

Manoj Kumar Thakur Vs. Shibani Devi

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Court : Patna

Decided On : Jan-13-1995

Judge : Sachchidanand Jha, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24

Appeal No. : Cr. Revision No. 1931 of 1990

Appellant : Manoj Kumar Thakur

Respondent : Shibani Devi

Advocate for Def. : S.K. Verma, Adv.

Advocate for Pet/Ap. : Tarakant Jha and Dhirendra Kumar Jha, Advs.

Disposition : Revision dismissed

Judgement :

Sachchidanand Jha, J.

1. In a matrimonial suit for decree of divorce the Court below has passed an interim order directing payment of maintenance pendente lite at the rate of Rs. 300/- per month and also expenses of the proceeding quantified at Rs. 4000/- under Section 24 of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as 'the Act'). The husband has come to this Court in revision.

2. Before I proceed to dispose of the case on merits, I may mention that earlier, pursuant to the orders of this Courts both the parties appeared in person before me along with their respective fathers in order to enable the Court to make endeavour for amicable settlement between them. During course of the Session, which was held in camera, in my Chambers, learned Counsel for the parties also were present. However, on account of recalcitrant attitude of the husband and his father the endeavour to bring about settlement between the parties was given up and this case was posted for hearing on merits.

3. Mr. Tarakant Jha, appearing on behalf of the petitioner, has assiduously submitted that in the absence of any finding in the impugned order, as also the necessary evidence, with respect to the income of the husband, the impugned order directing payment of maintenance pendente lite and the expenses of the proceeding cannot be sustained. Section 24 of the Act reads as follows :

'24. Maintenance, pendente lite and expenses of proceedings : Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay the petitioner the expenses of the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent. It may seem to the Court to be reasonable'

It would appear from the aforesaid provisions that the Section is in two parts. The first part of the Section provides for enquiry to be held by the Court in regard to the income of the wife or husband (applying under Section 24), as the case may be, as to whether her or his income is sufficient for her or his support. Once after such an enquiry it is held that the wife or the husband, as the case may be, has no sufficient income to support herself or himself, the Court will proceed to make an order directing the other side to pay maintenance pendente lite as well as expenses of the proceeding. At that stage, which will constitute the second stage of enquiry, the Court will, for the purpose of determining the sum of the maintenance or the expenses, take into consideration the own income of the wife

or husband, as the case may be, as well as the income of the other side. In my opinion, the expression 'having regard to' occurring in the second part of Section 24 refers to and is relevant only for the purpose of quantification of the sum, which is to be paid by the husband or the wife. In a case where there is no dispute that the petitioner of the application under Section 24, in the instant case the wife-opposite party, has no income of her own, the order in terms of Section 24 directing payment of maintenance pendente lite and the expenses of the proceeding should ordinarily be made, in this connection it would not be out of place to mention that the history of law of alimony or maintenance can/be traced back to the conditions then prevailing in England where the wife was considered to be a tutelage to and economically dependent on her husband and was thus entitled to be maintained so long she was the wife. The conditions prevailing in India even now, by and large, are no better, in many English decisions it has been held that the wife is the privileged suitor. In my opinion, therefore, having regard to the conditions prevailing in India the provisions of Section 24 have to be liberally construed so as to make them vibrant rather than dormant. In the instant case, there is no dispute that the wife has no income of her own. The factum of marriage is also not in dispute. I would, accordingly, hold that there is no infirmity in the order granting interim maintenance and expenses of the proceeding.

5. Mr. Tarakant Jha has referred to the impugned order and submitted that the direction of the Court in regard to payment is based on finding in regard to property and not income, which is derived therefrom. Mr. Jha, to that extent, appears to be right because what Section 24 requires is not existence of property but quantum of income, which is received or accrues to the person. The question, therefore, for consideration is whether the matter should be referred back to the Court below for the purpose of quantification of the amount of maintenance in a stereo-typed manner, like any other proceeding. I have some reservations in following that procedure, since the remand on that question may cause delay and may for that reason defeat the very purpose underlying Section 24, I have, therefore, looked into the relevant pleadings of the parties in the Court below on the question of the property/income of the husband.

6. According to the case of the wife-opposite party, the family of the petitioner has an income Rs, 24,000/- per year at the rate of Rs. 2,000/-per bigha in which the share of the petitioner is about Rs. 2,000/-. It is further said that the petitioner was doing private tuitions earning about Rs. 1500/- per month. In the rejoinder filed on behalf of the husband in the Court below it has been said, Inter alia, that the petitioner is a member of joint family possessing only 5 bighas of lands including orchard and that the income from the lands is 30 to 40 maunds of paddy in a year assessed at Rs. 4,000/-. In my view, both sides are either over-stating or understating their case. I do not want to go by conjectures but the fact remains that the petitioner is an educated person. He has confessed before me, when he appeared in person, that earlier he was doing tuitions and had an income of his own. His stand before me was that at present he was no more doing tuition work. It is difficult to believe this. Even if it is assumed that he is jobless this can hardly be a justification; and then this plea can be taken in many cases just to frustrate the claim for maintenance. Besides, there can be no reason to take the view that in spite of so much of lands available for cultivation he cannot earn any income of his own or engage himself in any other activity. The petitioner has admitted before me that he is the only son of his father. Although in the rejoinder petition in the Court below it was said that the family is joint. Mr. Jha, stated in his argument that he is separate, an obviously inconsistent stand.

7. Mr. S.K. Verma, appearing on behalf of the opposite party, has placed reliance on a judgment of Punjab and Haryana High Court in the case of Smt. Urmila Devi v. Hari Prakash Bansal (AIR 1988 Punjab and Haryana, 84), wherein it has been held that if the person concerned is able-bodied and fit enough to work, he is supposed to maintain his wife and he can be saddled with the liability to pay maintenance to the wife, I respectfully share this view. Mr. Verma has also referred in this connection to a recent judgment of Madhya Pradesh High Court reported in AIR 1991 Madhya Pradesh, 47 which has held that enquiry envisaged under Section 24 is of summary nature. The question, therefore, is whether the amount of Rs. 300 per month can be said to be excessive. The opposite party, a forsaken lady, is prosecuting her studies at Patna trying to stand up on her own, and has to incur expenses incidental to her studies. She is a liability at present on her father. Every father desires that after the marriage of his daughter he would be

relieved of his responsibility. It would, therefore, be not proper to interfere with the order, the effect of which would be that the opposite party would continue to be a burden on her father. The extent of the property has been indicated hereinabove. It may be said, as noticed above, that the parties have not come out with accurate version regarding extent of property and income. Courts in India, while dealing with the question of maintenance pendente lite to Hindu wives have generally followed the one-third rule in case of low income. If that be a reasonable basis, then it would follow that the maintenance of Rs. 300/- per month would only mean, in effect, that the husband would be presumed to be earning only a sum of Rs. 900/- per month. On the facts, as stated above, I do not think that an inference or conclusion that the husband's income would not be less than Rs. 900/- per month can be said to be arbitrary. It would, accordingly, follow that the Court's order fixing sum of Rs. 300/- per month as maintenance pendente lite is just and proper.

8. So far as the expenses of the proceedings quantified at Rs. 4,000/- is concerned, it has to be noticed that it is the petitioner who has filed the case for divorce at Madhubani and dragged the opposite party, who is living with her father at Patna; into this litigation upto the High Court. One does not know as to how far long the litigation would protract. Therefore, in my opinion, the quantification of expenses at Rs. 4000/- cannot be said to be arbitrary either, keeping in view the cost of litigation. I would further observe in this connection that if the proceedings are protracted, particularly on account of the attitude of the husband, it would be open to the opposite party-wife to file a fresh application for grant of further expenses of the proceedings and the impugned order would not be res judicata.

9. Before I part with this order, I would be failing in my duty if I do not refer to a letter which the husband is said to have written to his father-in-law i.e. father of the opposite party, a copy whereof has been marked as Annexure-A to the counter affidavit filed by the opposite party. The reading of the said letter reveals a very sad picture. It not only discloses as to how marriageable girls are treated like chattels but they also disclose facts which constitute, prima facie, offences punishable under the Dowry Prohibition Act and, perhaps, under the Penal Code. I am told at the Bar that a copy of the said letter had been produced before the Additional District Judge, Madhubani, also before whom matrimonial case is

pending. I do not know whether any action has been taken on the basis of the said letter or not. I would, accordingly, having regard to the peculiar facts of the case, direct the Additional District Judge, Madhubani, before whom the proceeding is pending to send a copy of the aforesaid letter dated 22.5.83 (Annexure-A) to the Counsel affidavit aforesaid) to the police for taking necessary action against the petitioner. If any case is instituted by the police, as stated above, the police shall also investigate as to whether the demand for dowry is only by the husband or is also at the instance of the members of the family.

9. This civil revision application being devoid of any merit is dismissed with costs, which is quantified at Rs. 550/- payable to the opposite party in the Court below. The matrimonial proceeding is directed to be disposed of by the Court below expeditiously in accordance with law.

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