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Monica Malik Vs. Amit Malik

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Court : Delhi

Decided On : Jan-31-2014

Judge : S.Ravindra Bhat

Appellant : Monica Malik

Respondent : Amit Malik

Advocate for Def. : Mr. Sounak S. Das

Advocate for Pet/Ap. : Ms. Gurmeet Bindra

Judgement :

$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON:

26. 11.2013 PRONOUNCED ON:

31. 01.2014 % + FAO4732012 CM APPL.19864, 19865/2012, 7768/2013 MONICA MALIK ..... Appellant Through: Ms. Gurmeet Bindra, Advocate. versus AMIT MALIK ..... Respondent Through: Mr. Sounak S. Das, Advocate. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI MR. JUSTICE S.RAVINDRA BHAT1 The appellant is aggrieved by an order of the Family Court made on her application seeking maintenance pendent lite under Section 24 of the Hindu Marriage Act, 1956 (hereinafter HMA). The impugned order held that the appellant was not entitled to maintenance, and at the same time it directed her to bear the expenses of the two children - who are living

with her - to the extent of 40% for each child (i.e., `12,000/- of the total sum of FAO (OS)473/2012 Page 1 `30,000/-, the balance payable by the respondent husband).

2. The parties to these proceedings - hereafter referred by their marital status (the appellant as the wife and the respondent as the husband) - got married on 1.9.1992. The couple have two children, a daughter (Chavi, born on 5.2.1997) and a son (Sagar, born on 11.6.1993). The wife alleges that with a view to harass and torture her and the children, the husband abandoned them on 12.8.2009, and later initiated proceedings under Section 9 of the HMA for restitution of conjugal rights. During pendency of that petition, the wife moved the Court for maintenance pendent lite under Section 24 to the tune of `1,00,000/- per month. In support of the application, she filed an additional affidavit on 11.1.2011.

3. The husband resisted the application and alleged that the wife had sufficient means and enjoyed a monthly rental income of `10,000/- and paid `1,00,000/- towards the insurance premiums annually. He also stated that the wife had a monthly income of `65,000/- from various sources.

4. The husband also stated that originally he was partner in the firm M/s Malik Light House with its premises at Sadar Bazar, Delhi and that on account of disputes that arose upon the death of his father, he was allotted only those shop premises. He consequently shifted to B-272, Greater Kailash Part-I and that the business at Sadar Bazar was incurring losses. The husband also claimed that he got a flat in Sector 10, Dwarka prepared and furnished and repeatedly requested the wife to join him but without success. He claimed that he was paying `19,000/- per month as rent. He also stated that he had furnished security of his business premises for an overdraft facility to the tune of `50 lakhs from the bank. The respondent/husband claimed that he suffered losses on account of goods FAO (OS)473/2012 Page 2 imported from China. He alleged that during his stay with the applicant/wife, two cars were purchased and one of them was retained by her for personal use.

5. The Trial Court in its impugned order reasoned- in paragraph 97-100 - that the materials furnished by the respondent/husband clearly indicated that he had sufficient means contrary to his allegations. The Trial Court took note of his

income tax return for the year 2010-11, as well as the fact that he was the beneficiary of an overdraft facility to the tune of `50 lakhs per month. Premised on these facts, the impugned judgment reasoned that the respondent had an income of about `50,000/-. The Trial Court, however, rejected the submissions of wife that the respondent was possessed of income in the range of `2-4 lakhs per month.

6. The Trial Court denied any amount towards maintenance to the wife holding that the materials indicated that she could earn more than `4 lakhs per annum. In so concluding, the Trial Court took into consideration the income tax returns for the assessment years 2006-07, 2007-08 and 2008-09. The Court further took note of the insurance premiums paid for a policy as well as the circumstance that the applicant wife enjoyed some rental income. In view of all these, the Trial Court assessed that a sum of `15,000/- each was necessary for the maintenance and upkeep of two children. However, according to its evaluation, the applicant had to be responsible for paying 40% of that amount working out to `12,000/- per month and the balance was to be borne by the respondent/husband.

7. The appellant argues that the Trial Court overlooked the fact that she was jobless at the time when she made application for maintenance. It was argued that her employment in the Fast Track Kids School was based on FAO (OS)473/2012 Page 3 an erroneous premise because she was briefly employed in an administrative position for three months between August, 2009 and November, 2009. Likewise, it is stated that the conclusion based on the transaction reflected in her passbook through three entries showed that she had paid for some purchases and that she had not received any amount towards salary etc. It was further contended that the conclusion with regard to her income earning capacity and the Trial Courts assessment that she was capable of earning `4 lakhs per annum was not based upon any material on record. Counsel highlighted the fact that the assessment of the respondent/husbands real income at `50,000/- was erroneous having regard to the circumstances. It was argued that the documents pertaining to profit and loss as well as asset statement of respondent/husband reveal that he conducted substantial business. Learned counsel argued that if this issue had been properly evaluated instead of merely accepting the transactions at face value and arriving at an ad hoc conclusion, the real assessment could have

been more than in the range of over `2 lakhs per month.

8. The respondent/husband in these proceedings urges the Court not to interfere with the findings of the Trial Court. Emphasizing that the determination is merely tentative and based upon a rough estimation, counsel stressed that the Trial Court acted within its rights in rejecting the appellants argument about her being unable to meet the needs. Learned counsel highlighted that as far as the respondent/husband was concerned, the Trial Court could not have assessed his income at any figure other than what in fact it did. Elaborating on this, counsel stated that the respondent/husband in fact incurred losses and had to also bear substantial expenditure to undertake the business that he was engaged in over and above that he had to FAO (OS)473/2012 Page 4 repay advances which he had secured from the bank. In these circumstances, the impugned judgment did not call for any interference.

9. The above discussion would reveal that the Trial Courts findings have been challenged by the appellant on two counts. The first is with respect to its determination that she is in fact earning and further capable of earning ` 4 lakhs per annum. In arriving at this conclusion, the Trial Court was considerably swayed by the fact that `1 lakh was paid on 7.1.2010 and 11.1.2010 towards insurance premiums. The appellants explanation here is that she was misled into believing at the relevant time that the policy was a single premium one and did not call for annual payments. The Trial Court rejected this explanation. The premiums for the insurance policy in this case for `50,000/- was paid through a cheque on 9.1.2010. It appeared to be an investment as opposed to an endowment policy. The Trial Court concluded that two different payments on 7.1.2010 and 11.1.2010 reveal that two policies had been purchased. There is no factual basis to support such an inference. Furthermore, the Trial Court in our opinion fell into error for rejecting the explanation of the appellant wife that she was misled into believing that the policy was a single premium one. The Trial Court failed to see that the income tax returns filed before it in fact did not reveal any additional income as to warrant its conclusion that the appellant had sufficient money to invest in insurance policies. Furthermore, the Trial Court assumed that since she used to live near Vijaynagar in 2009, which was close to the address given as the address of the clothing

establishment where she is said to have worked, that in fact she was carrying on business. The Trial Court had before it all the bank statements of the appellant; these pertained to the period 18.2.2008 to 27.4.2011. None of these indicated that FAO (OS)473/2012 Page 5 the appellant had earned anything in the range of Rs.40,000/-, as has been concluded by the Trial Court. The only indication about her earning are in the form of some commissions received through NEFT from Bharat Axa Life Insurance during the period 2009-2010. None of these are substantial and most of them are less than even `1,000/-. The appellant had also produced the bank account statement of her mother Smt. Saroj Chopra. These evidenced her contention that the mother used to often give her money. There are certain withdrawals from the account at Bank of Baroda, Greater Kailash of Mrs. Saroj Chopra which support such contention. Having regard to these facts, this Court is of the opinion that the Trial Courts findings with respect to the appellants earning capacity being in the range of `4,00,000/- per month cannot be sustained.

10. The second aspect which the Court has to now deal with is as to the assessment of the respondent/husbands true income. The Trial Court itself rejected the contention made on his behalf that he was not earning ` 10,00015,000/- per month. It, however, proceeded to assess his income at around `50,000/- per month. In this regard what needs to be noticed is that there is considerable material on the record. The income tax documents filed by the respondent reveal that as on 31.3.2008 he reported a net profit as `2,45,646/89 and also the drawings for the same period to the tune of `2,95,336.28. The total income reported by him for the year 2010-11 was `3,08,761/-. A reading of the balance sheet, however, reveals an entirely different picture. As on 31.3.2006, the figure standing as the sum total of the gross profit and the closing stock value was `30,23,228/-; for the next year, i.e., as on 31.3.2007 that figure was `18,55,863/-. By 31.3.2011 this figure was FAO (OS)473/2012 shown as `13,08,086/-. At the same time, the Page 6 respondent/husbands bank account reveals heavy cash transactions, both in terms of inflow as well as withdrawals. This aspect was highlighted by the appellant/wife and taken note in paragraph 103 of the impugned judgment. However, the Trial Court was dismissive about this saying that no adverse inference could be drawn at this aspect. Equally, the Trial Court rejected the gross profit and turnover figures as having any bearing on the income by

stating that this could not be considered as net income which is to be the only basis for assessment. It was further held that concealment of income tax could not be to the extent of 50 times.

11. Whilst there can be no quarrel with the proposition that total turnover and gross profit alone cannot be the basis of assessing maintenance amount to be paid, the Court needs to probe further. In this case, there was substantial material, not merely income tax returns and profit and loss statements but also details of the kind of expenditure which the respondent/husband was undertaking. For instance, for the year 2011, he reported that staff salary was to the tune of Rs.1,44,000/-; electricity expenditure was Rs.98,578/-; foreign travel costs Rs.64,976/-; domestic travel costs him Rs.66,960/- and he paid rent of `2,05,425/-. The last head in this Courts opinion is suspect because the respondents case before the Court was that the Sadar Bazar premises fell to his share in the family arrangement. Equally, the husband reported depreciation at `98,766/- for the relevant year. Furthermore, the banks transactions reflected in the statement filed before the court showed heavy cash deposits and withdrawals during the year 2010-11. The credit amount for the period 16.11.2009 to 31.12.2009 was `55,280/- whereas amount debited or withdrawn corresponding to the said period was `3,95,617/-. Likewise, for FAO (OS)473/2012 Page 7 the period 1.9.2009, 1,11,2009 credits were at `15,39,216.98/- whereas the amount withdrawn was `13,42,830.18/-. The figures for the months July and August were `6,22,031.25/- on the credit side and `2,98,966.16/- on the debit side. If one takes into account these as well as the nature of expenditure incurred (which includes credit card expenses to the tune of `11,846.78 as on 31.3.2010) and interest on overdraft at `3,38,481.64 as well as the overdraft limit permitted to the respondent/husband by the bank, i.e., `50 lakhs, the Trial Courts assessment that he was earning something in the range of `50,000/- per month is clearly an erroneous one.

12. On an independent consideration of these materials, this Court is of the opinion that the respondent/husbands income would be in the range of Rs.1,50,000 - Rs. 1,75,000/-.

13. In view of the above findings, the Court is of the opinion that the Trial Court fell into error in directing the respondent/husband to pay only Rs.18,000/- towards the maintenance and upkeep of two children. In substitution - having taken note of the minor needs of the couples son - this Court hereby directs the respondent to pay to the appellant a total amount of `35,000/- per month from the date of application till the date the two children attained majority. Likewise, the respondent shall pay maintenance pendent lite to the appellant @ `25,000/- per month from the date of application till date. The amount paid, if any, consequent upon the directions of the Trial Court shall be duly adjusted and the arrears constituting the difference between the amounts now assessed and directed to be paid shall be paid to the appellant wife within four months from today.

14. The impugned judgment and order of the Trial Court is accordingly set aside. The appeal is allowed in the above terms. FAO (OS)473/2012 The respondent Page 8 husband shall bear the cost of this proceeding quantified at `25,000/-. S. RAVINDRA BHAT (JUDGE) NAJMI WAZIRI (JUDGE) JANUARY31 2014 /vks/ FAO (OS)473/2012 Page 9

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