Suresh Kumar Vs. Kamaljit Kaur

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Court : Delhi

Decided On : Dec-14-1984

Reported in : 1985(9)DRJ68

Judge : Yogeshwar Dayal, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 115; Hindu Marriage Act, 1955 - Sections 24

Appeal No. : Civil Revision Appeal No. 505 of 1982

Appellant : Suresh Kumar

Respondent : Kamaljit Kaur

Advocate for Pet/Ap. : L.R. Gupta,; Rajiv Gupta and; C.L. Joseph, Advs

Judgement :

Yogeshwar Dayal, J.

(1) This is a petition

(2) On or about 31/08/1978, a petition for divorce was filed by the husband-petitioner against the wife-respondent in the court of DistrictJudge, Delhi.

(3) Case of the petitioner was that the wife had left the matrimonialhome in November/December, 1967 and since then the parties have not lived and co-

habited as husband and wife and on other grounds. A written statement was filed on beha of the wife on 2/11/1978. The grounds of desertion and cruelty were denied and the plea of the wife was that the parties had co-habited till 18/08/1984. A replication was filed to the written statement on or about 12/01/1979.

(4) On 2/11/1978, the respondent-wife filed an application before the trial court during the pendency of the aforesaid proceedings claiming a sum of Rs. 5,000.00 per mensem as alimony pending the disposal of petition for divorce and a sum of Rs. 20,000.00for meeting the expenses of proceedings under Section 24 of the Hindu Marriage Act. (hereinafter referred to as the 'Act').

(5) In the application for pendente-lite maintenance in paragraph 6, c alleged that she has no income; even her clothes and jewellery are lying at the house of husband's father because on 18/08/1978, she had gone to her mother's house for the weekend and since then she is living there,because of the instructions of the husband not to return to the matrimonialhome. It is also pleaded that the husband is a rich man and is only son of his father Shri Jagjivan Ram, who has been a Minister of the Cabinet of thePrime-Minister for last number of years. It was also pleaded that the husband, and his father constituted a Joint Hindu Family and they have substantial amount of properties, jewelleries, bank balances, fixed deposit amounts and interest in the business and the entire wealth of the family including the wealth of his father is available to the son, that the husband is maintaining car and spends thousand of rupees for entertaining girls. and friends; that the husband spent large amount to contest general elections of the Parliament though he lost. In para 14 of the application, the wife had given details of the source of income of the husband in his individual capacity. It was also pleaded that she has to defend the case and she has no other rnoveable and immoveable properties. It was also stated that in defense she has to summon evidence from various parts of the country and also from outside the country and the wife, thereforee, requires at least Rs. 20,000.00 towards expenses of theproceedings.

(6) In paragraph 19 of the application, the respondent-wife specifically pleaded that she had to buy clothes for herself because she has no access to the wardrobe left at the house of the husband. Besides this the wife is also entitled to a car.

(7) On 12/01/1979, the petitioner filed his reply to the aforesaid application of the wife under Section 24 of the Hindu Marriage Act.

(8) In paragraph 16 of this reply, the petitioner husband averred that the respondent-wife was possessed of large properties and had sufficient means and money to maintain herself; that she has been maintaining herself since1967 till date and was having interest and shares in various business such as(1) Venus Motors, Bombay Agra Road, Dhulia(2)Bhusaval Motors, BombayAgra Road, Dhulia (3) Singh Agro Agencies, D-38, defense Colony, NewDelhi (4) Maharashtra Construction Company, Bombay Agra Road, Dhulia(5) Surjit Finance Private Limited, D-38. defense Colony, New Delhi and(7) Moninder & Co., Malegaon Road, Dhulia and her income from there was more than Rs. 8,000.00 to Rs. 10,000.00 per month. Besides, she has got sufficient deposits in several banks and had also lockers and from Venus Motorsalone, her withdrawals were more than Rs. 60,000.00 in a year.

(9) On 13/02/1972, the respondent filed a replication to thisreply. In paragraph 16 of this replication, she admitted that she was a partner in various firms but said partnership concerns had been suffering heavylosses. In paragraph 20 of her replication, she alleged that, 'she was living on the charity of her brothers and mother'. On 13/02/1979, the responent-wife had filed an affidavit. In paragraph 4 of the affidavit shestated, 'I have no source of income and throughout my married life I was dependent on my husband'.

(10) In paragraph 17 of this affidavit, she admitted partnership Along with her brother in M/s. Venus Motors, Bombay Agra Road, Dhulia, but stated that the said partnership concern had suffered heavy losses and she has no income from the said concern nor she had ever received any profit from that firm.

(11) In paragraphs 20 and 21 of the affidavit, she admitted her interest in various firms but stated that the said firms did not do business.

(12) In paragraph 30, she stated that she does not own any immoveable property anywhere in India. In paragraph 31, she stated, 'I have no accounts or any other deposits either in the Banks, Post Office or any other firm and Ido not even have a

locker'. In paragraph 33, she stated that she has no interest and share in any business.

(13) In view of this affidavit of the wife, on 4/04/1979, the petitioner husband had filed counter affidavit to the aforesaid affidavit of thewife.

(14) On 19/04/1979 the petitioner husband filed an additional affidavit in continuation of the earlier affidavit dated 4/04/1979 and in this additional affidavit, the husband stated that he had come to know of the various businesses in which the wife had interest as partner from which she was drawing huge income.

(15) In the counter-affidavit dated 4/04/1979, the petitioner-husband, inter alia, stated that the wife has share in house No. D-38, defenseColony, New Delhi and the said house had, in fact, been jointly owned by his wife Along with her mother and brothers. It was denied in the affidavit that the wife had no account or deposits in Banks or Firms. It was also denied that the wife had no locker, It was, thus, pleaded in this affidavit that thewife has an account with Vijay Bank, defense Colony branch, New Delhi and during the pendency of these proceedings, the wife had fraudulently andmischievously closed down the locker and removed huge assets including jewellery and cash from the said locker. It was also pleaded that the wife has a Fiat Car bearing registration No. Dhd 6120 which was purchased by her brand new in May, 1976 and since then she is maintaining a car and has also been employing a driver besides other servants out of her own income and resources.

(16) In the additional affidavit which was filed on 19/04/1979, it was further deposed on behalf of the husband that the wife has secured a telephone connection bearing No. 692873 which is installed at D-38, defenseColony, New Delhi, in her own name besides the two telephones which are already installed in the same premises in the name of M/s. Surjeet MotorsPrivate Ltd. and other in the name of S. Surjit Singh Ahluwalia, her brother.It was stated that she had obtained this telephone for which she had applied several years back as she had requested for this telephone as she needed the telephone at the address for her various urgent and important needs. It was specifically mentioned that Mrs. Joginder Bedi, another sister of the wife, her brother and mother own and possess D-38, defense

Colony, New Delhi and another bangalow within the compound of M/s. Surjeet Motors (P.) Ltd. at Dhulia (Bihar). It was also deposed that the wife is a major contributor tothe household expenses and kitchen expenses of the family consisting otherself, her mother, brother and sister Mrs. Joginder Bedi, living jointly at D-38,defense Colony, New Delhi for a number of years. It was also deposed that for one year alone the contribution of the wife towards joint household expenses was to the tune of Rs. 18,000.00 and that amount was withdrawn partly from her account in M/s. Surjeet Motors (P)Ltd. to the extent of Rs. 4.000.00and from her bank account to the tune of Rs. 14,000.00and this has been anormal feature every year regarding such withdrawals and contributions for more than 10 years, lt Was also deposed that wife had approximately income of Rs.20,000.00annually from two insurance companies which were named in the affidavit. It was further deposed that the wife has got huge and profitable investment and interest in several firms and companies apart from those mentioned in the affidavit dated 4/04/1979 and in the reply to the application under Section 24 of the Act ; other firms mentioned were. (1)M/s.SurjeetMotors (P) Ltd (2) M/s. Surjit Steel Industries, Private Ltd,Dhulia and (3) transport company being managed by Mr. Maninder Singh,who is said to be younger brother of the wife but is, in fact, the son ofMrs. Joginder Bedi. It was also deposed that she is regularly income tax assessed.

(17) The wife filed additional affidavit to the affidavit of the husband dated 19/04/1979. In this affidavit of the wife dated 23/04/1979,she admitted installation of the aforesaid telephone at her defense Colonyhouse. She denied any interest in the house within the compound of M/s.Surjeet Motors, Dhulia and also denied that she had any interest in property belonging to her brother, mother and sister. She also denied that she contributed anything towards the kitchen expenses of the family at D-38, defense Colony, New Delhi. She also denied withdrawals of Rs. 18,000.00 fromM/s. Surjit Motors Private Ltd. or from any other account. She, however,admitted that she had agency of insurance companies but it was denied that income from those agencies was Rs. 40,000.00 annually.

(18) Along with this affidavit, she filed an order of the Income-TaxAssessment. She again denied any share and interest in the businesses mentioned by the

husband. She admitted having purchased the car but stated that it was purchased on hire purchase basis and she had yet to pay another sum of Rs. 22,000.00 to the company. But the circumstances under which the car was purchased by her were not disclosed.

(19) Since this counter-affidavit filed by the respondent was evasive and did not specifically admit or deny her interest in various business concern,particularly in Surjit Steels Industries, the learned Additional District Judge by order dated 23/04/1979, required the parties to lead evidence on this interlocutary application.

(20) Pursuant to this order, the wife examined herself only. She did not produce her brother or mother nor any other witness nor she produced any account books or various other records. The petitioner-husband examinedhimself. Learned trial court on examination of the affidavits, document any evidence and the oral evidence, gave a finding in Para 26 of the judgment :-

'That the wife has not taken a consistent stand about her income'It was also found :-'In her application she has stated that she was devoid of any income. Some admissions were however made about the income in the rejoinder. In her statement before the court also, in theexamination-in-chief, she has improved this position by staligt that she had some income'.

Again in Paragraph 31 of the judgment, learned trial court observed :-

'Examining the affidavits, what seems manifest is that the contention advanced by the wife in the first instance that she had no independent source of income or that she had no interest in any business etc. and had no income of her own nor had any individual financial status, was not correct'.

Coming to the separate alleged businesses of the wife, learned trial court found in Paragraph 42 of the judgment as under :-

'In so far as the wife is concerned, at the outset she tried to show that she bad no independent source of income whatsoever; that no business interest; had no bank account and had no lockersetc., all of which facts were more or less falsified by the various documents brought on record and the disclosures and admissions made in her lengthy cross-examination. It is also clear that she had various business interest; that according to hermother's categorical statement, referred to above, she was c from her husband for the last about 10 years. Inthis context, it seems quite relevant to mention that it is incredible to believe that with this state of affairs, the wife c be knowing any details of her business interest; the extent of her investment and would continue to sign blindly on the income-tax returns for the subsequent years ostensibly on the solepre text that she had a blind faith in her husband. This goes along way to prove that she has tried to be evasive by and large.The two aspects of the matter run counter to each other and are patently incongruous and irreconcelliable and no argument would justify her total reticence in the matter.Apart from the date of the actual matrimonial litigation before a court of law which incidentally is also initiated by the husband, the fact that the parties have been keeping strained relations for the last many years is also clear from the documents which speak for themselves, in some of which, as detailed above,the wife has even scored of the portion 'wife of in the incometax returns with the only obvious possible intention of showing a non-married, divorce or maiden character. This cannot be called incidental as no Explanationn in this respect has come forth from the wife on record, nor even argued at the bar ... ...Not only this, it is also proved from the record that she closed all her accounts and lockers etc., during the period the present application for the grant of maintenance pendentelite was under consideration by this court. It is difficult to believe that it could be only a mere coincidence.'

In Paragraph 41, it was again found by learned trial court,

'c some interest in certain business firms, is no body's dispute. Similarly, she had substantialwithdrawals is also notdisputed. The income tax returns are under review/revision is also not disputed.'

After giving all these findings, learned trial court gave a finding in Para 42 of the judgment as under :-

'HOWEVER,it is extremely difficult to arrive or to say that she c regular independent source of income so as to maintain her. The income which she may be having may be sometimes more sometimes less in the vicinity of being almost casual.'

After giving these findings, the learned trial court gave another finding thatthe income of the husband could be somewhere between Rs. 3,000.00 to Rs.4,000.00 per month and the wife's income on an average could be taken around Rs. 1,000.00 per month. Since there were no incumberances on eitherside, in relation to the child who has been already provided for, for whose maintenance there is no claim, the learned trial court though it fit to a wardan amount of Rs. 750.00 towards maintenance amount to the wife which would meet ends of justice and would give sufficient support to augment her resources to enable her to maintain. The learned trial court rejected the case for expenses for litigation.

(21) Learned counsel for the petitioner-husband challenged the findings of the learned trial court to the effect that the income of the wife was onlyRs. 1,000.00 and/or its nature was casual.

(22) It was submitted by Shri Lala Ram Gupta, learned counsel for the petitioner that the mass of evidence establishes that the wife had a share as a partner of 18% in M/s. Surjeet Steel Industries and a share of 25% in M/s.Venus Motors besides interests in other businesses brought out in the affidavits of the husband dated 4/04/1979 and 19/04/1979 which thewife was forced to admit during her deposition in court.

(23) It was submitted that the trial court itself has found that the wifehas been living with her mother at D-38, defense Colony, New Delhi, for the last more than 10 years before the start of the divorce proceedings and it hasalso been found by the learned trial court relying on the letter of the c 8/11/1970 (Ext. Aw 1/1-CX) that she (Smt. Kamal Kumar)wife had been living with her in Delhi and the kitchen is being managed jointly by them and that her (mother's) contribution was smaller as her son and daughters had withdrawn quite frequently to meet common expenditure.It was, thus, submitted that wife has been maintaining herself for more than10 years, without any demand for maintenance for these years that the wifehas been maintaining a brand new Chauffeur car driver that she also admits that she spends about Rs. 700.00 to Rs 800.00 in two months in various clubs and spends another similar amount in various social activities; that the trial court has

not scrutinized the evidence which shows that she had sufficient income and it cannot be said that she was not having independent income sufficient for her support and the necessary expenses of the proceedings',and, thereforee, the wife could not even maintain an application under section 24 of the Act. Section 24 of the Act reads as under :-

'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 noindependent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the c 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'sown income and the income of the respondent it may seem to the court to be reasonable.

(24) A close analysis of this Section will reveal that either party can apply who has no independent income sufficient for her or his support and necessary expenses of the proceedings. It only if this condition is c wife has no independent income sufficient for her support, then while computing the pendente-lite maintenance, this section contemplates that the court will have regard to the income of both the applicant and the respondent and then fix a reasonable amount. The application under Section 24 of the Act would not be maintainable if it is shown to the court that the'independent income is sufficient for his or her support and necessary expenses of the proceeding.

(25) Normally, the finding as to what is the income of either spouse is pure finding of fact and is not liable to be challenged in proceedings under section 115 of the Code of Civil Procedure. But, if the trial court while giving a finding of the income either misreads or ignores material documentary evidence or ignores The admission on record or ignores to draw a necessary presumption which may arise in law, the findings of fact may be vitiated and the findings may become subject matter of revision within the meaning of Section (1)(c) of the Code of Civil Procedure as it will amount to exercising jurisdiction illegally or with material irregularity.

(26) Such a finding of fact may also be vitiated if it is contradictory tothe other findings on which it is based. It means, in other words finding off act arrived at without reasoning. Such a finding of fact would suffer from jurisdictional infirmity and will become enable to scrutiny in the exercise of revisional jurisdiction of the High Court under Section 115 of the Code.

(27) The finding of the trial court in the present case not only suffers from all the aforesaid illegalities and irregularities but also suffers from jurisdictional infirmity as noticed by me and, thus, finding of the trial court thatthe independent income of the wife is Rs. 1,000.00 per month and that too ofa casual nature becomes enable to scrutiny under the provisions of 115 of the Code.

(28) It may be noticed that the application for maintenance was filed on 2/11/1978 wherein she pleaded that she had no income whatsoever and she was in need of buying clothes as she has no access to the wardrobs left at the house of the husband. The trial court found that prima-facie wifehas been living apart from her husband for at least 10 years. While giving this finding, the trial court ought to have enquired how the wife has been living for all these years before she filed an application for maintenance. Thewife was forced to admit that she had business interests in the c :-(1) M/s. Surjit Steel Industries, Private Ltd. (2) M/s. Venus Motors,Dhulia, besides five other firms. It has also been established and also found by the trial court that she had accounts in various banks in Delhi and atDhulia. She also had bank locker in Delhi. It has again come in evidence that soon after the filing of the petition, she made withdrawals of more thanRs. 80,000.00 from bank accounts in Delhi alone and that she closed her locker on 13/01/1979. On 23/11/1979 she had withdrawn Rs.40,000.00 from Punjab National Bank, Janpath branch. New Delhi and substantial amount from Central Bank of India, defense Colony, New Delhi.When the whole case set up in the application was found to be vitiated c documentary evidence, the findings of the learned trial court about the income of the wife are totally vitiated.

(29) I may now examine the evidence. The trial court itself has found that in all the businesses named by the husband, the wife had interest. It maybe mentioned that in two businesses she had 18% shares in M/s. Surjit Steel Industries and 25%

share as partner in M/s. Venus Motors. We have on record six assessment orders of M/s. Surjit Steel Industries for various assessment years from 1972-73 to 1976-77. These assessment orders are Exts. AX-2to AX-6. In the assessment year for 1972-73, the income of M/s. Surjit SteelIndustries was that of Rs. 5,88,000.00. For the assessment year 1973-74, it was assessed at Rs. 4,77,165.00and for the assessment year 1974-75, the income was assessed at Rs 2,51,751.00. In the assessment year 1975-76, the income shown was Rs. 2.86.751.00 and for the assessment year 1976-77, the assessed income was Rs. 4,80,000.00. It is true that these orders For assessment relating to M/s. Surjit Steel Industries were re-opened under Section 146 of the Income Tax Act vide orders on record Exts. X-1, X-2, X-3, X-4 and X-5.

(30) Again the firm M/s. Venus Motors was assessed for the years 1969-70, 1973-74, 1974-75 and 1975-76 vide assessment orders Exts. A-11, A-10, A-9 and A-8. For the assessment year 1969-70, the income of the wife shown was Rs. 3383.75 and for the assessment year 1973-74, her income was shown as Rs. 11,188.00. For the assessment year 1974-75, her income wasshown as Rs. 7,230.00 and for the assessment year 1975-76, her income wasRs. 6674.00. The wife filed her own assessment order for the year 1976-77dated 18-1-1977 (Ex. Aw 1/16) which shown her income at Rs. 18,404.00.This itself, which document the wife had filed herself, showed her M/s. Venus Motors and M/s. Surjit Steel Industries alone. . Along with the assessment order, Ex. Aw 1/17 is the return which was filed by the wife as 'Smt. Kamal Kumar' not disclosing even her married status. In this return also, she had shown her commission received from Insurance agency.In Annexure-D to this return, she has shown income from M/s. Surjit SteelIndustries at Rs. 27,164/56 but a loss was shown of Rs. 19,192/12 from M/s.Venus Motors. Her own return for the assessment year 1977-78 is Ex. AW1/1. Here again she files her return in the name of Smt. Kamal Kumar in which also she showed a loss of Rs. 1,43,162/06 and the details are shown from both the firms M/s. Venus Motors and M/s. Surjit Steel Industries. Inthis statement of account, an insurance commission received by her duringthe period 1-4-76 to 31-3-77 is shown as Rs. 10,413.00and for the period1-4-75 to 31-3-76 (Ext. Aw 1/3) the amount of insurance commission received by her is shown as Rs. 22,342/56.

(31) What I am trying to show is that a person showing loss to the tune of Rs. 1,43,162.00 during the assessment year 1977-78 must have suffered losses from somewhere. There must be assets from where one could suffer so muchloss. In the pleadings or in her examination in chief she nowhere stated that the investment in various firms where managed by the husband or they were made by husband Benami in her name or income-tax returns were prepared by her husband but this position she took when she was concerned in crossexamination. The deposition that it was husband who made investment in the business and that she was merely benami or that her husband was preparing her returns, was the deposition made by her during cross-examination and not in examination-in-chief. It appears to be totally false deposition.

(32) Coming to the bank accounts, it will be noticed that she withdrew more than Rs. 80,000.00 soon after the filing of the application under Section 24 of the Act. She also closed her locker. She nowhere disclosed the cto her credit in bank at Dhulia. Once the husband establishes that thewife had such numerous amounts in her account in various banks, it was theduty of the wife to explain wherefrom these amounts got accumulated. It appears to me that because of her pleas have been found to be false by the learned trial court as well as by me, a presumption ought to have been drawn against the respondent that she had sufficient independent income for his or her support and the necessary expenses required for legal proceedings pending in the Court.

(33) Mr. C.L. Joseph, learned counsel for the wife .brought to my c fact that husband has not filed any account of his income and it is established on record that he owns six acres of land near Delhi and also has two tractors and has substantial income from there. The husband deposed that his income is about Rs. 18,000.00 to Rs. 20,000.00 annually from this land nearDelhi. Besides, he had got a car in 1972.

(34) It will be noticed that the wife mentioned that she needed a car inher application for maintenance whereas it was found by the learned trialcourt that she had purchased a brand new car in the year 1976-77.

(35) The wife had deliberately suppressed her bank accounts, locker sand shares in various businesses and immoveable properties. A presumption arises against the wife for this suppressing of material facts. It came out inevidence that the wife has share to the extent of 25% in M/s. Marshall Engineering Corporation and at no stage of proceeding, the wife has c income from either.

(36) During the examination in court, the wife was put a question as c she would spend Rs. 5,000.00 She stated that she required Rs. 1500.00for clothing herself and her daughter and she would spend Rs. 1000.00 to Rs.1500.00 on petrol arid that she spends Rs. 1300-1400 in two or three c club and Rs. 750.00 to Rs. 800.00 per month on social service. She, however, admitted that she was not member of any social organization.

(37) Admittedly, the wife is living in her house D-38. defense Colony,New Delhi, and as found by learned trial court she has been living there formore than last 10 years before the start of the divorce proceedings. She never made any claim for alimony of maintenance from the husband of theseyears. Nothing had happened after the filing of the divorce petition which may entitle her to claim maintenance pendente-lite. At no stage, the wife who has been found to have substantial shares in various firms with her brother and sister, placed on record the assets of those firms which are stated to c losses into lacs. There is no evidence that those firms have beenwound-up.

(38) Some of the details of Rs. 5,000.00 as maintenance which she desires.are such that they cannot be granted in proceeding under Section 24 of theAct, like expenses for clubs or her expenses for social services. Regarding clothes she gave no monetary details of her own requirement. The claim for Rs. 1000.00 towards petrol necessarily would be in the light of her claim forgoing to clubs or as social services.

(39) Again the assessment order which the wife filed herself for the year1976-77 (Ex. Aw 1/16) shows annual income of Rs. 18,404.00. I have already noticed her return for the year 1977-78 showing a net loss of Rs. 96,254/54(Ext. Aw 1/1).

(40) Income of the wife as per the return (Ext. Aw 1/16) filed by her was at least Rs. 1500.00 per month, besides the deposits in the Banks c in her lockers and the deposits lying in the bank at Dhulia which c already noticed. The income of the husband was computed by c court at Rs. 3,000.00 to Rs. 4,000.00 per month without referring to any evidence whatsoever.

(41) It had come in the statement of the husband that he had an old car of 1972 model and had six acres of land near Delhi and income from that land was about Rs. 18,000.00 to 20,000.00 annually. This appears to be a reasonable figure of income from this extent of land. No other income of thehusband was really brought out on the record.

(42) In these circumstances, I am constrained to reverse the findings ofthe learned trial court that income of the wife was only Rs. 1,000.00 and/or that was of casual nature. I am also constrained to hold that wife has sufficient independent income for her support. In any case it is not established that her income is in any way less than the income of the husband. thereforee, when I consider the income of the wife separately or after pooling the income of the husband with the wife, no order for maintenance pendente-litecould have been granted to the respondent-wife. I would, accordingly,accept this revision petition and set aside the order of the trial court dated 22/12/1981 and dismiss the application of the wife filed by herhinder Section 24 of the Act.

(43) Unfortunately, there is no progress in the proceedings for divorce as the records were lying in this Court for the disposal of revision petition.Records should be sent back immediately and the parties are directed to appear before the trial court for further proceedings in the divorce petition on 16/01/1985.Application dismissed remanding the case.