

Arvind Chenji Vs. Krisnaveni

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Court : Andhra Pradesh

Decided On : Aug-10-2009

Reported in : 2010(1)ALT395

Judge : L. Narasimha Reddy, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 13 and 24; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rules 11 and 37; Practice of Civil Rules - Rule 141; Code of Criminal Procedure (CrPC) - Sections 125; Hindu Adoptions and Maintenance Act

Appeal No. : C.R.P. No. 2237 of 2009

Appellant : Arvind Chenji

Respondent : Krisnaveni

Advocate for Def. : D. Vathsalendra, Adv.

Advocate for Pet/Ap. : P. Kesava Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The marriage between the petitioner and the respondent took place, on 11-09-1989. They were also blessed with two children. In the recent past, differences have arisen between them and the same resulted in institution of proceedings, under the relevant provisions of law, against each other.

2. The petitioner filed F.CO.P. No. 847 of 2000 in the Family Court, Hyderabad, against the respondent, for the relief of dissolution of the marriage. In that O.P., the respondent filed I.A. No. 101 of 2001, under Section 24 of the Hindu Marriage Act (for short 'the Act'), for grant of maintenance. The LA. was allowed, on 02-11-2001. Interim maintenance at the rate of Rs. 15,000/-, per month, was allowed, not only in favour of the respondent, but also to the two minor children. Ultimately, the O.P., was allowed, on 28-06-2005.

3. The respondent filed E.P. No. 50 of 2008 in I.A. No. 101 of 2001 for recovery of arrears of maintenance granted to her with interest at 24% per annum. She has furnished the facts and figures in the E.P. She specifically prayed for attachment of the movable properties mentioned in the E.P. schedule. The petitioner filed counter, opposing the E.P. He stated that there are no arrears of maintenance, and that the respondent is not entitled to claim maintenance, subsequent to the date of decree in the O.P., i.e. 28-06-2005. Other objections were also raised. Through order, dated 27-04-2009, the Family Court took the view that the petitioner is under obligation to pay a sum of Rs. 4,30,000/-, being the maintenance, at the rate of Rs. 5,000/-, per month, from May 2003, till December 2008. Interest at the rate of 24% per annum, was awarded, and the petitioner was required to pay the total amount of Rs. 5,11,600/-, before 25-05-2009. It was further directed that, if the petitioner commits any default, he shall be arrested. The said order is challenged in this C.R.P.

4. Sri P. Keshav Rao, learned Counsel for the petitioner, submits that there was absolutely no basis for the Family Court to award maintenance, subsequent to the disposal of O.P. No. 847 of 2000. He contends that by its very nature, maintenance pendente lite is payable, during the pendency of the proceedings, and once the O.P., is disposed of, the obligation ceases. Learned Counsel submits that there is no order, passed by any Court, for payment of maintenance,

subsequent to the disposal of the O.P. He further submits that the direction issued by the Family Court, for arrest of the petitioner, is untenable in law and outside the scope of the E.P.

5. Smt. D. Vathsalendra, learned Counsel for the respondent, on the other hand, submits that the petitioner committed default in payment of maintenance, and in that view of the matter, the necessity has arisen to file the E.P. She contends that the Family Court has taken various aspects of the matter into account, and no interference is warranted with the order passed by it. Learned Counsel submits that, even where a woman spouse is granted maintenance, under Section 125 of the Cr.P.C., the relief under Section 24 of the Act, can be granted. It is also her case that there is no prohibition in law for continuing the arrangement under Section 9 or 13 of the Act.

6. The petitioner filed F.C.O.P. No. 847 of 2000 under Section 13 of the Act. In that O.P., the respondent and two minor children, viz., Shriram Chenji and Parashuram Chenji filed I.A. No. 101 of 2001, under Section 24 of the Act. It is rather surprising to note that the Family Court entertained the I.A., though Section 24 of the Act confers the right upon spouses alone, to claim maintenance. Be that as it may, the LA., was allowed on 02-11-2001, awarding a sum of Rs. 15,000/-, per month, towards maintenance for the respondent and two minor children.

7. The Family Court passed a docket order on 12-01-2005, directing the petitioner herein to deposit the maintenance amount payable to the children up to May 2003, in fixed deposit, and to pay all the arrears up to January, 2005 to the respondent within 15 days.

8. Consequent upon this, the respondent filed E.P. No. 27 of 2004. Through an order, dated 12-01-2005, the Family Court directed the petitioner to deposit Rs. 5,26,500/-.

9. The respondent filed C.R.P. No. 628 of 2005, against the docket order, dated 12-01-2005. The petitioner, in turn, filed C.R.P. No. 630 of 2005, feeling aggrieved by the order of the same date passed in E.P. No. 27 of 2004. Both the revisions were disposed of by this Court, setting aside the order in the E.P., as well as the

docket order. It was left open to the respondent to file an application before the Family Court for determination of the quantum of amount payable to herself, on the one hand, and the children, on the other hand. The respondent filed I.A. No. 689 of 2005 for apportionment of the interim maintenance. Through the order, dated 27-03-2006, the Family Court apportioned the interim maintenance @ Rs. 5,000/- per month, each, for the respondent and two children. The O.P., itself was allowed on 28-06-2005, granting a decree of divorce.

10. The respondent filed the E.P. No. 50 of 2008 for recovery of the arrears of maintenance payable to her. It was pleaded that there was accumulated sum of Rs. 2,20,000/- up to the date of judgment in the O.P., and that she is entitled to be paid maintenance at the rate of Rs. 5,000/-, per month, up to the date of filing of the E.P.

11. Two questions arise for consideration, viz., whether the respondent was entitled to be paid interim maintenance, beyond 28-06-2005, on which date O.P. No. 847 of 2000 was allowed, and, (b) whether it was competent for the Executing Court to direct arrest of the petitioner if he fails to pay the amount.

12. The Law provides for grant of maintenance in favour of the dependents of different categories. They include the spouses, children, or parents. Relevant provisions are contained in Section 125 Cr.P.C., and the Hindu Adoptions and Maintenance Act. Apart from those provisions, Section 24 of the Act confers right on a party, to an O.P., filed under various provisions of that Act, to claim interim maintenance. The provision reads as under:

Section 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 to the petitioner the expenses of the proceeding, and monthly during 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.

13. In the instant case, the petitioner filed O.P. under Section 13 of the Act. It was certainly competent for the respondent to file an application under Section 24 of the Act. May be, on account of wrong advice, I.A. No. 101 of 2001 was filed, not only on behalf of the respondent, but also on behalf of the children, of herself and the petitioner. Such a step was totally impermissible in law. Be that as it may, the petitioner was held entitled to be paid a sum of Rs. 5,000/- per month. It is a matter of record, that the O.P. was allowed on 28-06-2005. The language of Section 24 of the Act, makes it clear that the maintenance granted under it, is during the pendency of the proceedings before the Court. Axiomatically, once the proceedings are disposed of, the arrangement, as to payment of maintenance also comes to an end. It is not as if that the aggrieved party is without any remedy. Claim can be made for permanent alimony, or an application can be filed under Section 125 Cr.P.C.

14. In *T. Rajender Singh v. Maya Devi* (1) : (1996) Vol. II DMC 362 : 1996 (1) ALT 928, this Court held that the grant of maintenance under Section 125 Cr.P.C., on the one hand, and Section 24 of the Act, on the other hand, are not mutually exclusive. It was also mentioned that the purposes for, and the circumstances under which, amounts are granted, under such provisions, are different from each other.

15. Placing reliance upon the judgment of the Punjab and Haryana High Court in *Parveen Bala v. Jagdish Rao* (2) (1994) I DMC 319 (D.B.), learned Counsel for the respondent submits that the maintenance granted under Section 24 of the Act would continue, even during the pendency of the appeal. From a perusal of the said judgment, there is nothing to indicate, that any principle was laid, to the effect that the maintenance granted under Section 24 of the Act, would continue, beyond the disposal of the main proceedings. In para 3 of that judgment, reference was only made, to the factum of the amount, having been granted under Section 24 of the Act. When Section 24 of the Act itself makes it clear that the amount granted under it, shall be during the pendency of the proceedings, it is difficult to accept, that the liability to pay the maintenance would survive, the disposal of the main case. It is a different matter that, if an appeal is presented by an aggrieved party against the order in the main proceedings, the same arrangement, that was

obtaining during the pendency of the proceedings, before the trial Court, as regards payment of maintenance, may be directed to be continued. However, a party, who was granted maintenance under Section 24 of the Act, cannot insist on payment thereof, beyond the date of disposal of the main proceedings.

16. The trial Court, in the instant case, did not make any order, for payment, beyond the date of disposal of the O.P. Hence, the claim made by the respondent for maintenance @ Rs. 5,000/- beyond 28-06-2005 is clearly untenable.

17. The E.P. filed by the respondent for recovery of arrears is certainly maintainable in law. The Family Court did undertake an exercise to arrive at the conclusion, as to the amounts, that are payable by the petitioner, to the respondent. It is a different thing that the Family Court calculated the maintenance for the period, subsequent to the date of O.P. also. The correction thereof is a sequence of the findings, recorded above. However, the Family Court indicated the result of the E.P., as under:

Neither the Dhr., nor the Jdr., furnished the date of payment of Rs. 2,10,000/- by the Jdr., but mentioned as it was paid on various spells. The Dhr., is also entitled to interest over the maintenance amount fell in arrears from the date of segregation of maintenance. Since the arrears fell in due from May, 2003 onwards, the Jdr., is liable to pay the arrears of maintenance amount as well as interest to the Dhr. The total maintenance amount due is Rs. 4,30,000/- from May, 2003 till December, 2008 @ Rs. 5,000/- p.m. to the Dhr. The simple interest @ 24% per annum comes to Rs. 81,600/-.

18. It needs to be mentioned that the E.P. filed by the respondent was under Rule 11 of Order XXI, read with Rule 141 of Civil Rules of Practice. A specific prayer was made for attachment of some items of movable property. Whenever a decree-holder wants the judgment-debtor to be arrested, an application under Rule 37 of Order XXI C.P.C., has to be made. Detailed procedure is prescribed to deal with applications, filed under that provision. The scope of enquiry would be, as to the means, possessed by the judgment-debtor, and his disinclination to pay the decretal amount. Even assuming that the E.P. filed by the respondent herein can be treated as under Order XXI, Rule 37, the Family Court did not bestow its

attention to the prescribed procedure. Therefore, the direction issued by the Executing Court, for arrest of the petitioner, is not sustainable in law.

19. If the maintenance calculated for the period subsequent to the date of decree in O.P. is excluded, the respondent would be entitled to be paid a sum of Rs. 2,20,000/-, that was due for a fairly long period. During the course of hearing of the C.R.P., this Court directed that the petitioner shall have to pay a reasonable amount towards interest, and the figure of Rs. 1 lakh (one lakh) was indicated. In compliance with the said observation/direction, the respondent (sic. Petitioner) had handed over a demand draft for Rs. 3,20,000/- to the respondent, and she has received the same in the Court itself.

20. In view of the above, the C.R.P. is allowed, and the order under revision is set aside. With the payment of Rs. 3,20,000/-(three lakh twenty thousand), the claim in the E.P. shall stand fully satisfied.

21. There shall be no order as to costs.