would be nullified on passing of the final order. In case the proposition propounded by the learned counsel for the petitioner is accepted, it will tantamount to holding that on passing of the final order, the interim relief which has been granted to a party would be null and void.

9. The judgment cited by the learned counsel for the petitioner has been carefully perused by this Court. In Prem Chandra Aggarwal's case (supra), the appeal had been filed against the interim order dated 24.04.2004 passed by the High Court of Allahabad in a writ petition. The final judgment was passed by the High Court on 25.08.2008. The Apex Court in the circumstances of the said case has observed that any direction given in the interim order dated 24.04.2004 would cease to exist. By making the said observation, the contempt petition and the appeal was disposed of as having rendered infructuous.

10. It is a settled principle of law that while interpreting the judgment of Supreme Court by a High Court, the facts and circumstances of the case in which the order is passed; have to be carefully scrutinized while following the dictum. The judgment of the Apex Court cited by the learned counsel for the petitioner does not lay down a rule of law that interim order will be nullified on passing of the final order. Only interpretation of the words used in the judgment would be that the interim relief granted to a party will cease to exist after the passing of a final order but any benefit accrued out of interim order will not cease to be executable. The principle of merger if applied in the present case would mean that the wife-respondent is entitled to interim maintenance @ Rs.15,000/- per months from 05.01.2012 till 22.07.2014 but she is entitled to maintenance @ Rs.20,000/- per month w.e.f. 22.07.2014 as the interim order merges into the final order and would cease to exist. The words "cease to exist" will not be meant to nullify the interim relief granted to the respondents vide interim order dated 12.06.2012.

11. In view of the above said clarification, this petition is dismissed.

12. It is also not out of place to mention here that on 1st May, 2015 a direction had been issued to the petitioner to bring the entire arrears of maintenance till the adjourned date. The said direction seems to have not been complied with by the petitioner. As such, the petition deserves to be dismissed on this score alone. The arguments raised by the learned counsel for the petitioner in context to Section 125(2) Cr.P.C. stand answered in the interpretation by this court as mentioned here-in-above.

13. Respondents will be entitled to recover the arrears of interim maintenance as well as the arrears of final order in accordance with law subject to any enhancement in revision petition which is stated to be pending before this Court.

Petition dismissed.
