

Mukesh Teli Vs. Bharati Teli and ors.

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Court : Andhra Pradesh

Decided On : Dec-09-2005

Reported in : AIR2006AP256; 2006(3)ALD738

Judge : T. Ch. Surya Rao, J.

Acts : Hindu Adoption and Maintenance Act, 1956 - Sections 20, 21, 23 and 23(2); Criminal Procedure Code - Sections 125 and 488; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151

Appeal No. : CRP No. 3618 of 2005

Appellant : Mukesh Teli

Respondent : Bharati Teli and ors.

Advocate for Def. : Manjari S. Ganu, Adv.

Advocate for Pet/Ap. : S. Balchand, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T. Ch. Surya Rao, J.

1. The instant revision petition is directed against the order, dated 27-6-2005, passed by the learned Judge, Family Court, Hyderabad, in I.A. No. 1486 of 2004 in O.P. No. 902 of 2004. Both the learned Counsel agreed for the disposal of the revision petition at this stage of admission itself and accordingly the revision petition is being disposed of.

2. The revision petitioner is the respondent in the interlocutory application filed in I.A. No. 1486 of 2004 by the respondents herein seeking interim maintenance at the rate of Rs. 53,200/- per month pending disposal of O.P. No. 902 of 2004, filed by the respondents seeking maintenance, on the file of the Family Court, Hyderabad. The first respondent is the wife and respondents 2 and 3 are their daughter and son respectively. The marriage of the petitioner with the first respondent was solemnized on 31-12-1983. Out of the lawful wedlock, respondents 2 and 3 were born to them. On the premise that the respondents were neglected by the revision petitioner and harassment was meted out to them at his hands, they filed the main petition seeking maintenance at the rate of Rs. 53,200/- per month; the break up of which had been given inter alia in the petition which includes the expenses for maintaining house and for other day today expenses like food, clothing, etc., in an amount of Rs. 25,000/-; medical expenses at Rs. 4,200/-; education expenses for each of the respondents 2 and 3 at Rs. 10,000/- and hostel and miscellaneous expenses for petitioner No. 3 at Rs. 4,000/-, aggregating to Rs. 53,200/-. Accompanying the petition, they filed interim application, as aforesaid, seeking interim maintenance at the same rate. That application was resisted by the revision petitioner. The case of the respondent appears to be that the first respondent has also been earning equally. He was driven out of the fiat by his wife and got him arrested by the police by launching a false case, on account of which, his business has gone down and suffered losses. If the respondents 2 and 3 are willing, they can stay with the father, and since his wife is also equally earning, she must share the burden.

3. At the time of the enquiry, Exs.PI to P65, on the side of the petitioners/claimants and Exs.RI to R16, on the side of the revision petitioner were got marked. After having heard either side and considering the documents filed on either side, under the impugned order, the Court below directed the revision petitioner to pay an

amount of Rs. 15,000/- per month as interim maintenance to the respondents 1 to 3 from the date of petition. Having been aggrieved by the said order, the revision petitioner is now assailing the same, as aforesaid.

4. The learned Counsel for the petitioner represents that the first respondent has been getting an income of approximately Rs. 20,000/- per month and has been residing in the residential flat accommodation of the revision petitioner. Granting interim maintenance at huge rate of Rs. 15,000/- is unwarranted and the Court shall have to see at the time of granting interim maintenance, the bear necessities of the parties. It is his contention that the rate of interim maintenance granted by the Court below has no relevance to the actual income of the revision petitioner. Finally, it is contended that there has been no provision granting interim maintenance and the application filed under Section 151 of the C.P.C. is not maintainable.

5. There has been no gainsaying about the relationship inter se between the parties. As can be seen from the impugned order, the age of the second respondent-daughter was 19 years at the time of filing of the application and the age of the third respondent-son was 17 years by then. The second respondent obviously an unmarried major daughter. The main O.P.No. 902 of 2004 was filed before the Family Court seeking maintenance. Although no provision has been mentioned therein, since the parties are Hindus, the application must have been filed under the provisions of Hindu Adoption and Maintenance Act, 1956. A major daughter albeit not married is not entitled to claim maintenance from her parents, more particularly the father unless she is unable to maintain herself.

6. There has been no provision under the said Act for granting interim maintenance. When a claim has been made for maintenance by filing a suit or appropriate proceeding, in ordinary course to adjudicate that claim by the civil Court or the Family Court, as the case may be, it takes reasonable time. Till such time the parties cannot be asked to starve. Although there has been no appropriate provision for seeking interim maintenance, but I see no prohibition under the statute for granting interim maintenance pending adjudication of the main claim. That is where the inherent powers of the Court can be invoked for

rendering substantial justice to the parties. In my considered view, therefore, Section 151 can be invoked for claiming interim maintenance pending adjudication of the suits or proceedings filed under the Hindu Adoption and Maintenance Act seeking maintenance. Therefore, the contention of the learned Counsel for the revision petitioner that the present application for interim maintenance is not maintainable cannot be countenanced.

7. Having regard to the relationship inter se between the revision petitioner and the respondents 1 to 3 and the fact that there has been estrangement in between the revision petitioner and the first respondent and the respondents 2 and 3 are with the first respondent, a provision shall be made for their sustenance pending disposal of the main O.P. The principles enjoined under Section 23 of the Hindu Adoption and Maintenance Act shall have to be considered even for granting interim maintenance. The Court below having been of the view that the first respondent did not disclose her income and the revision petitioner also did not disclose his true and real income, and the documents filed on either side did not help the Court to assist the actual income of both the parties and having found that the first respondent was having some source of income may be around Rs. 18,000/- to Rs. 20,000/- per month, out of which a sum of Rs. 14,090/- she was getting towards her share of rents, ultimately jumped to the conclusion that in its view if an amount of Rs. 15,000/- was granted for maintenance and educational expenses it would be a reasonable amount and the respondent was capable of paying such amount. Such a conclusion is bereft of any basis and reason. The Court has to find out as to what is required by the wife to maintain a standard of living, which is neither luxurious nor penurious, but is moderately consistent with the status of the family. The needs and requirements of the wife and the children who are entitled to claim maintenance for such moderate living can be fairly determined only if their separate income also is taken into consideration together with the earnings of the husband and his commitments. Merely because the wife is getting some income that will not in my considered view disentitle her to claim maintenance. It is the obligation of the husband to maintain the wife. It is not a sine qua non that wife must be incapable of maintaining herself, so as to claim maintenance from her husband. Therefore, the income, if any, of the wife and the income of the husband shall have to be taken into consideration, besides

considering the family status of the spouses.

8. The quantum of maintenance depends upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families, a survey of the conditions and necessities and rights of the members on a reasonable view of change or circumstances possible required in the future, regard being, of course had to the scale and mode of living and to the age habits, wants and class of life of the parties. Section 23(2) of the Hindu Adoption and Maintenance Act makes no departure from these principles. Vide *Kulbhushan v. Raj Kumari* : [1971]2SCR672 and *Kolasani Sivakumari and Ors. v. Kolasani Sambasiva Rao* : 2000(1)ALD750 . In *Kolasani Sivakumari's* case (*supra*) in Para 25 this Court held thus :

It shall be the discretion of the Court to determine what maintenance shall be awarded. In doing so, the Court shall have due regard to the considerations set out in Sub-section (2) thereof. Sub-section (2) ordains that the position and status of the parties, the reasonable wants of the claimant, whether the claimant is justified in living separately, the properties possessed by the claimant if any, and the number of persons entitled to maintenance.

9. In *Bhamidipati Saraswathi v. Bhamidipati Krishna Murthy* : AIR 1960 AP30 , a Division Bench of this Court held that in an application for interim maintenance the only consideration that should enter the judicial verdict was whether the party applying for relief was possessed of sufficient means or not.

10. In *Bhagwan Dutt v. Kamala Devi* : 1975 CriLJ40 , while dealing with the petitions of Section 488 of the old Code of Criminal Procedure the Apex Court held that the object of the section was to prevent vagrancy and destitution and therefore the Court should find out as to what is required by the wife to maintain a standard of living, which is neither luxurious nor penurious, but is moderate and consistent with the status of the family. The Apex Court further held that the needs and the requirements of the wife for such moderate living could be fairly determined only if her separate income was also taken into consideration together with the earnings of the husband and his commitments.

11. It is no doubt true that the above referred judgment was held under Section 488 of the Criminal Procedure Code (Old). Be it a proceeding filed under Section (488) 125 of the Cr.P.C. or the proceedings filed under the civil law claiming maintenance, while dealing with the application filed seeking interim maintenance the observations made by the Apex Court are quite germane. In fact, in Para 26 the Apex Court has considered the provisions of Section 488 of the Code and Section 23(2) of the Hindu Adoption and Maintenance Act and held thus :

The question therefore resolves itself into the issue whether there is anything in Section 488 which is inconsistent with Section 23(2) or any other provisions of the Act. This matter is no longer *res Integra*. In *Nanak Chand v. Chandra Kishore Aggarwal* : 1970 CriLJ522 , this Court held that there is no inconsistency between Act 78 of 1956 and Section 488, Criminal P.C. Both could stand together. The Act of 1956 is an Act to amend and codify the law relating to adoption and maintenance among Hindus. The law was substantially similar before when it was never suggested that there was any inconsistency with Section 488, Criminal P.C. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties.

12. It is obvious from the impugned order the Court below failed to consider these aspects and reached a conclusion not with reference to any intelligible data or the considerations enjoined under the provisions of Section 23(2) of the Act, but on sheer hypothesis. Such an order is, therefore, not tenable and cannot be sustained. Therefore, the matter has to be invariably sent back to the Court for fresh consideration.

13. However, a suitable arrangement shall have to be made for the period interregnum till the application on such a remand is disposed of by the Court. Obviously, the second respondent is a major daughter. Under Section 20 of the Act a Hindu is bound during his or her lifetime to maintain his or her legitimate or illegitimate children so long as the child is a minor. The obligation extends to a daughter, who is unmarried only when she is unable to maintain herself out of her own earnings or other property. The unmarried daughter is no doubt a dependent

as can be seen from Section 21 of the Act. She can claim maintenance as a dependent in the event of the death of the deceased against the estate. When the father or mother is alive the daughter can claim maintenance only under Section 20, subject, however, to the condition that she is unable to maintain herself or that she is a minor. These aspects have been totally overlooked by the Court below. On a tentative basis if an amount of Rs. 5,000/- is sanctioned towards interim maintenance to all pending disposal of the application, that in my considered view would meet the ends of justice.

14. For the above reasons, the revision petition is allowed and the impugned order is hereby set aside. The matter is remitted to the Court below for fresh consideration in the light of the observations made inter alia in the order. However, the petitioner on a tentative basis shall pay at the rate of Rs. 5,000/- (Rupees five thousand) to the respondents. The Court below shall make every endeavour to dispose of the application as early as possible without being prejudiced by any of the observations made inter alia in the order in its own way in accordance with law.