



2026:DHC:8649



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010358672026**% ***Date of Decision: 29.09.2026***+ **W.P.(CRL) 2357/2026, CRL.M.A. 23865/2026**

JYOTI SINGH & ANR.

.....Petitioners

Through: Mr. M.S. Sisodia, Ms. Disha Sisodia,
Mr. Ajey Sharma and Ms. Gurpreet
Kaur, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI AND ORS.Respondents

Through: Mr. Anand V. Khatri, ASC.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS"), the petitioners being aggrieved by the absence of any effective enforcement of the judicial orders whereby maintenance was granted to the petitioners. They seek restoration of Ex. CRL No. 226/2023, dismissed by the learned Principal Judge, Family Court, East District, Karkardooma Courts, Delhi vide order dated 05.02.2026, and directions to trace respondent no. 2.

2. Attention is drawn to the order dated 21.09.2024, passed by the learned Metropolitan Magistrate, Mahila Court-01, East District, Karkardooma Courts, Delhi in CT Case No. 4923/2019, under the Protection



2026:DHC:8649



of Women from Domestic Violence Act, 2005 (hereinafter “DV Act”), which, *inter alia*, directs as under:

In view of the failure of both the parties to produce the relevant material qua the income of the respondent no. 1, the Court deems it fit to consider the same as Rs. 17,494/- per month, in view of the minimum wages payable to unskilled worked in Delhi with effect from 23.10.2023. Accordingly, the Court deems it fit to award an interim maintenance of Rs. 9,000/-per to the petitioner for her

maintenance as well as the maintenance of her minor daughter. This amount shall be payable from the date of filing of the petition till the date of disposal of the present case. The said amount is directed to be deposited in the bank account of the petitioner before 10th day of every month. Arrears of maintenance, as accrued, are directed to be cleared by respondent within 06 months of the present order.

Any default in payment of interim maintenance on a monthly basis shall be viewed strictly in terms of the judgment of Hon'ble High Court of Delhi in "**Gaurav Sondhi Vs. Divya Sondhi**", 120 DLT (2005) 426.

Anything received by the petitioner in any other proceedings of maintenance or proceedings of like nature or towards ad interim maintenance shall be adjusted in the amount awarded by this order.

Nothing stated herein shall tantamount to an expression of opinion on the final merits of the case.

With the above said observations, the present application U/s 23 of the DV Act is disposed of. Copy of order be given dasti to the petitioner.

Put up for the arguments on the application for deletion of respondent no. 2 to 5 from the array of parties on 25.01.2025.

3. The said order also records that the marriage, cohabitation in the



2026:DHC:8649



shared household and the birth of the minor daughter stand admitted by respondent no. 2 herein (respondent no. 1 therein), who was proceeded against *ex parte*, and that, in his income affidavit, he stated that he was working as a private security guard at MMM Securities.

4. It is also averred by the petitioners that, by order dated 02.05.2023 passed by the learned Principal Judge, Family Court, East District, Karkardooma Courts, Delhi in M.T. No. 578/2019, interim maintenance of Rs. 4,000/- per month to each petitioner (Rs. 8,000/- in all) was awarded from 26.11.2019, along with litigation expenses of Rs. 11,000/-, and that the said order attained finality.

5. The execution proceedings arising out of the aforesaid order was dismissed on 05.02.2026 for non-prosecution on the ground that the decree holder had failed to provide the fresh address or whereabouts of the judgment debtor

6. The Supreme Court has emphasised that a maintenance award must be capable of effective enforcement. In this regard, reference is made to the following judgments:

(i) In **Rajnish v. Neha**, (2021) 2 SCC 324:

“Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law.”

“132. For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956



2026:DHC:8649



[sic, 1955]; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.”

- (ii) In **Kuldip Kaur v. Surinder Singh**, (1989) 1 SCC 405, the liability under an order of maintenance was held to be dischargeable only by actual payment:

“6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a ‘mode of enforcement’. It is not a ‘mode of satisfaction’ of the liability. The liability can be satisfied only by making actual payment of the arrears. ... The order for monthly allowance can be discharged only upon the monthly allowance being recovered. ...”

- (iii) In **Rahul S. Shah v. Jinendra Kumar Gandhi**, (2021) 6 SCC 418, the Supreme Court issued directions to ensure the expeditious execution of decrees. Since **Rajnesh** (supra) permits an order of maintenance to be enforced as a money decree of a civil court, the following directions in **Rahul S. Shah** may appropriately be borne in mind while enforcing an order of maintenance:

“42.12. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. ...”



2026:DHC:8649



7. This Court has taken the same view where the husband was untraceable. In **Manjeet Kaur v. Tej Pratap Singh**, 2007 (94) DRJ 670, the wife's execution petition remained unsatisfied for years because the husband was absconding. Holding the order restricting her arrears to be "clearly erroneous", the Court observed:

"4. ... The petitioner was diligently pursuing this petition. It was only because the respondent remained untraced and could not be served with warrants of attachment, though repeated attempts were made through SHO, that the petitioner could not recover the amount in this execution petition for substantial period. ...

10. ... If due to deliberate default and omission on the part of the respondent/husband she could not realise this amount earlier, that would not mean that the petitioner is to suffer and if such a course of action is taken, it would give premium to the respondent for his faults. The impugned order is accordingly set aside. ..."

8. The principle underlying the aforesaid decisions is one of general application, namely, that no person may take advantage of his own wrong. In **Union of India v. Major General Madan Lal Yadav (Retd.)**, (1996) 4 SCC 127, where the delinquent had escaped from lawful custody and thereby prevented his trial from commencing, and then sought to plead the resulting delay as a bar, the Supreme Court held as under:

"28. ... In this behalf, the maxim nullus commodum capere potest de injuria sua propria - meaning no man can take advantage of his own wrong - squarely stands in the way of avoidance by the respondent In Broom's Legal Maxims [10th Edn.] at page 191 it is stated "it is a maxim of law, recognized and established, that no man shall take advantage of his own wrong" ... At page 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". ...



2026:DHC:8649



29. ... *The respondent having escaped from lawful military custody and prevented the trial from being proceeded with in accordance with law, the maxim nullus commodum capere potest de injuria sua propria squarely applies to the case and he having done the wrong, cannot take advantage of his own wrong and plead bar of limitation to frustrate the lawful trial by a competent GCM.*”

9. The same principle governs the enforcement of an order of maintenance. A judgment debtor who absconds, conceals his whereabouts, or otherwise evades the process of the executing court, creates the very difficulty which is thereafter urged, or relied upon, as a reason for not proceeding further with the execution. To permit the execution to be closed on that ground would be to allow the defaulter to convert his own default into a defence, and take advantage of his own wrong. An absconding judgment debtor cannot frustrate a maintenance award by simply evading the Court and the due process.

10. It is also well settled that the liability to pay maintenance is a continuing one. In ***Shantha @ Ushadevi v. B.G. Shivananjappa***, (2005) 4 SCC 468, as noticed by the Supreme Court in ***Poongodi v. Thangavel***, (2013) 10 SCC 618, “*it has been held that the liability to pay maintenance under Section 125 CrPC is in the nature of a continuing liability*”. The liability therefore neither lapses with time nor stands discharged by the failure of a particular round of execution; it subsists until it is actually satisfied. An execution proceeding which is closed while the liability subsists, and while the decree holder remains unpaid, achieves nothing except the removal of the matter from the board of the Court.



2026:DHC:8649



11. It must also be borne in mind that a claimant for maintenance is, ordinarily, a deserted spouse or a minor child, possessed of neither the means nor the machinery to trace a person who does not wish to be found. The State, on the other hand, possesses both. An order of maintenance is not a private debt to be realised by the unaided efforts of the claimant; it is an order of a Court, made under a social welfare provision, and the obligation to render it effective rests upon the Court and upon the agencies of the State that assist it. To cast upon a deserted wife the burden of locating an absconding husband, and to deny her relief until she discharges that burden, is to invert the scheme of the law. As observed in **Rajnesh** (supra), maintenance laws “*have been enacted as a measure of social justice to provide recourse to dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy*”.

12. The consequences of a contrary approach are not merely theoretical. An unenforced order of maintenance leaves a wife and a minor child without the means of subsistence, while the defaulter suffers nothing. It also erodes public confidence in the administration of justice, for, as observed by the Supreme Court in **Rahul S. Shah** (supra), “*remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees*”, and, as more recently observed in **Periyammal (Dead) through LRs v. V. Rajamani**, (2025) 9 SCC 568, “*the woes for the litigants in this country start once they are able to obtain a decree in their favour and are unable to execute and reap its fruits for years together*”.

13. In view of the foregoing, the following principles may appropriately



2026:DHC:8649



be borne in mind by courts seized of proceedings for the enforcement of maintenance orders:

- (a) an order of maintenance is a measure of social justice, and the obligation to render it effective rests upon the Court; an order which cannot be enforced defeats the very object of the law;
- (b) the liability under an order of maintenance is a continuing one, and is discharged only by actual payment, and not by the taking, or the failure, of any coercive step against the defaulter;
- (c) the fact that the judgment debtor is absconding, or that his present whereabouts are not known, is not a ground for dismissing or closing an execution petition. Such a circumstance calls for the invocation of the coercive processes available in law, and not for the closure of the execution;
- (d) a judgment debtor who evades the process of the Court cannot be permitted to take advantage of his own wrong, and the inability of the decree holder to furnish his current address, occasioned by his own conduct, is not a default on the part of the decree holder;
- (e) the executing court is not confined to the address furnished by the decree holder. It may, *inter alia*, direct police assistance in terms of **Rahul S. Shah** (supra); require the judgment debtor to disclose his assets; summon records from his disclosed employer, from banks and from other relevant sources; and resort to the modes of enforcement available under Section 125(3) read with Section 128 of the Cr.P.C. (Sections 144(3)



2026:DHC:8649



and 147 of the BNSS), as also, in terms of **Rajnish** (supra), to the modes available for the execution of a money decree under Sections 51, 55, 58 and 60 read with Order XXI of the Code of Civil Procedure, 1908;

- (f) an execution petition which is dismissed without the executing court having exhausted the processes available to it is not, in substance, a judicial disposal of the execution, and such an order is liable to be set aside and the execution restored; and
- (g) the dismissal of an execution petition in such circumstances, with liberty to file afresh, is no substitute for its continuation, since it exposes the decree holder to avoidable objections, including under the first proviso to Section 125(3) of the Cr.P.C., and rewards the very conduct which occasioned the delay.

14. Since the liability under an order of maintenance can be discharged only by actual recovery, and the executing court may secure police assistance where the decree cannot otherwise be executed, the unavailability of the judgment debtor, or the fact that his whereabouts are not known, cannot by itself be a ground for closing the execution proceedings. A contrary approach would reward a defaulter who evades the process of the Court, and also render the order of maintenance illusory.

15. Thus, in matters such as the present, where the judgment debtor is untraceable, it is incumbent upon the executing court to take resort to measures lawfully available to trace the judgment debtor, instead of permitting the absence of a current address as a circumstance which



2026:DHC:8649



frustrates the enforcement of the order of maintenance.

16. The petitioners, having approached the executing court in time and pursued the execution, cannot be driven to fresh proceedings merely because the judgment debtor is stated to have evaded process, as held in **Manjeet Kaur** (supra). Accordingly, the order dated 05.02.2026 is set aside, and Ex. CRL No. 226/2023 is restored to its original number and position. The concerned Family Court is directed to take effective steps to trace and serve the judgment debtor, including by way of appropriate police assistance from the SHO, PS Shakarpur, who shall file a status report of the steps taken, and to conduct enquiries concerning the residence, employment and assets of the judgment debtor.

17. The present petition is allowed in the above terms. Pending application also stands disposed of.

18. A copy of this order be sent to the concerned Family Court and to the SHO, PS Shakarpur for necessary compliance, and to the SHO, PS Mahila Thana (Gramin), Commissionerate Ghaziabad, for information.

SACHIN DATTA, J

SEPTEMBER 29, 2026/at/sd