

Samru Singh Vs. Dhanamani Singh

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Court : Orissa

Decided On : May-03-1986

Reported in : 1986(I)OLR683

Judge : S.C. Mohapatra, J.

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

Appeal No. : Civil Revision No. 785 of 1985

Appellant : Samru Singh

Respondent : Dhanamani Singh

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

Advocate for Pet/Ap. : R. Ch. Mohanty, Adv.

Judgement :

S.C. Mohapatra, J.

1. Petitioner filed an application for dissolution of his marriage with opposite party by a decree of divorce under the [Hindu Marriage Act, 1955](#) (hereinafter referred to as 'the Act')- After taking some adjournments for filing the written statement, the opposite party filed an application under Section 24 of the Act asking for Rs. 1000/- towards expenses of the proceeding and maintenance pendente lite @ Rs.

400/- per month asserting in the application that she had no independent income to meet the expenses of the proceeding filed against her and to maintain herself. In the application, she alleged that the petitioner, an employee under the Steel Authority of India Limited. Rourkela Steel Plant, Rourkela, was drawing a monthly salary of Rs. 1200/- and has various luxurious articles along with two houses and lands in village Jhirpani and Shaktinagar. Petitioner challenged the aforesaid averments as untrue and asserted his take home salary to be Rs. 850/- only wherefrom he maintains his parents and his younger brother Chandra Singh meeting all his expenses of education in the local High School. He asserted that the opposite party has an annual income of Rs. 3,000/- from the landed property gifted to her father.

2. No documentary evidence was filed by either party and the petitioner and opposite party examined themselves only as witnesses in support on their respective assertions in the petition and objection. Trial Court having ordered payment of Rs. 500/- for expenses of the proceeding and Rs. 250/- per month for maintenance pendente lite, the same is assailed in this Civil Revision by the petitioner.

3. While admitting the Civil Revision, this Court directed stay of operation of the impugned order on payment of Rs. 500/- as ordered by the trial Court towards expenses of the proceeding in the trial Court and monthly maintenance of Rs. 150/- per month in place of Rs. 250/- ordered by the trial Court towards arrear and current maintenance pending disposal of the Civil Revision.

4. In order to consider the correctness of the impugned order, Section 24 is to be kept in view. It reads as follows :

'24. Maintenance pendente lite and expenses of proceedings- Where in any preceding 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.

5. A bare perusal of the section makes it clear that order to be passed under Section 24 is a judicial order which is to be supported by reasons and cannot be arbitrary. Being a judicial order, the same is to be based on materials on record. For getting a favourable order, the applicant has to establish the following :

(i) The applicant has no Independent income sufficient for her support and for necessary expenses of the proceeding or if she has income the nature and quantum of it.

(ii) The income of her husband and the quantum thereof.

(iii) The nature and extent of her needs both for maintenance and for expenses of the proceeding.

See ILR 1964 Cutt. 958 (Ganga Devi v. Krushna Prasad Sharma)

6. On consideration of evidence of the parties, the trial Court found as a fact that the applicant-opposite party has no independent income sufficient for her support and for necessary expenses of the proceeding. It has also been found by the trial Court that the take home salary of the petitioner is Rs. 987/- per month. These are findings of fact based on materials and there is no scope for interference in this revision.

7. In ILR 1964 Cutt. 958 (supra) it has been laid down that the ingredients are to be established by evidence as in a suit. The language of Section 24 however, gives wide discretion to the Court to determine the sum payable as it may deem to the Court to be reasonable. Thus, mathematical calculation is not envisaged under the Act. Though arithmetic may be a good servant for determining the same it will be bad master in such cases. It is, however, to be remembered that the necessary expenses of litigation and the sum required for maintenance of the applicant would depend upon the income of the parties. Since the order envisages an ad interim arrangement during pendency of the proceeding, other factors as in Section 25 for granting permanent alimony are not required to be satisfied. An order under Section 24 should neither be a source of profit to the applicant nor a penalty on the

opposite party.

8. There is absolutely no material in support of the order directing payment of Rs. 500/- towards expenses of the proceeding. The impugned order is not supported by any reason. Normally, expenses of the proceeding would include remuneration to the Lawyer, Court-fees, stamp and paper, clerical expenses, cost of stationeries, expenses to be incurred for journey from the place of residence for instructing the Lawyer and attending the Court for summoning the witnesses to depose in Court and their expenses and for obtaining and producing the documents in support. Besides these normal expenses, there may be special nature of expenses which can also be considered on the availability of materials on record. Since no material is available on record, there was no scope for the trial Court to arbitrarily fix the expenses of the proceeding. However, I find that the applicant-opposite party has engaged a Lawyer in the trial Court and has filed the application under Section 24 of the Act. She is to file the written statement which has been deferred by the Trial Court on her prayer following the decision reported in AIR 1981 All. 178 (Smt. Anjula v. Milan Kumar). She may have to adduce oral and documentary evidence. Her present residence is in a rural area wherefrom she has to travel to Rourkela for the purpose of proceeding. Since remitting back the matter would delay the trial of the main application, to the prejudice of the petitioner, in view of the order of the trial Court permitting the opposite party to defer filing the written statement till disposal of the application under Section 24, Mr. R. Ch. Mohanty, the learned counsel for the petitioner submits that the amount of Rs. 500/-already deposited may be treated to be the expenses for the proceeding and he would not press the revision to that extent. The submission is fair and is accepted.

9. There is no material in this case in support of the nature and extent of the needs of the opposite party for her maintenance. On her own evidence she now stays in the village with her father. Expenses in a rural area are lesser than the expenses in urban areas. The take home salary of the petitioner is only Rs. 987/-. He is an employee in the Rourkela Steel Plant which is in an urban area. His expenses are bound to be much more than that of the opposite party. The minimum annual expenses of food and clothing of an individual cannot be less than Rs. 2,000/-.

There would be some other expenses also. In the peculiar circumstances of this case, making a reasonable guess work for early disposal of the proceeding for benefit of both the parties, I add Rs. 400/- more to Rs. 2,000/- by a reasonable guess work and determine the monthly sum payable towards maintenance of the opposite party to be Rs 200/-. I make it clear the both the parties are free to move the trial Court for re-determination of the litigation expenses and the future monthly maintenance on the basis of materials to be adduced.

10. The trial Court has directed the sum to be paid from the date of the initiation of the proceeding of divorce. An application under Section 24 of the Act is not a suit by the wife for maintenance under the Hindu Adoption and Maintenance Act, 1956. Therefore, the maintenance could not have been granted prior to the date of application under Section 24 of the Act.

11. In conclusion, the petitioner is to pay the applicant-opposite party Rs. 500/- towards expenses of the proceeding and Rs. 200/- per month from the date of application under Section 24 of the Act till disposal of the divorce proceeding before the trial Court unless modified subsequently by the trial Court. The amount of Rs. 500/- deposited by the petitioner shall be withdrawn by him to be paid to the applicant-opposite party on or before the 18th June, 1986. Adjusting the amount already paid to the applicant-opposite party towards monthly maintenance, the arrear maintenance till end of May, 1986, shall be paid in three equal monthly installments beginning from 18th June, 1986. The current maintenance from the month of June shall be paid on or before the 10th of every month. For the month of June, 1986, however, the current maintenance shall be paid on or before the 18th June, 1986, since the Court reopens after summer vacation on that date.

12. In the interest of justice, it is necessary to direct that proceeding under the Act should be disposed of early preferably by end of October, 1986. Since the application under Section 24 of the Act is disposed of by this order, the applicant-opposite party shall file the written statement on or before 18th July, 1986 after receipt of the litigation expenses of Rs. 500/-.

13. In the result, the civil revision is allowed in part subject to the aforesaid directions. In the circumstances, there shall be no order as to costs.

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