

S.S. Bindra Vs. Tarvinder Kaur

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Court : Delhi

Decided On : May-31-2004

Reported in : AIR2004Delhi442; 112(2004)DLT813; II(2004)DMC297; (2004)138PLR33

Judge : Vikramajit Sen, J.

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

Appeal No. : CRP 233/2003

Appellant : S.S. Bindra

Respondent : Tarvinder Kaur

Advocate for Def. : R.C. Chopra, Adv.

Advocate for Pet/Ap. : Chetan Sharma, Sr. Adv. and; Vijayender Kumar, Adv

Disposition : Petition dismissed

Judgement :

Vikramajit Sen, J.

1. In divorce proceedings initiated by the Revisionist (Husband), the Respondent Wife had filed an application under Section 24 of the Hindu Marriage Act for the

grant of maintenance for herself and for her two minor children. By the impugned Order dated 31.1.2003, the Addl. District Judge has come to the conclusion that the Husband's statement of his salary being Rs. 29,000/- per month does not inspire confidence. The Addl. District Judge has kept in mind the Husbands own statement that he was spending a sum of Rs. 45,000/- per month on himself. It is the finding of the Trial Court that the Husband was drawing a sum of Rs. 1,30,000/- per month as salary. In order to enable the Wife and Children to live in the same status in which the Husband was living, the Trial Court has ordered the Husband to pay a sum of Rs. 75,000/- per month to the Respondent together with Rs. 1 Lakh towards litigation expenses. The Order has been assailed in the present Revision Petition.

2. A detailed hearing took place on February 28, 2003 on which date S.N. Kapoor, J passed the following Order:

(sic) Flying allowance at the rate of Rs. 1300/- per flying hour is supposed to be given. It come to Rs. 84,500/- per month. Seeing all other allowances the approximate figure of income of Rs. 1,30,000/- may be generally true but with variations here and there.

Supposing for the sake of argument if it is accepted that income would be around at Rs. 1,30,000/-, even then nearly 30% thereof would be required to be paid towards income tax. It would come to approximately Rs. 39,000/- per month. If this 39,000/- is deducted, then the actual gross salary in the hand of the petitioner would come to about Rs. 91,000/-. In such a circumstance, despite the fact the respondent is supposed to bring up two growing children of 13 and 11 years grant of maintenance at the rat of Rs. 75,000/- out of Rs. 91,000/- would not be justified by any stretch of imagination and thereforee the order is required to be modified.

In aforementioned circumstances for the present it would be appropriate to direct the Accounts Officer/Concerned Office of the Alliance Air, i.e. the employer of the petitioner disbursing the pay and allowance to the petitioner to issue a cheque in the name of the respondent at the rate of 60% of the remaining amount after deducting tax with effect from 1st March, 2003, to the petitioner keeping in view the personal and professional expenses which are likely to be incurred by the

petitioner while working on flying duties as well. This amount of 60% would include all payments which have to be made towards school fee of the children. The respondents shall get the maintenance accordingly. This order shall be effective from 1st March, 2003.

As regards the arrears the petitioner shall obtain a certificate from his previous employer of the amount received during the period earlier to 1st March, 2003. The petitioner shall clear the arrears of the last two months by way of demand draft in the name of the respondent. List for further directions on 28th April, 2003.

3. The Order was assailed, without success, before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 5668/2003. The Petition was dismissed as withdrawn on the statement of learned counsel for the Petitioner/Husband that certain points urged before the High Court were not considered and that the High Court would be approached. Mr. Sharma has placed reliance on the observations of the Apex Court in *Union of India and another Versus Sher Singh and others*, : AIR 1997 SC1796 to the effect that the dismissal of a Special Leave Petition without a speaking order does not constitute *res judicata*. The question before the Court is altogether different in that while the rigours of *res judicata* cannot be applied, the declining of leave by the Hon'ble Supreme Court would always remain of relevance. It is also indicative of the Petitioner's understanding that the order directing payment of maintenance at the rate of 60% with effect from 1.3.2003 had attained finality.

4. If the hearing of the Petition is to be considered afresh, I would be of the view that the Revision is not maintainable after the amendments carried out to Section 115 of the Civil Procedure Code, and the view expressed by the Apex Court in *Shiv Shakti Coop. Housing Society, Nagpur vs . Swaraj Developers and Others*, : [2003]3SCR762 and in *Surya Dev Rai Versus Ram Chander Rai and other*, : AIR 2003 SC3044 .

5. However, I find no reason to disagree with the Order passed by S.N. Kapoor, J. on 28.2.2003. By that Order so far as the question of payment of 60% of the pay and allowances of the Petitioner to the Wife and Children is concerned, it had intended to be imparted finality. The said Order has been made effective from 1st

March, 2003 and therefore the only question that remained pertained to arrears. It was in this context that a Certificate from the Husband's employer for the period earlier to 1st March, 2003 had been called for.

6. Mr. Sharma, learned Senior Counsel for the Petitioner has contended with vehemence that the exposition of the law as contained in *Jasbir Kaur Sehgal (Smt.) Versus District Judge, Dehradun and others*, : AIR 1997 SC3397 has not been given effect to in the impugned Order but this is not so. I had occasion to consider this very point in *Annurita Vohra Versus Sandeep Vohra*, 2004 (3) AD 253 and had concluded that after taking into account compulsory deductions from the salary, the remaining income should be divided equally between all the family members entitled to maintenance, with one extra portion/share being allotted to the earning spouse solely since extra expenses would necessarily occur. I find no reason to change that view. It is this approach that obviously had already been favored and preferred by S.N. Kapoor, J in Order dated 28.2.2003, since if the formula in Vohra's case (supra) were to be applied today, the Husband would be entitled to retain only 40%.

7. I also cannot agree with the understanding of learned counsel for the Husband that a learned Single Judge of this Court in *K. Lalchandani Versus Smt. Meenu Lalchandani*, : 68(1997)DLT712 intended to give a very precise and restricted meaning to the words 'same standards of living which they enjoyed till the date of separation.' The syntax must be appreciated, and once this is done, it will be evident that what the learned Judge had conveyed was that an endeavor should be made to put to dependents almost at the same position that they would have enjoyed had there been no separation between spouses. The intention was not peg it or freeze it to the date of separation.

8. Before departing from this aspect of the case, the argument of Mr. Sharma that maintenance must be pegged to the income of the earning spouse at the time of the severance needs to be reflected upon. The contention is that the Petitioner was employed in the Indian Air Force and for the substantial period within which the parties remained as a family unit, the income was much less than what the Petitioner is presently earning. Mr. Sharma would, therefore, have this Court hold

that the Wife and Children are at best entitled to live in a life style commensurate with the Husband's income while he was an Air Force Officer. I cannot accept this argument. Firstly even whilst the parties were together, the Husband was in private employment and drawing a much larger salary than what was being received by him as an Air Force officer. In this period of about one year, he was employed as a pilot with Jagson Airlines Limited. Secondly, in my opinion there is a basic fallacy in the arguments on behalf of the Husband in that if interim Orders are to be pegged to a particular point in time, then if the income of the earning spouse were to suffer a drastic reduction for any reason including a deterioration in his/her health, the Court would be precluded from making any adjustment because of these factors while granting interim maintenance. In other words, a person may be earning Rs. 30,000/- per month at the time when the family suffers a severance and may, therefore, be liable to payment of half or 1/3rd of salary as the case may be. Subsequently if his salary were to go down, there can be no gainsaying that the Court would not grant interim maintenance on the earlier earning. It is trite to state that dependents of a Husband are entitled to live in accordance with his status. If this fluctuates upwards or downwards depending on his income, the interim orders should ordinarily be reviewed. The vicissitudes of family income must always be translated and infused into orders granting interim maintenance. The possible fluctuations in the fortunes of the Husband have in substantial measure, been permanently rooted out and eradicated by S.N. Kapoor, J. in that his Lordship had ordered 60% of the net salary to be paid to the Wife and two Children and not a fixed figure. I find no reason to depart from the Orders dated 28th February, 2003.

9. The next contention of Mr. Sharma is that the Addl. District Judge has granted almost double of what the Wife had prayed for in the application under Section 24 of the Hindu Marriage Act. Whereas, she had prayed for Rs. 30,000/-, more than double that amount has been ordered. Similarly, whereas Rs. 33,000/- had been prayed for towards litigation expenses, Rs. 1 lac has been ordered. So far as the latter question is concerned, the litigation expenses has been reduced to Rs. 50,000/- and I find no justification to vary that part of the Order. In respect of the maintenance, it must again be borne in mind that the claim is relative to the income of the earning spouse. In the present case, the income of the Husband has

increased manifold. Proceedings under Section 24 of the Hindu Marriage Act are essentially interlocutory in nature. The normal expectation is that an application would be decided within one month of its being filed. This, however, is an impossibility keeping in perspective the present strength of Judicial Officers. It would be unfair, therefore, to restrict a prayer for maintenance in a mindless manner to what has been made not just several months but years earlier Orders should be passed keeping the present in perspective and with a view to bringing about justice between the parties. The Court does not grant exactly what is prayed for, but usually much less. By that very yardstick it is not precluded to grant more, if the circumstances call for it.

10. This Court need not calculate the arrears of maintenance, since it has been ordered that 60% should be paid by the Husband as maintenance. This exercise should be completed by the Trial Court. If the Petitioner/Husband is in arrears of maintenance the divorce proceedings would not proceed, and may eventually be adjourned sine die or be dismissed as the case may be. This exercise could then be undertaken by the Executing Court.

11 The Petition is devoid of merit and is dismissed.