S Vs. AC

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SooperKanoon Citation : sooperkanoon.com/1132374

Court : Delhi

Decided On : Mar-11-2014

Judge : Manmohan Singh

Appellant : S

Respondent : AC

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment pronounced on: March 11, 2014 C.M. Nos.2284/2006 and 13056/2012 in Mat.App.19/2004 DR.SEEMA Through ..... Appellant Mr.R.K. Kapoor, Adv. with Ms.Shweta Kapoor, Adv. versus DR.ALKESH CHAUDHARY Through None. ..... Respondent CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. By this order I propose to decide the pending applications, being CM No.2284/2006 and CM No.13056/2012, filed by the appellant/applicant.

2. Brief facts for the purpose of adjudication of the matter are that Dr.Seema and Dr.Alkesh Chaudhary were married on 17th April, 1992. A male child was born to them on 22nd May, 1996. The child is with the mother. A petition for dissolution of marriage was filed by the respondent on 9th January, 1997. It was allowed on 5th February, 2004. Dr.Seema filed an appeal before this Court which was dismissed on 31 st January, 2011. During the pendency of the appeal, Dr.Seema filed an application, being CM No.2284/2006 which was directed to be decided at the time

of final hearing of the appeal but while passing the judgment in the appeal, the said application remained undecided.

3. After the dismissal of the appeal, Dr.Seema filed a Special Leave Petition before the Supreme Court which was also dismissed. After the dismissal of the Special Leave Petition, Dr.Seema moved an application, being CM No.12396/2011, for restoration of the pending application, being CM No.2284/2006. The said application was allowed by order dated 17th January, 2012. The appellant has also filed an application, being I.A. No.13056/2012, under Section 151 CPC seeking direction against the respondent to produce various documents.

4. Both the parties have also filed the written submissions. The respondent was himself absent at the time of hearing of the applications.

5. The relevant period to claim the maintenance by the appellant is 1st August, 1999 to 31st January, 2011 who filed application for maintenance and litigation expenses under Section 23 read with Section 26 of Hindu Marriage Act, 1955 (hereinafter referred to as the Act) and read with Section 151 CPC. In para 3 of the application, it was stated that the appellant is out of job since August, 2005 and she needs maintenance. It was stated that the respondent has sufficient resources and monthly income and he would be in a position to pay the maintenance to the appellant at the rate of Rs.20,000/- per month for the period from 1st August, 1999 to 31st July, 2005 and thereafter at the rate of Rs.30,000/- per month for the period from 1st August, 2005 till she gets reasonable employment.

6. Regarding her non-employment, she filed an affidavit dated 7th July, 2012 pursuant to order dated 30th May, 2012. In the affidavit it is stated that she is a qualified medical doctor being MBBS with post graduate diploma in nuclear medicine. The appellant is not employed anywhere. Earlier she was working as nuclear medicine physician in Rajiv Gandhi Cancer Institute, Delhi, on contract/tenure basis till July 2005. She worked as clinical assistant. She was getting salary of Rs.19,750/- per month. Now she is unable to do any work and is jobless/unemployed for last six years and eleven months, except for a period of 15 months. It is also stated in the affidavit that the appellant had a prolonged ill health

due to gall bladder stones and undergone surgery, cholecystectomy for gall bladder stones in September, 2007. She was diagnosed with breast cancer in March 2008 and undergone long expensive treatment. At that time she was working part time due to ill health. From 1st August, 2007 to 31st May, 2008 i.e. 10 months duration, she worked in Sun Imaging Centre, Y.K. Diagnostics, Delhi, received a professional fee of Rs.52,026/- per month, after deduction of TDS. She joined Sita Ram Bhartiya Institute and Research Centre, Delhi, on 10th July, 2008 but could not work and continue there because her health did not permit her. From 1st April, 2010 to 31st August, 2010 i.e. 5 months duration, she worked in Inmas, National Heart Institute, Delhi, and received a professional fee of Rs.45000/- per month, after deduction of TDS. In the affidavit, she has also given the reasons for unemployment due to ill health, details of ailments etc. and also filed the documents to show her bonafide.

7. The respondent is not appearing in the matter after the completion of the pleadings in the application except the respondent has filed written arguments. However in his pleadings, he opposed the application mainly on the grounds that the same is not maintainable as no application for maintenance pendentelite or litigation expenses can exist independently unless lis is there. It is stated that once the petition under Section 13 of the Act was disposed of, no proceedings were pending before the learned District Judge or interim order under Section 24 of the Act could not have been passed. It is also stated that the appeal was decided on 31 st January, 2011. During the pendency of the appeal, the appellant did not press the application or at the time of final arguments or before the Supreme Court. Thus, the appellant waived her right in respect of interim maintenance under Section 24 of the Act.

8. It is submitted by the respondent that the appellant has concealed the material facts from this court as the appellant is having following properties: i. The HIG Flat No.853, Rama Apartments, Dwarka, in use and possession of the appellant. This property is approximately Rs.3,00,00,000/- (Rs.Three Crores only). The said flat is on rent since October 2003 and rental of the similarly situated Flat in that area is about Rs.50,000/- p.m. ii. The property No.E59 Bali Nagar, New Delhi. This property is approximately Rs.8,00,00,000/- (Rs.Eight Crores only). iii. Plot no.65

PKT-17, Sec-24, Rohini Delhi. This property is approximately Rs.5,00,00,000/- (Rs.Five Crores only). It is submitted that properties mentioned at serial no.ii & iii stands in the name of her parents who has expired few years back. iv. FDs and other investments in various banks such as State Bank of Patiala Branch Bali Nagar, Oriental Bank of Commerce Branch Rajiv Gandhi Institute, HDFC Branch Dwarka. v. Account No.633 in Canara Bank. vi. Provident Fund No.DL/19779/493.

9. Lastly it is stated by the respondent that the appellant has failed to file the income tax returns for the period 2009-2010 and 2010-2011. She has only filed the returns for the period 2008-2009 and 2011-2012 which do not reveal her true income as she has concealed her professional income which she earned through professional fee, rental income, income through interest on various bank accounts. Thus, it is stated that the pending application be dismissed.

10. In order to counter the submissions of the respondent in his pleadings and written submissions, the appellants counsel argues that she is entitled for grant of maintenance in accordance with the status of the husband, respondent in the present case. The appellant was entitled to claim the maintenance during the period during which matrimonial proceedings were subsisting and pending before the Court, till its final disposal. It is stated that the respondent did not pay the maintenance whether the said period is prior to the date of the filing of the application or otherwise. It is submitted that in view of the provisions of Section 24 of the Act she is entitled to be granted maintenance having regard to the appellants own income and the income of the respondent.

11. It is argued that while granting maintenance in favour of the appellant, the Court has to look into the income of the appellant as well as the income of the respondent. In other words, even if the appellant/wife is employed for some period even then she can claim maintenance for that period also because the said provision specifically provides that while granting maintenance the income of the appellant would also be taken into consideration which clearly means that even if the appellant is employed for some time during the period during which the maintenance is claimed but then for that period the quantum of maintenance may vary, from that for the period during which the appellant is not employed at all. But

in either case the income of the respondent has to be taken into consideration by the Court. The statutory provisions are explicitly clear.

12. It is also stated that at present income of the respondent is more than Rs.30 lac per month. He referred the pleadings and affidavits filed by his client-appellant from time to time wherein it was stated that in most of the cases (majority) the respondent charges from the patients in cash and the said income does not get accounted for (non-taxable/black money). CGHS, BHEL, STC, MMTC, NTPC, BTPS, Delhi University as acknowledged/ claimed by the respondent in his various Magazines Clippings & Poster. He owned very well equipped, very well renowned, fully air-conditioned Eye Centre in Greater Kailash-2 (Commercial Place) New Delhi, having commercial value of more than Rs.40 crores. Even the expensive eye equipment lying at his eye hospital would not be less than Rs.5 crores. He is maintaining three chauffeur driven three luxury cars. His style of living is like a prince who is earning approx. Rs. 30 lac per month and spending lavishly. He is a perchant for expensive gifts, E-gadgets, latest costliest smart-phones, I-phones, clothes, gyms, very frequent dines in big hotels, parties with friends.

13. The statement made in her affidavit is also that the respondent has completely renovated his eye hospital 3 years back & house with investment of approximately Rs.60 lac & Rs.70 lac respectively. The respondent has purchased premises (eye-hospital place) & various latest eye-equipments worth approximately Rs.15 crores between the year 2004-2011. The respondent has purchased latest Eximer/Lasik (for spectacle removal) in the year 2010 for approximately Rs.2 crores. He has employed three more full time eye-surgeons/specialists and is paying handsome salary to them running between Rs.2-4 lac per month. The electricity bill for his OPD Centre (max. only 8 hrs per day which is running 24-25 days in a month) is about Rs.25,000/- per month. The respondent is not ready to disclose his other assets and properties which run into crores of rupees. The details of the assets given in the application are as under: i. M.D. Eye Care & Laser Hospital - fully air conditioned, well equipped at M-165, Greater Kailash II, New Delhi-48. (Worth Rs.1012 crores). ii. Eye-equipments for Eye Testing/Treatment/Lasik Laser. (Worth Rs. 5 crores). iii. Centrally Air-conditioned residence with latest costly equipped amenities at E-41, Greater Kailash Enclave-II, New Delhi-48. (Worth

Rs.10 crores). iv. 3 Residential Plots on the land measuring about 400-500 sq. yds. in and surrounding Delhi. (Worth Rs.9 cores) v. 3 luxury cars. (Worth Rs.42 lac) 14. As regard allegations made by the respondent against the petitioner with regard to the property she owns, it is stated in the additional affidavit that the father of the appellant died on 12th November, 1999. The mother died on 10th August, 2011, much after the disposal of the appeal and after the period for claim of maintenance as by the appellant. With regard to the property i.e. HIG Flat No.853, Rama Apartments, Dwarka, it is stated that the same is of the value about Rs.1.20 crores and not 3 crores as alleged. It was on rent intermittently only and rental was Rs.17,000/- per month only. She has to pay back the loan she had borrowed more particularly from their sister to pay the instalments of the said flat. With regard to property i.e. E-59, Bali Nagar, New Delhi, and property i.e. Plot No.65, Pkt.-17, Sec.-24, Rohini, Delhi, it is stated that the same are not the properties of the appellant. It belonged to her mother who died on 10th August, 2011. The period for claim of maintenance is up to 31st January, 2011 and she was the absolute owner of her properties. Therefore, the properties belonging to the mother become irrelevant for determining the quantum of maintenance upto 31st January, 2011. appellant has two more sisters. Even otherwise, the Even otherwise the value of the said property at Bali Nagar is Rs.3 crores and not Rs.8 crores as alleged.

15. Quantum of maintenance contemplated under Section 24 of the Act is that which appears to the Court to be reasonable. In considering the question, naturally, the Court must take into consideration income of the spouses and the needs of the claimant having regard to the status of the parties, their family background, the standard of living to which the claimant has been accustomed, legal and other obligations of the person liable to make the payment and other relevant circumstances.

16. In the case of Sh.Bharat Hegde vs. Smt. Saroj Hegde, 140 (2007) DLT16in which it was observed that the relevant considerations to be taken into account at the time of assessing maintenance claims are: Status of the parties, reasonable wants of the claimant, the independent income and property of the claimant, the number of persons, the non-applicant has to maintain, the amount should aid the

appellant to live in a similar lifestyle as he/she enjoyed in matrimonial home, non-applicants liabilities, if any, provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the appellant, and the payment capacity of non-applicant. Equally, and as it often is the case, some guesswork is not ruled while estimating the income of the non-applicants when all the sources or correct sources are not disclosed. Paras 7 & 8 of the said judgment read as under:

7. Maintenance awarded cannot be punitive. It should aid the applicant to live in a similar life style she/he enjoyed in the matrimonial home. It should not expose the non applicant to unjust contempt or other coercive proceedings. On the other hand, maintenance should not be so low so as to make the order meaningless.

8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The Court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non applicant has to maintain.

5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non applicant.

9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.

10. The non applicant to defray the cost of litigation.

11. The amount awarded under Section 125 Cr.PC is adjustable against the amount awarded Under Section 24 of the Act.

17. In Vinny Parmvir Parmar vs. Parmvir Parmar, (2011) 7 Scale 741, the Supreme Court held that the quantum of maintenance inter alia depends on the status of the husband. The Court in para 12 held as under:

12. .The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The Courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party..

18. In Jasbir Kaur Sehgal vs. District Judge, Dehradun and Ors.,1997(7) SCC7 the Supreme Court held that there can be no set formula laid down for fixing the amount of maintenance. Rather, it depends on the facts and circumstance of each case. Thus, the Court must consider the status of the parties, their respective needs and the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance. Accordingly, the amount of maintenance should be such that the wife is able to live in reasonable comfort considering her status and lifestyle she had while living with her husband and she does not feel handicapped during the prosecution of her case.

19. It is settled law that even a decree of divorce cannot disentitle the wife from claiming maintenance. The proceedings filed under Section 25 of the Act are independent proceedings and the respondent is bound to contest those

proceedings on the merits of the application filed under Section 25 of the Act. The proceedings under Section 24 of the Act have to be contested independently on its own merits by the respondent. In order to show the status of the respondent, it is stated that the respondent is self employed, senior, renowned super specialist Vitro-Retinal Eye Surgeon and owns very well equipped, fully air-conditioned Eye Hospital/Centre situated at Posh South Delhi at M-165, Greater Kailash II (Commercial).

20. The respondent did not deny the fact that the appellant filed the application under Section 25 of the Act before the trial court at Tis Hazari, Delhi, in which the following relief was sought by the appellant: a. A gross lumpsum amount of Rs.1.5 crore for her maintenance and support. b. Provision for residence for her. c. A new luxury car for her. d. Respondent be directed to transfer half of all the assets/ properties/money earned by him from the date of marriage till the date of divorce. e. Litigation expenses and counsel fee. f. Rs.1 crore for the higher education for the child.

21. From the pleading and material placed on record, it has come on record that she was employed with Rajiv Gandhi Cancer Institute, Rohini, Delhi, with effect from 1999 till July, 2005 and earning Rs.24,500/- per month and she also worked from 1st August, 2007 to 31st May, 2008, Y.K. Diagnostic, Delhi, at the rate of Rs.58,000/- per month. On 10th July, 2008 she joined Sita Ram Bhartiya Institute and Research Centre. Thereafter she worked with National Heart Institute, Delhi. Besides, the income from the profession, the appellant is in possession of 3 bedroom HIG flat at Dwarka and she rented out the same with effect from October 2003 at about Rs.10,000/- with 10% escalation after 12 months, at that time. As per the respondent, the said flat originally belonged to him but she got transferred in her name.

22. Though no cogent and clear evidence is available on record to show the real income of the respondent, except the statement made by the appellant which is denied by the respondent, who on the other hand, countered that she possesses few properties in Delhi as well as movable assets. However, one thing is clear that at the time of filing the application for maintenance and as of today the respondent

has been earning much more than the appellant and he has large number immovable and movable assets as per details given. He is a reputed doctor in the city. The respondent has not denied the fact that the appellant is suffering from cancer. Rather, he is not appearing in Court when the application is taken up from to time. It might be possible that he was thinking that the Court may not enquire about his assets.

23. Divorce proceedings have finally been decided between the parties. The only disputes between the parties are with regard to maintenance claimed by the appellant for the relevant period of time. She is claiming the maintenance from the period 1st August, 1999 to 31st January, 2011.

24. The appellant has been able to clarify her position about the details of the properties i.e. movable and immovable given by the respondent in his pleadings. But the fact remains that the respondent owns number of immovable properties and reasonable good income. Thus, considering the overall facts and circumstances of the matter, I am of the view that the respondent is liable to pay some reasonable amount as maintenance claimed by the appellant so that even remaining disputes also be rested. In these type of cases, some guess work is not ruled while estimating the income of the non-applicant when all actual income and sources are not disclosed by way of cogent and clear evidence.

25. Under these circumstances, the above mentioned applications are disposed of with the directions that the respondent shall pay Rs.10,000/- per month from the period 1st August, 1999 to 31st January, 2011 within twelve weeks from today to the appellant.

26. No costs. (MANMOHAN SINGH) JUDGE MARCH11 2014