

Sushmita Ghosh Vs. G.C. Ghosh

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SooperKanoon Citation : sooperkanoon.com/699418

Court : Delhi

Decided On : Sep-04-1998

Reported in : 1998VIAD(Delhi)91; 4(1998)CLT313; 75(1998)DLT420; 1999(48)DRJ161

Judge : Dalveer Bhandari, J.

Acts : Hindu Adoption and Maintenance Act, 1956 - Sections 18; [Code of Civil Procedure \(CPC\), 1908](#) - Order XXXIII, Rules 2 & 3

Appeal No. : Suit No. 412 of 1993

Appellant : Sushmita Ghosh

Respondent : G.C. Ghosh

Advocate for Def. : Mr. R.M. Tufail, Adv.

Advocate for Pet/Ap. : Mr. Y.P. Narula, Adv

Judgement :

ORDER

Dalveer Bhandari, J.

1. The plaintiff filed a suit under Section 18 of the Hindu Adoption and Maintenance Act, 1956 for maintenance and separate residence. Along with the

suit, the plaintiff had also filed an application under Order 33 Rules 2 and 3 by which a leave of the Court was sought to sue the defendant as an indigent person. This Court by an order dated 30.1.1995, on consideration of all the relevant facts and circumstances, permitted the plaintiff to sue the defendant as an indigent person because the Court was convinced that she is not in a position to pay the requisite court fees.

2. In the plaint, it is mentioned that the plaintiff was married to the defendant according to Hindu Rights and Ceremonies on 10th May, 1984 at Calcutta. The marriage between the parties was an arranged marriage. No child was born out of the wedlock.

3. It is stated that though the plaintiff is an educated person yet she has remained a house wife and never worked. The defendant is a highly qualified engineer and possesses a degree of Bachelors of Engineering and Masters of Business Administration. It is also mentioned that the defendant is a Managing Director and a partner of the firm Scafform Hi - Tec. The said firm has only one other partner Mr. T.K. Ghosh. The firm is engaged in the business of making scaffolding. It is also mentioned in the plaint that the defendant is also a Director of the company called Hi-Tech Scafform Private Limited which is carrying on the business of scaffolding at H-1502, Chittaranjan Park, New Delhi. The said company is a private limited company consisting of three Directors including the defendant who is one of the promoters of the said company and has a controlling interest in the said company. The said company carried on business of construction.

4. It is also incorporated in the plaint that apart from the above mentioned company, the defendant had opened a proprietorship firm in the name and style of M/s scafform International in October, 1992. The Income from these firms is as under:

1) Scafform Hi Tech) 20,000/-
2) Hi Tech Scafform) plus Private Limited) 10,000/-
approx
3) Scafform Inter- : Not known national

5. It is also mentioned in the plaint that the defendant also gets dividends and profit of about Rs.2.5 lakhs per annum from the said companies/firms. In the plaint

it is mentioned that the defendant has ancestral property including a house and land in Village Nirsha Chatti, District, Dhanbad, Bihar. The plaintiff expressed that she is not aware about the fixed deposits, shares and other properties of the defendant. According to the plaintiff, the defendant has business with large construction companies like Ansals, Continental Constructions, Som Dutt Builders, D.L.F., etc. It is also mentioned that the defendant has also constructed buildings/houses for the D.L.F. and Qutub Enclave at Gurgaon and at Kailash Colony, New Delhi.

6. Immediately, after the marriage of the plaintiff with the defendant, they resided together at various places at Delhi and lastly at 7, Bank Enclave, Laxmi Nagar, Delhi for the past one year. The defendant took the said house on lease dated 10.12.1991 from Kusum Khurana on behalf of M/s Hi-Tech Scafform (P) Ltd. for a period of 36 months. The defendant, however, abandoned and deserted the plaintiff in July, 1992 because he developed intimate relations with a lady named Vanita Gupta with whom he subsequently got married to after conversion into Islam religion with the malafide intention of marrying for the second time.

7. In the plaint, the plaintiff has incorporated that after the marriage of the plaintiff and the defendant they lived a normal life till February, 1992. In February, 1992, the plaintiff went to her parental home, Calcutta for a holiday and came back on or around 17.4.1992. During her stay in Calcutta, she was asked by the defendant to return by 31.3.1992. The plaintiff, however, told the defendant that as per Bengali Custom she could not travel in the month of Chaitra. The defendant got quite angry and threatened the plaintiff that if she would not come by 31.3.1992 she would face dire consequences. The plaintiff returned as soon as she could travel to Delhi. Thereafter, the defendant started harassing the plaintiff by constantly asking her for a divorce by mutual consent. The plaintiff was totally shocked and astonished by the defendant's behavior and did not know what had happened to the defendant. The plaintiff later on came to know that the defendant had developed intimate relations with Ms Vanita Gupta.

8. In the end of May, 1992, the plaintiff at the behest of the defendant and his family went to Calcutta for seven days to attend a cousin's wedding. The plaintiff

had a confirmed return ticket to Delhi on 1.6.1992. On the mid-night of 29th May, 1992, however, while the plaintiff was still in Calcutta, the Defendant rang her up and told her that all her belongings were being sent by train to Calcutta and she need not come back to the matrimonial home in Delhi. The plaintiff was extremely upset and shocked by the defendant's unusual behavior and sent a letter by speed post asking him why he had said so. Thereafter, when the defendant did not reply for a long time. The plaintiff Along with her father and Aunt came to Delhi. On her arrival at the matrimonial home the defendant started screaming and shouting at the plaintiff and thereafter kept on constantly harassing the plaintiff and telling her to pack her bags and leave. The defendant also threatened the plaintiff's father that if the plaintiff was not immediately taken away he would be responsible for any fatal harm that would be caused to her.

9. Around 1st July, 1992, the defendant told the plaintiff that it would be in her interest to agree to a divorce by mutual consent as he had converted himself to Islam. The defendant showed the plaintiff a certificate of conversion. The defendant told the plaintiff that he was going to get married in the second week of July, 1992 with Ms Vanita Gupta for the second time. The plaintiff's father and Aunt tried to talk to the defendant but the defendant refused to pay any attention to their advice. Thereafter, on 21.7.1992, the defendant left the matrimonial home Along with her parents and deserted the plaintiff.

10. On or about 2nd week of July, 1992, the defendant surreptitiously filed a petition for divorce in the court of Shri J.D. Kapoor, A.D.J. The notice of the said divorce petition was sent to the plaintiff's parental home in Calcutta instead of matrimonial home in Delhi where the plaintiff was in fact residing at that time to the knowledge of the defendant. The said petition was listed on 19.8.1992 and thereafter on 15.9.1992, the plaintiff filed an application of maintenance under Section 24 of the Hindu marriage Act. On 3rd September, 1992, the defendant got married to Ms Vanita Gupta and started living with her at C-71, Takshila partment, 57, Patparganj, Delhi. It is also mentioned that the defendant wrote a false letter to the landlord that he was transferred from Delhi and he wanted to vacate the premises and he wanted a refund of the security deposit amount of Rs.27,000/-.

11. It is also mentioned in the plaint that the Imam, Maulana Qari Mohammad Idris after investigation found that the defendant had hidden and misrepresented the facts and accordingly, cancelled the conversion by issuing the FATWA. It is mentioned in the plaint that the plaintiff is totally dependant on the defendant for food, shelter and day to day requirements. The plaintiff has always been a house wife. The defendant has no other dependants except the plaintiff. The plaintiff has prayed that she is entitled to a maintenance of at least Rs.12,000/- per month in order to live in the same status as the defendant. It is also mentioned that the defendant is an affluent businessman and maintains a high standard of living. He owns a lot of movable properties including a deluxe Maruti van.

12. It is mentioned that the plaintiff and the defendant last resided together at Delhi where the cause of action arose. The defendant worked for gain in Delhi and hence this Court has jurisdiction to try this suit. The plaintiff has valued the suit for the purpose of court fee and jurisdiction at Rs.14,40,000/-.

13. In the written statement, the defendant admitted about their marriage on 10.5.1984 and it is also mentioned that they were living happily and there was no complaint of any kind. It is also mentioned that for a long period the defendant had an inclination towards Islam, therefore, he decided to convert and embraced Islam.

14. It is also mentioned in the written statement that the defendant offered the plaintiff to embrace Islam religion but when the plaintiff refused to do so, the defendant married another woman and started living with her. On 27.5.1993 a son was born out of the new wedlock. It is mentioned that all belongings of the defendant and his father remained with her and they were not allowed to take away all their belongings and his father had to file a petition under Section 406 IPC in Criminal Court, Shahdara, Delhi.

15. The defendant has mentioned that he is staying in a two bedroom set Along with his second wife and her two daughters of his parents, while the plaintiff is alone, staying in a palatial bungalow. It is mentioned that the defendant's business had been completely ruined and he is now trying to manage his day to day affairs. The defendant has also complained that the plaintiff has dragged him in the

litigation. In the written statement, the defendant has not denied that the plaintiff is a house wife and the defendant possesses a degree of BE and MBA and is carrying on his own business in Delhi. However, it is denied that the defendant is a Managing Director and a partner of the firm Hi-Tech. It is also denied that the defendant is a Director of M/s Hi-Tech Scafform (P) Limited. It is complained that the defendant was thrown out of his house, i.e., 7, Bank Enclave and he was not allowed to take his complete belongings. It is mentioned that since November, 1992, the defendant is jobless and is trying to get a suitable job in Delhi. It is admitted that the defendant opened a proprietorship firm in the name and style of M/s Scafform International Capital invested by the employees themselves and the employees are also the partners of the firm. The fact that the defendant is earning lakhs of rupees from the said firm is denied and it is mentioned that the defendant is facing a great financial crisis.

16. The defendant had denied the fact that he was harassing the plaintiff by asking her for a divorce by mutual consent. It is mentioned that the plaintiff was staying for most of the time in Calcutta. therefore, the notice was sent to Calcutta. It is mentioned in the written statement that the plaintiff is M.A. in History and can get a suitable job anywhere and her parents are also quite well to do. It is denied that the defendant is a rich businessman and maintains a high standard of living. As a matter of fact, the defendant's business has totally collapsed and he is at the mercy of his father and other well-wishers. It is also denied that the plaintiff cannot pay the court fees.

17. On the pleadings of the parties on 17.2.1995, the following issues were framed:

'1. To what amount the plaintiff is entitled to recover by way of maintenance from the defendant? OPP.

2. Relief.'

18. The Court mentioned that from the pleadings of the parties neither any other issue arose nor claimed. No issue has been framed on the relief claimed by the plaintiff for a separate residence. The question as to what arrangements be made

to provide separate residence to the plaintiff will be considered while deciding the suit and granting relief to the plaintiff, if she is otherwise entitled.

19. The Court directed the parties to lead evidence by way of affidavit and liberty was reserved to the parties to tender the deponents for the purpose of cross examination.. Both the plaintiff and defendant have filed their affidavits and they were cross examined.

20. The plaintiff filed her evidence by way of affidavit on 17.1.1994. She has reiterated the averments which she had mentioned in the plaint. It is mentioned in the affidavit that the defendant told her that he is a partner of the firm Scafform Hitech and is a Director of a private limited company known as M/s Hitech Private Limited. The defendant earns about Rs.20,000/- per month. He also told her that in addition to his income of Rs.20,000/- he was getting perquisites of Rs.10,000/- per month. In addition to said monthly income, the defendant also had a share in the profit of the said company and firm and his dividend income is Rs.2.5 lakhs per annum. It is also mentioned that the books of accounts and other documents related to the said business of the defendant are in his possession and the defendant is liable to produce the same. It may be pertinent to mention that the defendant did not produce any document regarding his business income. It is further mentioned that from the proprietorship firm M/s Scafform International in Delhi, the defendant earns around Rs.35,000/- per month. The proprietor has opened two branches; one in Calcutta and another in Goa. It is mentioned that the defendant has a lavish style of living. It is mentioned that the defendant purchased a car on hire purchase besides that he pays Rs.4,500/- towards rent per month only. The defendant pays the school and tuition fees of the two daughters of Vanita (his second wife) and has huge petrol expenses. The defendant has telephone No. 2208526 and office telephone No. 2226166 and various electric and electronic facilities like TV, Refrigerator, V.C.R. and his house is lavishly furnished. It is mentioned that the defendant is spending Rs.10,000/- only on food. The defendant had admitted Vanita's daughter Anjali to Queen Mary's School and is giving a large sum of money to get admission in the said school. It is mentioned that the defendant has earned about Rs.14 lakhs from Uni Tech during the last one year and Rs.4 lakhs from the other two companies. The defendant has six

bank accounts in various banks, details of those have been given.

21. In the affidavit she has sought at least Rs.12,000/- per month for day to day expenses and a separate residence. She has given the break up of the said expenses which is set out as under:

Food : Rs. 4,000 per month

Clothing (including

summer and winter) : Rs. 500 per month

Medical expenses : Rs. 2,000 per month

Domestic help : Rs. 1,800 per month

Conveyance : Rs. 1,000 per month

Telephone : Rs. 350 per month

Electricity : Rs. 400 per month

Water charges : Rs. 50 per month

House hold furnishing : Rs. 100 per month

Miscellaneous & other

out of pocket expenses : Rs. 1,800 per month

TOTAL : Rs. 12,000 per month

22. It is mentioned that the defendant be directed to pay the house rent of the premises in which she was living separately, as she was entitled to live in the circumstances of the case. It is mentioned that the defendant's father is a retired

Central Government servant and he gets pension besides this he earns from a large number of equity shares, etc. in number of companies like UTI. It is also mentioned that the defendant's father Along with his wife has ancestral property including the house and land in GT Road in Nirsha Chatti, District Dhanbad, Bihar. Half of the big house has been rented which fetches about Rs.1,000/- per month.

23. The plaintiff was cross examined at length by the learned counsel for the defendant. In the cross examination, she reiterated that the defendant told the plaintiff that his annual profits from the partnership firm were to the extent of Rs.2.275 lakhs per year. She mentioned in the cross examination that she was getting Rs.1,500/- from the defendant. He mentioned that he was paying to the plaintiff the said amount only to save the tax. She further stated in the cross examination that from the proprietorship firm Scafform International, the defendant was earning Rs.35,000/- per month. This information is based on a reliable source. She could not remember who gave her this information. Though she could not also remember the date and the time but indicated that this information was given to her sometime after 1992. She further mentioned in the cross examination that she has come to know about the proprietorship concern having branches at Calcutta and Goa from the advertisements which were inserted by the defendant in the Supreme Court Souvenir.

24. She mentioned that her father-in-law had left on his own and she never turned her father-in-law and mother-in-law out of the house as alleged. She mentioned in the cross examination that her father in law had taken away all his personal belongings from his personal almirah, including the gas and TV Set. She further mentioned that it is wrong to suggest that the defendant could only take the clothes in the suitcase.

25. The plaintiff had admitted that the telephone was installed at her residence by her father which he managed from the MP quota. She also admitted that she had operated a bank locker Along with the defendant on 2.7.1992 but she denied that she took away jewellery, cash, share certificates and that nothing was left in the locker. In fact she was taken to the bank locker because the defendant wanted some amount for his business. The defendant took gold ornaments lying in the

locker. In the cross examination she stated that she has a brother, and his parents. She denied that she made any complaint against the defendant in the sales tax department. In the cross examination, she reiterated that as on the date when she filed the petition, the income of the defendant must have been between Rs. 35,000/- and Rs. 40,000/- per month.

26. The defendant filed evidence by way of affidavit on 4th ebruary, 1994. He has reiterated the averments mentioned in his written statement. He mentioned that the plaintiff did not take the marriage seriously and she used to spend most of the time with her parents in Calcutta. She used to come to Delhi only to take money from the defendant. The longest stay in Delhi was for a period of three months.

27. The defendant also mentioned that the plaintiff never wanted to become a mother and the marriage could be consummated nearly after four and a half years of their marriage. It is mentioned that the plaintiff never behaved like a good wife and could never prove to be a good companion to the defendant. The defendant asserted that he cannot be compelled to pay rent of the house occupied by the plaintiff.

28. The defendant was cross examined by the counsel for the plaintiff. In the cross examination, he has denied that he had ever fabricated the account by showing his income as Rs.10,000/- for the year 1994-95 and Rs.28,000/- for the years 1992-93 and Rs.66,000 for the year 1993-94. He had admitted in the cross examination that he filed applications DW1/A and DW1/B before the trial court for going abroad.

29. The plaintiff filed documents pertaining to current account of the Central Bank of India. He had filed both photocopies and certified copies. Formal proof of the certified copies was dispensed with because the counsel for the defendant admitted genuineness of the documents. Accordingly the documents were marked as Exhibit P(A) and Exhibit P(B).

30. In the statement of the defendant dated 1.10.1995, he had mentioned that he was working as a sole proprietor of the concern which is in the business of fabrication and steel boarding prior to 1992. He had a partnership firm in the name

of M/s Scafform HiTech. The firm was dissolved on 1.10.1991. He also admitted that he was a Director in the Hi-Tec Scafform Company. He also asserted that the partnership firm had losses. The loan of Rs.50,000/- was given by the firm to the defendant which was not repaid but the firm did not file any suit against the defendant for recovery. He further mentioned that he had taken the factory from Kulbir Singh on a rent of Rs.2,000/- which was enhanced to Rs.4,000/-. The rent is shared by him and one Govardhan. He mentioned in the statement that the largest order executed by him was amounting to Rs.32 lakhs in 1993. He also mentioned that he had executed orders which are in the range of Rs.3 lakhs to Rs.5 lakhs. He also admitted that he had purchased a car, Maruti Van. He also has a telephone at his residence but the same was got disconnected because of non payment. It is mentioned that he pays rent of Rs.4,000/- per month. He has mentioned that he has five fixed employees apart from labourers numbering around 20. He further mentioned that he paid to his foreman Rs.3,000/- per month. At the time the jobs are being executed the wage bill works to Rs.40,000/- to Rs.45,000/- per month. He has mentioned that he has seven welding machines and all are locally manufactured costing Rs.5,000/- or so.

31. In the applications DW1/A and DW1/B filed by the defendant for going abroad, it is clearly stated that he possesses immovable as well as immovable property.

32. Mr. Y.P. Narula and Mr. R.M. Tufail, learned counsel for the parties argued the case at length and also considered the judgments cited at the bar. Mr. Tufail particularly placed reliance on the following judgments:

1. Sunil Mehra v. Baby Rashmi Mehra & Others (1997) DMC 149 (DB)].
2. Kulbhushan Kumar Vs . Raj Kumari & Another : [1971]2SCR672 .
3. Bhagwan Dutt Vs . Kamla Devi and Another : 1975 CriLJ40 .

After hearing the learned counsel for the parties at length and perusing the pleadings of the parties and their evidence some conclusions are irresistible :

1. The defendant in order to get married to Vanita Gupta converted himself into Islam religion.

2. The plaintiff possesses a degree of M.A. in History. She is a house wife and she has never worked.

3. The plaintiff has some financial support from her father and perhaps she has been able to maintain herself because of that financial support. From the defendant she was getting only Rs.2,000/- per month. In *Kulbhushan Kumar Vs . Rajkumari*; : [1971]2SCR672 their Lordships of the Supreme Court observed that 'Even if the wife received some amounts from her father regularly, it was a bounty and not her income. therefore, it could not be taken into account under Section 23(2)(d) of the Act in determining the amount of maintenance.

4. The defendant is a highly qualified businessman with BE and MBA degrees. He has a fairly large business.

5. According to the defendant he is paying rent of Rs.4,000/- per month for his apartment.

6. The defendant is having a telephone at his residence.

7. The defendant has also purchased a maruti van and maintain ing the same.

8. The defendant is also bearing expenses of education of two daughters of his second wife who are studying in the private English Medium School.

9. The defendant is paying Rs.2,000/- per month as his share of the rent of the factory premises.

33. In view of clear position of law and according to Section 18 of the Hindu Adoption and Maintenance Act, 1956, a Hindu wife is entitled to maintenance etc. The said Section is set out as under:

'18. Maintenance of wife.:

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance -

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully, neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

34. According to the provisions of the Hindu Adoption and Maintenance Act, 1956, the plaintiff is clearly entitled to maintenance and separate residence. Even on the admission of the defendant he has ceased to be a Hindu by conversion to Islam religion.

35. No separate issue was framed but the Court indicated in the order that the question as to what arrangements be made to provide separate residence to the plaintiff will be considered at the time of deciding the suit.

36. It can be concluded without any fear of contradiction that the defendant is leading a fairly comfortable life. He maintains a car and has a telephone. According to him he pays Rs. 4,000/- towards the rent alone which is disputed by the plaintiff. According to her he is paying between Rs.15,000/- as Rs.20,000/- rent

per month. The defendant did not file lease deed despite opportunity was granted to him. His share of rent of factory premises according to him is Rs. 2,000/-. Two daughters of the second wife of the defendant are studying in private English Medium Schools. The entire expenses are also borne by the defendant. The defendant is also maintaining his parents. All the expenses cumulatively demonstrate that the defendant has fairly good income. The total income of the defendant should be at least Rs.30,000/- per month. In this view of the matter, the plaintiff in my considered opinion is entitled to a reasonable standard of living.

37. On consideration of the totality of the facts and circumstances of this case, the plaintiff is entitled to maintenance. She is also entitled to a separate residence. After balancing the equities, in my considered opinion, the plaintiff is entitled to Rs.5,500/- per month towards maintenance and Rs.2,000/- per month towards her separate residence. The plaintiff cumulatively shall be entitled to Rs.7,500/- per month from the date of the institution of the suit. The defendant had been paying Rs.2,000/- as interim maintenance per month to the plaintiff for some time (in view of the order of the court). The defendant shall be entitled to deduct from the total balance amount to be paid to the plaintiff. There shall be an escalation clause and according to that the plaintiff shall be further entitled to 12% increase after every three years towards the maintenance and separate residence from the date of this order, i.e., 4.9.1998.

38. The entire outstanding amount shall be paid by the defendant to the plaintiff within two months from today otherwise, the plaintiff shall be entitled to the interest on this amount at the rate of 18 % per annum after expiry of two months. The future amount towards maintenance and separate residence shall be paid by the defendant to the plaintiff on or before 10th of every calendar month.

39. The suit filed by the plaintiff is decreed with costs in the aforesaid terms. The registry is directed to prepare the decree in aforesaid terms.