(2024) 01 DEL CK 0115

Delhi High Court

Case No: Criminal Revision Petition No. 224 Of 2021

Sapna Paul		APPELLANT
	Vs	
Rohin Paul		RESPONDENT

Date of Decision: Jan. 19, 2024

Acts Referred:

- Constitution of India, 1950 - Article 227
- Protection of Women from Domestic Violence Act, 2005 - Section 2(a), 12, 22, 23, 28, 29
- Code of Criminal Procedure, 1973 - Section 6, 7, 9, 311, 397, 401

Hon'ble Judges: Amit Bansal, J

Bench: Single Bench

Advocate: Shirin Khajuria, Ranjeet Mishra, Poulomi Barik, Subrat Deb, Nayan Gupta, Deepika V. Marwaha, Raunika Johar, Faiz Khan

Final Decision: Disposed Of

Judgement

Amit Bansal, J

1. The present revision petition has been filed by the petitioner (Wife) impugning the judgment dated 1st November, 2019, passed by the learned Additional Sessions Judge (Appellate Court), South-East District, Saket Courts, New Delhi whereby, the judgment dated 16th November, 2016, passed by the learned Metropolitan Magistrate (Trial Court), Mahila Court, South-East District, Saket Courts, New Delhi was set aside and the matter was remanded back to the Trial Court.

2. Vide the judgment dated 16th November, 2016, the Trial Court had allowed the application filed by the Wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) and directed the respondent (Husband) to pay a sum of Rs.1,00,000/- per month towards maintenance as well as compensation under Section 22 of the DV Act to the Wife.

3. Assailing the impugned judgment passed by the Appellate Court, the Wife filed the present petition along with an application for condonation of delay and an application for stay of the proceedings before the Trial Court. Vide detailed order dated 22nd July, 2022, the application for condonation of delay was allowed by the predecessor bench. Vide order dated 2nd September, 2022, the proceedings before the Trial Court pursuant to the remand judgment passed by the Appellate Court were stayed by the predecessor bench.

4. The final arguments were heard in this petition on 1st August, 2023, 20th September, 2023 and on 23rd November, 2023 when the judgment was reserved and parties were given liberty to file brief note of arguments. Written notes of arguments have been field on behalf of the Husband as well as the Wife.

5. Subsequently, an application was filed by the respondent to place on record a copy of the judgment in MAT. APP. (F.C.) No.38/2021 dated 18th December, 2023, passed by a Division Bench of this Court in the divorce proceedings between the parties hereto. The application was allowed vide order dated 12th January, 2024 and the said judgement was taken on record. Both sides have also filed written submissions qua the effect of the aforesaid judgement on the present proceedings.

6. Briefly stated, the parties got married on 10th February, 1991 as per Arya Samaj Rituals. One child was born out of the said wedlock on 28th December, 1991. As per the Wife, the Husband was an alcoholic and a womanizer and had several extra marital relationships. The Husband often used to beat up their child under the influence of alcohol, on account of which the child suffered 80% loss of hearing in his left ear.

7. In these circumstances, the Wife filed a complaint under Section 12 of the DV Act before the Trial Court on 16th December, 2009. Notice was issued in the aforesaid complaint and the Husband filed the written statements on 6th February, 2010. Subsequently, the Husband stopped appearing before the Trial Court and was accordingly proceeded ex-parte vide order dated 29th November, 2010.

8. The Husband filed an application for setting aside the aforesaid ex-parte order on 11th February, 2011, which was allowed subject to payment of costs of Rs.5,000/- vide order dated 15th July, 2011 and the matter was listed for cross-examination of the Wife on the same date. In the said order, it has also been recorded that the Husband was ready and willing to bear all the educational expenses of the son.

9. Subsequently, the parties were referred for mediation vide order dated 22nd May, 2014. The parties arrived at a settlement in the mediation proceedings on 25th September, 2014. However, it is the case of the Wife that the Husband did not comply with the terms of the settlement.

10. Accordingly, the Trial Court proceeded with the trial. On 17th March, 2015, the appearance of the Husband was recorded, though the Presiding Officer was on

leave. Thereafter, once again, the Husband stopped appearing and the Trial Court proceeded ex-parte against the Husband. Accordingly, his right to cross-examine the Wife was closed vide order dated 8th October, 2015 and the matter was listed for Husband's evidence. The Husband did not lead any evidence and therefore, his right to lead evidence was closed vide order dated 21st December, 2015 and the matter was listed for final arguments on 28th January, 2016. During the course of the final arguments, an application was filed on behalf of the Wife to lead additional evidence which was allowed vide order dated 29th March, 2016. Pursuant to the said application being allowed, the additional documents sought to be placed on record were the official documents filed with the Registrar of Companies (ROC) in respect of the company 'Show Time Events (India) Private Limited' of which the Husband was a director. The Husband did not appear for final arguments and the final arguments on behalf of the Wife were heard by the Trial Court and ex-parte final judgment was passed on 16th November, 2016.

11. The Trial Court came to the conclusion that the Wife had suffered 'domestic violence' at the instance of the Husband and therefore, falls within the definition of 'aggrieved person' under Section 2(a) of the DV Act.

12. In its final judgment, the Trial Court directed the Husband to pay a maintenance of Rs.1,00,000/- per month to the Wife along with compensation of Rs.5,00,000/- under Section 22 of the DV Act. The operative part of the judgment passed by the Trial Court is set out below:

"22. Keeping in view the entire facts and circumstances of the case, and part-time income of the complainant, the respondent is directed to pay Rs.1,00,000/- (Rs. One Lakh only) per month towards her maintenance. This amount includes the provision for alternate accommodation and any other ancillary expenses.

23. As son of the parties namely Sh Uday Paul had already attained majority, no direct relief can be granted to him in the present case.

24. Protection Order u/s 18 of the Act: Applicant has been adjudicated to be an Aggrieved person u/s 2(a) of the Act. However, the complainant is residing separately from the respondent. The apprehension of commission of Domestic Violence by respondents has ceased to exist. Accordingly, no order of Protection is warranted in the given circumstances.

25. Compensation order u/s 22 of the Act: In addition to other reliefs as may be granted under this act, the Magistrate may on an application being made by aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress caused by the acts of domestic violence committed by that respondent. A Compensation of Rs.5,00,000/- (Rs. Five Lakhs only) is also awarded in favour of complainant for the mental and physical injuries suffered by her at the hands

of the respondent. This amount also includes the litigation cost.

26. This amount shall be deposited by the respondent directly in the bank account of Applicant on or before the 10th day of each month. Particulars of her Bank account shall be provided by the complainant to the Protection Officer as well as respondent for compliance. The payment of the amount against maintenance to applicant has to be made since the date of filing of petition i.e, 18.12.2009 till the complainant is legally entitled to receive the same. The amount awarded shall suffer 10% commensurate increase every 3rd year from the date of order. Any amount paid towards maintenance of complainant in any other proceeding shall be adjusted towards the decretal amount.

27. Arrears of maintenance since the date of filing of application till date of order be paid within six months of the date of this order."

13. The aforesaid judgment was challenged by the Husband by way of an appeal before the Sessions Court (Appellate Court).

14. The Appellate Court set aside the judgment passed by the Trial Court and remanded the matter to the Trial Court to re-try the case.

15. Assailing the impugned judgment passed by the Appellate Court, counsel for the Wife has made the following submissions before this Court:

(i) There was no occasion for the Appellate Court to remand the matter to the Trial Court for a de novo trial. Since all the relevant evidence was placed before the Appellate Court, the same could have been looked into by the Appellate Court itself.

(ii) While remanding the matter to the Trial Court, the Appellate Court did not fix any interim maintenance to be paid to the Wife by the Husband, causing her severe hardship.

(iii) Even though the judgment of the Appellate Court records the various contentions raised by the Wife, no findings have been returned on them.

(iv) Trial Court was mindful of the fact that the son of the parties had turned major, but was still studying and not working at the time of the passing of the judgment and therefore, did not grant any direct relief to him and granted a maintenance of Rs.1,00,000/- to the Wife.

(v) The Husband had only spent Rs.8,00,000/- on the maintenance of their son and not Rs.32,00,000/-, as claimed by him before the Appellate Court.

(vi) Since the Husband deliberately stopped appearing before the Trial Court and also failed to comply with the mediation settlement between the parties, the Trial Court had rightly proceeded ex-parte against the Husband.

(vii) Additional evidence was produced by the Wife before the Trial Court in terms of Section 311 of the Code of Criminal Procedure, 1973 (CrPC), to determine the real income of the Husband since he had stopped appearing before the Trial Court.

(viii) The additional documents were public documents such as annual returns of the company of which the Husband was a director.

(ix) In view of the above, the Trial Court correctly awarded the maintenance of Rs.1,00,000/- per month, taking into account the financial status of the parties.

16. Per contra, senior counsel for the Husband has made the following submissions:

(i) The present revision petition filed under Section 397 read with Section 401 of the CrPC is not maintainable.

(ii) Husband did not appear in the complaint case before the Trial Court as the parties had settled their disputes in mediation vide settlement dated 25th September, 2014, in terms of which the Wife had agreed to withdraw her complaint.

(iii) The application filed on behalf of the Wife under Section 311 of the CrPC for additional documents was allowed by the Trial Court without issuing notice to the Husband.

(iv) Wife was throughout earning more than Rs.1,00,000/- per month and was living in her own inherited house in South Delhi but still claimed alternate accommodation.

(v) Husband was spending more than Rs.40,000/- for education of their son.

(vi) The Trial Court failed to take note of the income tax returns of the Husband which were part of the Trial Court Record and erroneously relied upon the profits of the company to determine the maintenance amount.

(vii) The Husband was only a director in the said company with a 10% shareholding. Therefore, the profits of the company could not be taken into account for determining the income of the Husband and thereby fixing maintenance.

(viii) The Wife has made false statements with regard to the son of the parties suffering hearing difficulties on account of violence by the Husband.

(ix) The Husband currently is a 65 years old retired person suffering from heart ailments and is incapacitated to work actively and is living on his retirement benefits from the company.

(x) Reliance is placed by the Husband on the findings in the judgment of divorce granted by the Family Court in favour of the Husband on grounds of cruelty and desertion by the Wife and the judgment of this Court upholding the same (hereinafter conjointly referred as 'HMA proceedings').

17. The following submissions have been made on behalf of the Wife in rejoinder:

(i) As regards the maintainability of the present petition, the Husband himself had preferred a revision petition before this Court, being CRL.REV.P. No.22/2018 against the interim order passed by the Appellate Court directing him to deposit 50% of the maintenance granted by the Trial Court as a precondition to hearing the appeal. Therefore, he cannot contend now that the revision filed by the Wife is not maintainable. In any event, the present revision petition is maintainable under the provisions of the CrPC.

(ii) Reliance placed by the Husband on the judgment passed in the HMA proceedings between the parties is misplaced since the said proceedings granting divorce would have no bearing on the proceedings under the DV Act, which is the subject matter of the present petition.

18. I have heard the counsels for the parties and perused the material on record.

Whether the present revision petition is maintainable.

19. One of the objections taken on behalf of the Husband is that the present revision petition under Section 397 read with Section 401 of the CrPC is not maintainable. In this regard, reference may be made to Sections 28 and 29 of the DV Act which are set out below:

"28. Procedure.—(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

...

29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

20. In terms of Section 28 of the DV Act proceedings under Sections 12 and 23 of the DV Act would be governed by provisions of the CrPC. Further, as per Section 29 of the DV Act, an appeal against the order of the Magistrate shall lie to the Sessions Court. The DV Act does not provide for any further appeal against the order passed by the Sessions Court. The Allahabad High Court in Dinesh Kumar Yadav v. State of U.P., 2016 SCC OnLine All 3848, has held that a revision to the High Court is maintainable against an order passed by the Sessions Court under Section 29 of the DV Act. Relevant observations of the said judgment are set out below:

"35. Under section 397 of Cr. P.C. "the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court...". That the Court of Sessions is as an inferior Court to the High Court, cannot be disputed. Thus, the Court of Sessions before which an appeal has been prescribed under section 29 of the Act, 2005 is a Criminal Court inferior to

the High Court and, therefore, a revision against its order passed under section 29 will lie to the High Court under section 397 Cr P C. section 401, Cr. P.C. is supplementary to section 397 Cr.P.C.

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37. In view of the above, as the remedy of an appeal had been provided under section 29 of the Act, 2005 before a Court of Sessions, which means a Court of Sessions referred under section 6 read with sections 7 and 9 of the Cr. P.C., without saying anything more as regards the procedure to be followed in such appeal, and there being nothing to the contrary in the Act of 2005 which may be indicative of exclusion of the application of the provisions of Cr. P.C. to such an appeal, the normal remedies available against a judgment and order passed by a Court of Sessions by way of appeals and revisions prescribed under the Cr. P.C. before the High Court, are available against an order passed in appeal under section 29 of the Act, 2005."

21. I am in respectful agreement with the aforesaid view of the Allahabad High Court. As noted above, in terms of Section 397 of the CrPC, provisions of the CrPC are applicable to proceedings under the DV Act. Therefore, in my considered view, in view of the fact that the Sessions Court is a Court inferior to the High Court, a revision petition would lie under Section 397 CrPC to the High Court against the order passed by the Sessions Court in appeal under Section 29 of the DV Act.

22. Counsel for the Husband has placed reliance on the judgment of the Madras High Court in Arul Daniel v. Suganya, 2022 SCC OnLine Mad 5435, to state that the present revision petition would not be maintainable. In Arul Daniel (supra), the Madras High Court had held that a petition under Section 482 of the CrPC challenging the proceeding under Section 12 of the DV Act is not maintainable and the correct remedy would be to file a petition under Article 227 of the Constitution of India. This judgment is not applicable in the present case as here the Wife has not challenged the order passed under Section 12 of the DV Act but has challenged the order passed by the Sessions Court under Section 29 of the DV Act whereby the appeal filed by the Husband was allowed.

23. In view of the above, I am of the view that the present revision petition filed by the Wife is maintainable.

Whether the Judgment in Divorce Proceedings would have any bearing on the present proceedings.

24. The findings/observations qua cruelty passed by the Division Bench of this Court cannot be disputed. However, in this regard, counsel for the Wife has placed relied on the judgement of the Apex Court in Raj Talreja v. Kavita Talreja, (2017) 14 SCC 194, wherein it has been observed that even if there is a finding of cruelty against the wife, it cannot by itself be a ground for denying maintenance. A similar view has

been taken by a Coordinate Bench of this Court in Pradeep Kumar Sharma v. Deepika Sharma, (2022) SCC OnLine Del 1035, wherein the Court held that there is no bar of cruelty in the right of the wife to claim maintenance. Further, the Supreme Court in Dr. Swapan Kumar Banerjee v. State of West Bengal, (2020) 19 SCC 342, has held that even if divorce has been granted on the grounds of desertion by the wife, this cannot be a ground to deny maintenance to the Wife.

25. In light of the aforesaid legal position, in my considered view, the findings of cruelty against the Wife in the divorce proceedings, by itself cannot be the basis to deny maintenance to the Wife under the provisions of the DV Act.

Judgment of remand passed by the Appellate Court.

26. The Appellate Court vide judgment dated 1st November, 2019 set aside the judgment of the Trial Court and remanded the matter to re-try the case.

27. The following submissions were made on behalf of the Husband before the Appellate Court:

(i) The complaint case filed by the Wife was time barred as the parties had been living separately for a long time before filing of the complaint.

(ii) The Trial Court passed the judgment only on the basis of the submissions of the Wife that she was subjected to domestic violence without any proof thereof.

(iii) The Husband stopped appearing before the Trial Court as he expected the Wife to withdraw her complaint in view of the settlement arrived at between the parties on 25th September, 2014.

(iv) Even though the Husband had not been proceeded against ex parte, the Trial Court allowed the application filed on behalf of the Wife for leading additional evidence vide order dated 29th March, 2016 without issuing notice to him.

(v) Wife had wrongly claimed Rs.1,05,000/- as maintenance from the Husband, which included an amount of Rs.40,000/- for the upkeep of their son. It was the Husband who had been maintaining the son and had spent around Rs.32,00,000/- in this regard.

(vi) The Wife has failed to disclose that she was earning around Rs.1,00,000/- per month at the time of filing of the complaint. The Trial Court did not ask the Wife to file her detailed income affidavit.

(vii) The Trial Court failed to consider that the Wife was living in her own house and therefore there was no requirement to make a provision for alternate accommodation in the maintenance amount.

(viii) At the time of passing of the judgment of the Trial Court, the son of the parties had turned major and was earning and therefore, the Trial Court wrongly awarded a sum of Rs.1,00,000/- as maintenance taking into account that Rs.40,000/- was for

upkeep of the son.

(ix) The Trial Court has made a completely wrong assumption that the Husband was earning a salary of Rs.50,00,000-60,00,000/- per annum.

(x) The Trial Court erred in taking into account the earnings of the company of which the Husband was a director to determine the earnings of the Husband.

28. On behalf of the Wife, the following submissions were made before the Appellate Court which are duly noted in the impugned judgment as under:

(i) The Husband failed to comply with the terms of the settlement as recorded in the Settlement Agreement arrived at between the parties in the mediation proceedings and failed to transfer the share in the family house in the name of his son.

(ii) Additionally, the Husband stopped appearing before the Trial Court without any justification after settlement between the parties.

(iii) As per the additional documents placed on record by the Wife before the Trial Court, the Husband was a director in two event management companies, both of whom had their registered address to be the residential house of the Husband.

(iv) The Husband did not file his income affidavit along with his written statement filed on 6th February, 2010.

(v) The Wife had only been working till December 2009, and thereafter, left her job and was looking after her house and their son single-handedly.

(vi) The Husband was not bearing any expenses towards the upbringing of the child even though he had agreed to contribute towards the upbringing of the child as noted in the order dated 27th May, 2011, passed by the Trial Court.

(vii) The income tax returns filed by the Husband before the Appellate Court shows that there was a progressive increase in his gross total income and is deliberately not paying maintenance to the Wife.

29. Based on the aforesaid submissions, the Appellate Court reached the following conclusions:

"41. However it is noticed that in her application filed by the respondent in the section 12 of DV Act, she had prayed for a total sum of Rs.1,05,000/- per month as monetary relief which included the expenses of school fees and other related expenses of aggrieved to the extent of Rs.40,000/- per month as he is studying in a hostel. However on the date of passing of the impugned judgment, learned trial court has itself observed that the son of the parties had achieved majority and no direct relief can be granted to him. However at the time of passing of the impugned judgment, learned trial court ignored that amount of Rs.1,05,000/- lakh per month as claimed by the respondent included sum of Rs.40,000/- per month towards the expenses for the son of the parties.

Similarly, although learned trial court observed that respondent is herself earning an amount of Rs.40 to 50,000 per month, it appears to have not taken the same into consideration while fixing amount of maintenance for her.

42. It is further noticed that the respondent had claimed compensation and damages under section 22 of DV Act for the injuries including mental torture and emotional distress caused by the act of domestic violence committed by the respondent. However, when the appellant filed the additional documents on record which included the medical expenses and medical record of the son of the parties, the respondent had admitted to the correctness of those documents which raises doubt upon the averment of the respondent or her son being subjected to domestic violence in the manner explained by her in her complaint case filed before learned trial court.

43. I find force in the submissions of learned counsel for appellant that the impugned order has been passed by taking all the depositions made by the respondent before learned trial court in her affidavit of evidence to be correct and proved in absence of the respondent leading any evidence, more so in respect of observation of learned trial court that the appellant herein was an alcoholic and a womaniser and had extramarital relationship with several other women without the respondent leading any evidence in support of the same.

44. Further when the additional documents filed by the appellant were taken on record by the detailed order of this court dated 15.04.2019, learned counsel for respondent had submitted that he did not wish to cross examine the appellant in respect of those documents and the same could be taken into consideration while deciding the present appeal. Those documents included the documents of expenses incurred by the appellant towards the upbringing of the son of the parties as well as in respect of his medical treatment. But still respondent has claimed that it was the respondent alone was bearing the expenses of bringing up of the son of the parties.

45. It is noticed that in the impugned order, learned trial court assessed the income of the appellant on the basis of the profit of the company having doubled over the years ignoring the ITR of the appellant which were already on record. Learned trial court has observed that the profit and loss statement of the company for the year ending 31.03.2015 shows a profit of more than Rs.50 lakhs and since the profit of the company had doubled over the years, as a necessary consequence the remuneration of the Directors would also have increased and thus it can be presumed that respondent(appellant herein) must be getting a salary of at least Rs.50 to Rs.60 lakhs per annum if not more. Learned trial court further observed that apart from this, he must also be getting his share in the profits/dividends of the above-mentioned company in his capacity as a Director. I concur with submission of learned counsel for

appellant that taking into account the profit and loss statement of the company in which the appellant herein was Director for fixing the amount of maintenance for respondent is misplaced and that too when the ITRs of the appellant were already on record and learned trial court ignored to take the same into consideration.

46. Further what cannot be lost sight of is the fact that the documents on which the learned trial court has relied heavily for fixing the quantum of maintenance in favour of the respondent were brought on record when the respondent had filed an application for leading additional evidence which was allowed without giving notice of the same to the appellant herein was not even proceeded ex-parte at that stage. The reliance of learned counsel for the respondent on section 311 Cr.P.C. for allowing application of the respondent for leading additional evidence without giving notice of the same to the appellant herein is unfounded."

30. A perusal of the aforesaid extracts from the impugned judgment of the Appellate Court would show that the Appellate Court noted various errors in the judgment of the Trial Court. For instance, the Trial Court ignored that the sum of Rs.1,05,000/- per month claimed by the Wife included a sum of Rs.40,000/- per month towards expenses of the son of the parties and at the time the judgment was delivered by the Trial Court, the son had already attained the age of majority and thus, no relief could be granted to him. However, the Appellate Court failed to take into account that the Trial Court had granted maintenance from 2009 to 2016 and for a large part of this period, the son of the parties, even though he had attained the age of majority, was still pursuing his studies. The obligation of a father towards his child does not end when the child attains majority even though he is still pursuing his studies. In this regard, reference may be made to the judgment of the Coordinate Bench of this Court in Urvashi Aggarwal v. Inderpaul Aggarwal, (2021) SCC OnLine Del 4641. Relevant observations of the said judgment are set out below:

"12. This Court cannot shut its eyes to the fact that at the age of 18 the education of petitioner No.2 is not yet over and the petitioner No.2 cannot sustain himself. The petitioner No.2 would have barely passed his 12th Standard on completing 18 years of age and therefore the petitioner No.1 has to look after the petitioner No.2 and bear his entire expenses. It cannot be said that the obligation of a father would come to an end when his son reaches 18 years of age and the entire burden of his education and other expenses would fall only on the mother. The amount earned by the mother has to be spent on her and on her children without any contribution by the father because the son has attained majority. The Court cannot shut its eyes to the rising cost of living. It is not reasonable to expect that the mother alone would bear the entire burden for herself and for the son with the small amount of maintenance given by the respondent herein towards the maintenance of his

daughter."

31. The Appellate Court noted that the approach of the Trial Court of determining the income of the Husband on the basis of profit and loss statement of the company while ignoring the income tax returns of the Husband was misplaced. It was further noted that the documents on the basis of which the maintenance was fixed by the Trial Court was brought on record by the Wife by way of an application for additional evidence which was allowed by the Trial Court without giving notice to the Husband, even though the Husband had not been proceeded ex-parte at that stage.

32. Despite noting the aforesaid errors in the judgment of the Trial Court, the Appellate Court failed to return any findings on the following issues, which were raised before the Appellate Court:

(i) Whether the Trial Court was correct in proceeding with the matter even though the Husband was not appearing before the Trial Court;

(ii) Whether the finding of the Trial Court that the Wife was an 'aggrieved person' as per section 2(a) of the DV Act, was correct or not;

(iii) Whether the Husband was justified in not filing his income affidavit before the Trial Court;

(iv) Whether the Wife continued to work and earn after filing of the present complaint;

(v) Whether the Wife was entitled to receive any maintenance towards alternate accommodation;

(vi) Whether the Husband was bearing any expenses towards the upbringing of the son of the parties;

(vii) Till what period was the son of the parties entitled to maintenance.

33. The Appellate Court, instead of adjudicating and returning a finding on the aforesaid issues, simply remanded the matter back to the Trial Court without giving any reasons or justification for the same. The relevant extracts from the Appellate Court order are set out below:

"49. In view of the aforesaid observations, the impugned judgment of learned trial court dated 16.11.2016 in respect of directing the appellant to pay Rs.1 lakh per month towards the maintenance which includes the provision for alternate accommodation and any other ancillary expenses to the respondent as well as directing the appellant to pay compensation under section 22 of DV Act for the mental and physical injuries suffered by respondent at the hands of appellant herein is set aside and the matter is remanded to the learned trial court to retry the case."

34. In Manik Kutum v. Julie Kutum, 2020 (14) SCC 469, the Supreme Court has observed that the matter should be remanded back by a superior court to a trial court only when some factual inquiry is required to be held which cannot be undertaken at the appellate stage. The relevant observations in Manik Kutum (supra) are set out below:

"8. In our considered opinion, the High Court erred in remanding the case to SDJM for fresh inquiry and for fixing the maintenance for the respondent (wife).

9. The High Court having recorded a finding of fact in para 22 of the impugned order that the respondent wife is the legally wedded wife of the appellant, it should not have then remanded the case to SDJM for any inquiry and instead should have fixed the maintenance payable by the appellant (husband) to the respondent (wife) in the revision itself. It is more so because we find that the respondent is not earning and has no independent source of any income to maintain herself.

10. In our view, the need to remand the case to SDJM is called for only when some factual inquiry is required to be held to decide any factual issue involved in the case which cannot be undertaken at the revision stage or when it is noticed that there is no finding on any particular factual issue(s) recorded by SDJM or when additional evidence is filed for the first time at the appellate/revision stage which requires examination by SDJM in the first instance and to record a finding in the light of such additional evidence. Such is not the case here because all the material for fixing the maintenance was on record. It is for these reasons, we are of the view that there was no need to remand the case to SDJM as it would only prolong the litigation causing harm to the respondent (wife)."

35. In the present case, the entire record of the Trial Court was summoned by the Appellate Court vide order dated 8th February, 2017. Further, the Husband filed an application for additional evidence before the Appellate Court which was duly allowed vide order dated 15th April, 2019 and the documents filed by the Husband were taken on record. Therefore, the entire record was there before the Appellate Court for it to decide the appeal on merits. There was no justification at all to remand the case back to the Trial Court. The order of remand is completely cryptic and without giving any reasons justifying the remand.

36. Even while remanding the matter back to the Trial Court, the Appellate Court did not deem it appropriate to fix an amount towards interim maintenance. The intention of the DV Act is to provide immediate succour to the aggrieved wife, especially when civil remedies towards maintenance are drastically delayed. The Supreme Court in Rajnesh v. Neha, (2021) 2 SCC 334, has observed that if the maintenance is not made in a timely manner, it defeats the object of social welfare

legislation.

37. The Appellate Court should have been conscious of the fact that in the present case, the complaint under the DV Act, was filed by the Wife as far back in 2009 and by the time the impugned judgment of remand was passed by the Appellate Court, it was already 2019. For a period of ten years, the Wife did not get any maintenance other than the sum of Rs.10,00,000/- that was paid by the Husband in terms of the order dated 18th July, 2018, passed by this Court in CRL.REV.P. No.22/2018 filed by the Husband. Therefore, even if the Appellate Court remanding the matter to the Trial Court, it should have fixed an interim amount to be paid by the Husband to the Wife.

38. In view of the discussion above, the impugned judgment of the Appellate Court remanding the matter to the Trial Court is set aside and the matter is remanded back to the Appellate Court for adjudication of the appeal filed by the Husband on merits and more particularly, the issues flagged in paragraph 32 of this judgement.

39. It is unfortunate that in the present case, the complaint was filed in the year 2009 and almost 14 years have elapsed and the Wife has not been granted any interim maintenance other than the sum of Rs.10,00,000/- paid by the Husband pursuant to the aforesaid order passed by this Court. Accordingly, even though I am remanding the matter to the Appellate Court to decide the appeal on merits, it is deemed appropriate that an amount of interim maintenance is fixed by this Court pending the adjudication of the appeal on merits.

40. On the basis of the income tax returns of the Husband on record from the financial year 2009-10 to financial year 2019-20, the income of the Husband can be summarised below:

Assessment Year	Financial Year	Gross Total Income/Year	Net Total Income/Year
2010-2011	2009-2010	26,24,477	15,69,715

41. As per the table above, taking into account the net total income of the Husband from the financial year 2009-10 to 2019-20, on an average, the Husband would have earned approximately a sum of Rs.2,00,000/- per month. As per the income tax returns of the Wife on record, her earnings after the financial year of 2009-2010 seem to be significantly lower than that of the husband.

42. Keeping in view the income of the parties and the judgment of the Supreme Court in Kulbhushan Kumar v. Raj Kumar, (1970) 3 SCC 129, which was reaffirmed in the judgment of the Supreme Court in Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy, (2017) 14 SCC 200, I am of the view that it would be just and

proper that twenty-five percent of the net income of the Husband be granted to the Wife as interim maintenance. Accordingly, it is directed that the Husband shall pay a sum of Rs.50,000/- per month to the Wife as interim maintenance from 16th December, 2009, when the complaint under the DV Act was filed till 1st November, 2019, when the impugned judgment was passed by the Appellate Court. The sum of Rs.10,00,000/- already paid by the Husband to the Wife pursuant to the orders of this Court shall be deducted from the aforesaid amount.

43. While disposing of the present revision petition, the following directions are passed:

(i) The arrears of interim maintenance calculated on the basis above will be paid to the Wife by the Husband over a period of six months in six equal monthly instalments, beginning from 1st March, 2024.

(ii) Any payment made to the Wife in terms of the above shall be subject to the final judgment that may be passed by the Appellate Court fixing the final maintenance.

(iii) The Appellate Court shall decide the quantum of maintenance in accordance with the guidelines laid down by the Supreme Court in Rajnesh v. Neha (supra).

(iv) Taking into account the long period that has elapsed since filing of the complaint, the Appellate Court shall decide the present appeal within a period of one year from today.

(v) The Appellate Court shall decide the appeal on the basis of the material before it. However, the parties shall be at the liberty to lead additional evidence before the Appellate Court in view of any change in circumstances after the financial year 2019-2020.

44. The petition along with pending applications stands disposed of.