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Court : Orissa

Decided On : Nov-20-1990

Reported in : 71(1991)CLT498; II(1991)DMC48

Judge : A. Pasayat, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24 and 26; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Civ. Revision No. 885 of 1990

Appellant : Ram Chander Agarwalla

Respondent : Mrudula Poddar @ Agarwalla

Advocate for Def. : S.K. Dey, Y. Mohanty, D. Ray and P.C. Biswal

Advocate for Pet/Ap. : A. Mukherjee, G. Mukherjee and D. Mohanty

Judgement :

A. Pasayat, J.

1. Quantum of interim maintenance and litigation expenses granted in a proceeding filed for dissolution of marriage is the subject-matter of dispute in this revision application,

2. The plaintiff-petitioner has instituted O.S. No. 190 of 1986 (1) in the Court of Subordinate Judge, Nayagarh praying for dissolution of marriage. Stand of the wife-opposite party is that the husband has illegally deserted her and the minor child, and the suit has been filed with oblique motives. Undisputedly, the parties litigating are married to each other and the question to be gone into in the suit would be whether justifiable-reasons exist for dissolution of marriage. During the pendency of the suit, an application styled as one under Sections 24 and 26 of the [Hindu Marriage Act, 1955](#) (in short 'the Act') was filed by the wife claiming interim maintenance for herself, and the minor daughter and litigation expenses in order to enable her to effectively participate in the adjudicatory process. It was her claim that the husband was earning more than Rs. 5,000/- per month, was a prosperous business man and a reasonable claim of Rs. 700/-, which is absolutely necessary for maintenance, should be granted, in addition to a consolidated sum of Rs. 10,000/- as litigation expenses in support of the later claim, it has been urged that she is forced to stay with her father at Calcutta, and her frequent visit to Nayagarh where the proceeding is pending, costs money and because of the protracted litigation the claimed sum is absolutely reasonable. The claim was resisted by the husband-petitioner on the ground that the sum was exorbitant and the interim maintenance as indicated by the wife was a figment of imagination, and he was a mere hawker and the business to which allusion has been made, belongs to his father and that also is not a very prosperous or profit earning concern. It was also indicated that the wife is gainfully employed and is earning substantially to maintain herself and the child. The claim of litigation expenses has been characterised as extremely exorbitant and fantastic. In support of the claim, the wife examined herself and another witness while the husband examined himself and another witness, to substantiate his stand.

3. The learned Subordinate Judge came to hold that from the material he was satisfied that the monthly income of the husband was at least Rs. 5,000/- per month, and that the wife was entitled to interim maintenance of Rs. 700/- per month from the date of institution of the suit, i.e., 17-11-1986 till final adjudication and was also entitled to litigation expenses of Rs. 10,000/-. This order as indicated above is the subject matter of challenge in this revision application.

4. Assailing, the 'correctness of the order, it has been submitted that there was absolutely no material placed before the learned Subordinate Judge as regards the actual income of the husband, and the conclusions have been arrived at on mere surmises and therefore, the quantification as done is irrational and is liable to be vacated. On the other hand, it has been urged by the wife-opposite party that the determination was made by the learned Subordinate Judge on the available materials, and keeping in view the admissions of the husband. Specific reference has been made to the husband's statement that from 1986 he was not paying any maintenance to the wife and the child, and he was previously spending between Rs. 500/- to Rs. 600/- for the fooding of the wife and the child. A reference is also made to the deposition of the witness examined by the husband to the effect that for a female and a child Rs. 800/- would be required as maintenance. On behalf of the husband, however, it has been submitted that the 'wife having independent source of income for the livelihood, is not entitled to the maintenance and litigation expenses and in any event the quantum as determined is arbitrary. On a perusal of the order and the evidence as led by the parties, I find that there is practically no material on which income of the husband can be accurately determined. However, in view of the admission of the husband that he was spending between Rs. 500/- to Rs. 600/- per month for the fooding of the wife and the child, some basis for fixation of the quantum is available. The quantum could be reasonably fixed at Rs. 600/- to which opposite party would be entitled to the said sum per month, as interim maintenance till the finalisation of the proceeding.

5. The other question that survives for consideration is the quantum of litigation expenses to be granted. The only ground urged by the wife in support of the claim is that the expenses involved to effectively participate in the proceeding at Nayagarh are high, since she is staying at Calcutta. According to her, each visit costs money and she has to frequently come because the husband is adopting dilatory methods to prolong the proceeding so that she is harassed and is not able to contest in the proceeding. Considering this, I feel that this apprehension could be arrayed if the proceeding is directed to be finalised at an early date. As held by this Court in II (1986) DMC 362 (Orissa) : R.C. Mishra v. K.B. Mishra; while granting litigation expenses a reasonable assessment of the expenses likely to be incurred has to be made. Unfortunately, the requisite exercise has not been

undertaken by the learned Subordinate Judge. On a fair estimate, I determine the amount to be Rs. 3,000/-. The only other question that needs adjudication is the date from which the wife is entitled to the interim maintenance and litigation expenses, mode and schedule of payment thereof. The learned Subordinate Judge has allowed it from the date of institution of the suit. This has been characterised as illegal by the learned counsel for the husband-petitioner.

6. The object of Section 24 is to ensure that a party to a proceeding does not suffer during pendency of the proceeding by reason of poverty and such party may be either petitioner or respondent in the petition in which the application is made. As indicated by the Supreme Court in AIR 1978 SC 1807 :

Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and others : the decision under Section 24 is not final and remedy under Section 24 of the Act and under Section 125 of the Code of Criminal Procedure, 1973 are quite independent. The application under Sections 24 and 26 of the Act has been filed on 15-3-1989. It appears that due to non-appearance of the wife-opposite party the application was rejected by order dated 30-9-1989. Therefore, Civil Revision was carried before this Court bearing C.R. No. 984 of 1989 and by order dated 6-7-1990 the matter was directed to be re-heard. The impugned order is consequential to such direction.

7. It is submitted by the petitioner that delay in disposal of the application is solely attributable to the recalcitrant attitude of the opposite party, and he should not be made to suffer. On the other hand, the opp. party has submitted that this Court was satisfied about justifiable reason for which there could be no appearance on the date 'fixed and therefore, liability of the husband to pre-interim maintenance cannot be remitted.

8. On consideration of the rival submissions, I find that the learned Subordinate Judge has directed payment of the interim maintenance from the date of filing of the suit i.e., 17-11-1986. The date from which interim maintenance can be granted has been subject-matter of several controversies. There is no hard and fast rule as to from what date the grant can be made. It would depend on the facts and circumstances of each case. There is no legal bar for granting it prior to date of

application. (See 32 (1990) OJD 94 Criminal : Yudhisthir Nayak v. Smt. Rukmini Nayak. Reference in this context may also be made to some other decisions of this Court reported in 62(1986) CLT 218: Gouri Das v. Pradyumna Kumar Das; 62(1986) CLT419 = 11(1986) DMC 189 : Samru Singh v. Dhanamani Singh and 66 (1988) CLT 593=11 (1986) DMC 152 : Sarojini Sarangi v. Dr. Biswanath Sarangi. In Gouri Das's case (supra), it was held that though the date could be fixed from the date of service o.' summons, yet no hard and fast rule can be laid down and the Court has to decide the date from which the maintenance is payable having regard to the facts and circumstances of each case and the conduct of the parties. In Sarojini's case (.supra), it was held that in case of laches and inordinate delay in making the application, the same may be taken into consideration for not allowing the claim prior to the date of application. The view that payment could be effective from the date of service of summons was indicated by Punjab and Haryana High Court in the cases of Sudershan Kumar Khurana v. Smt. Deepak : AIR 1981 Punjab and Haryana 305 and Sarita Mehta v. Arvind K. Mehta : (1978) 80 Punjab Law Reporter 211 and by the Calcutta High Court in the case of Samir Kr. Banerjee v. Smt, Sujata Banerjee : Vol. 70 CWN 633.

9. On behalf of the petitioner, it is submitted that the interim maintenance if any to be paid, should be payable from the date of order. Reliance in support of this plea is placed on II (1988) DMC 502 M.P. High Court. Ramesh v. Chitra and II (1987) DMC 461 (Rajasthan High Court); Madhu Sudan v. Pushpa Bahwana. With great respect, I cannot persuade myself to agree with the view taken by the Madhya Pradesh High Court that maintenance pendente lite has to be granted from the date of the order. The view indicated by the learned Single Judge of the said Court is that under Section 21 of the Act ordinarily the amount of maintenance is granted from the date of the order passed by the Court. Section 24 of the Act nowhere postulates such a condition. The foundation for the view has not been indicated in the judgment. Therefore, the decision of the Madhya Pradesh High Court in this regard is of no assistance to the petitioner. So far as the decision of the Rajasthan High Court is concerned, the only principle laid down by the Court seems to be that grant of maintenance pendente lite is discretionary which as to be exercised on sound legal principles and not on caprice or humour. As a general principle, there can be no reason to differ with the view expressed, but there is nothing in the

decision which throws any light on the controversy relating to the date from which the interim maintenance can be awarded.

10. On consideration of the rival submission and the circumstances of the present case, I am of the view that interim maintenance is payable from the date of application. The amount payable till November, 1990 is Rs. 12,300/-. The litigation expenses have been fixed at Rs. 3,000/-. Therefore, the present liability is Rs. 15,300/-. Considering the quantum, I direct that this shall be paid by the petitioner to the opposite party in the following manner; (a) a sum of Rs. 4000/- shall be paid by the end of November, 1990; (b) a sum of Rs. 6,000/- shall be paid by 31-12-1990; and (c) the balance of Rs. 5,300/- shall be paid by 15-10-1991. The monthly interim maintenance from December, 1990 onwards shall be paid in addition to the arrears directed to be paid in instalments. The payments shall be made by 10th of the corresponding month.

11. Keeping in view the nature of the allegations, I direct that the proceeding be finalised by the end of February, 1991. The proceeding shall be taken up on day to day basis continuously, and unnecessary adjournment shall not be granted to the husband unless the cause shown is of such a nature that adjournment becomes imperative. Similarly, the wife shall not seek adjournment on untenable grounds. The date of hearing shall be preferably fixed in the third week of January, 1991 to be continued till the completion of the trial, so that the disposal is possible by the date indicated. The date shall be fixed taking into consideration the convenience of the parties.

12. On the payments being made, as directed above, the trial shall proceed on day to day basis and shall be finalised by the date stipulated above.

13. The Civil Revision is accordingly disposed of; but there shall be no order as to costs.