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Court : Delhi

Decided On : Sep-01-1997

Reported in : 1997VIAD(Delhi)846; 70(1997)DLT764; 1997(43)DRJ790

Judge : Manmohan Sarin, J.

Acts : Hindu Marriage Act, 1955 - Sections 25

Appeal No. : Civil Revision Appeal Nos. 406 and 527 of 1997

Appellant : Pominder Kumar Chhabra

Respondent : Asha Devi

Advocate for Pet/Ap. : Geeta Luthra, Adv

Judgement :

Manmohan Sarin, J.

(1) By this common order, I would be disposing of civil revision Nos. 406/97 and 527/97, filed by the petitioner/husband. The first revision is directed against order dated 2.1.1997, passed by the learned Additional District Judge, granting Rs. 1500.00 per month as maintenance and Rs. 4,000.00 as litigation expenses, on an application moved by the respondent/wife under Section 24 of the Hindu Marriage Act. The petitioner preferred a review application against the order dated 2.1.1997. which was dismissed by the Additional District Judge vide order dated 27.3.1997.

The petitioner has preferred civil revision No.527/97 against the order dated 27.3.1997, dismissing the review application.

(2) The factual matrix of the case may be briefly noted:-

(I)The petitioner/husband filed a petition for divorce under Section 13 of the Hindu Marriage Act. The respondent/wife in the application for grant of maintenance averred that the petitioner / husband was engaged in business. He was running a chemist shop by the name and style of M/s Chhabra Medicos, at shop No.9, Sector 7, Dda market, Rohini. The petitioner was stated to be earning about Rs. 6,000.00 per month. It was averred that the petitioner owned one Mig flat No. 5, Sector 13, Navshakti Sadan, Rohini Delhi. The petitioner's father was employed as Superintendent in a Government School. There were only four members in the family including the petitioner viz, parents of the petitioner, his younger brother and the petitioner himself. The petitioner's brother was said to be owning a separate flat No. 73, Sector 13, Navshakti Sadan, Rohini, Delhi. Father of the petitioner was said to be having independent income from salary and the petitioner had no liability apart from maintaining the respondent/wife, who was having no source of income.

THE petitioner in the reply affidavit controverter the said averments, stating that he was only one of the three partners in the chemist shop and his income there from was only Rs. 2,000.00 per month. Flat No. 5, Sector 13, Navshakti Sadan, Rohini, Delhi, though in the name of the petitioner, actually belonged to his father. The price of the same had been paid by the petitioner's, father. The petitioner admits having sold the said flat on 20.10.1995 for a total consideration of Rs. 1,90,000.00 . He paid to his father Rs. 1,35,000.00 by cheque and Rs. 40,000.00 in cash. The respondent/wife claims that the market value of the said flat was not less than Rs. 10 lacs and the said sum would be available with the petitioner/husband. It was claimed that even if it is assumed that the petitioner gave a sum of Rs. 1,75,000.00 to his father, he would still have the balance amount with him. The petitioner also alleges that he had given Rs. 40,000.00 to the respondent/wife on 4.8.1994, who had taken the money to enable her father to construct a second floor in their house. Petitioner claims that the same has not been returned by the respondent/wife and her father. This of course, is denied by respondent/wife. Respondent / wife claimed that the sale was made after the notice of the application under Section 24 of the Hindu Marriage Act, had been received by petitioner. It was with a view to defeat the respondent / wife's claim for maintenance.

(3) As regards the chemist shop , petitioner claims to be a partner Along with his brother and mother. His share being only one third. This is disputed by respondent/wife, who claims that the petitioner has half share in the shop. Mother's share is only to have tax benefit. Petitioner claims that the business of the chemist shop did not prosper as expected, since the proposed hospital at AmbedKar Nagar did not come up and become functional. As a result of the complaint lodged by respondent the petitioner's father was suspended and ultimately retired from service. Petitioner says that respondent is a post graduate and B.Ed. she is earning about Rs 4,000.00 .00 per month from private tuitions etc.

(4) The learned Additional District Judge in the impugned order dated 2.1.1997, held that the petitioner had failed to bring forth any evidence to show any income of the respondent/wife. Merely because she had the capacity to earn was not a ground to debar her from maintenance . The learned Additional District Judge also held that the petitioner had not filed any documents to show income from his business but had only admitted Rs. 2,000.00 per month as his share. Petitioner had failed to come out with truth about his correct income and status. The transfer of the flat was held to be a fraudulent one and with a view to avoid liability for maintenance. The learned Additional District Judge also observed that value of the flat was much higher. In these circumstances, he accepted the averment of the wife that the petitioner's income was Rs. 6,000.00 per month and, accordingly, awarded Rs. 1500 per month as maintenance.

(5) The petitioner has Along with the review application, filed the balance sheets in respect of income from the shop, which showed that the income of the three partners was less than Rs. 6,000.00 per month. Further that there was no necessity for a sale tax registration, since the annual sales were less than Rs.

2.5.lacs. The learned Additional District Judge dismissed the review application holding that the court while passing the impugned order had taken into consideration all relevant facts. The documents, which were filed with the review petition which were very much in the possession of the petitioner and no Explanationn was forthcoming as to why these were not filed earlier. It was further held that the income of the petitioner from the chemist shop was taken at Rs. 2,000.00 per month. The arguments with regard to the flat being benami property had been raised earlier. Finding no ground for review, the said application was dismissed with cost of Rs.1500.00 .

(6) Learned counsel for the petitioner, Ms. Geeta Luthra, has been heard at length in support of the revision petitions. She has painstakingly referred to the balance sheets and the documents filed in support of her contentions that the profit of the chemist shop for the year ending 31st March, 1996 was Rs. 647.68 and for the year ending 31st January, 1997 was Rs. 30,086.50. From the balance sheets, it is also noticed that apart from the aforesaid figures of net profit, there were withdrawals of Rs. 24,000.00 and Rs. 20,000.00 for house expenditure. It is submitted by her that maintenance awarded to the wife, thereforee, on the basis of the husband's income should have been in the range of Rs. 400.00 to Rs. 500.00 or at best Rs. 750.00 per month. It is not disputed before me that the petitioner lives in the house at Sohanganj with his parents and the business of the chemist shop is in the nature of the family business. The argument of the learned counsel for the petitioner is that the learned Additional District Judge grievously erred in fixing the maintenance taking into account the immovable property viz, flat No. 5 Sector 13, Navshakti Sadan, Rohini, Delhi. Reliance in this regard is placed on Gita Chatterjee Vs . Probhat Kumar Chatterjee : AIR1988 Cal83 , wherein it was held that the word 'income' under Section 24 of the Hindu Marriage Act, did not include capital assets like lands and hereditaments. It included only returns accruing from those assets. Further, the observation in the impugned order holding that 'the petitioner had returned the sum of Rs. 40,000.00 to his father, which had been taken as loan for constructing the second floor,' 'was also assailed as an error apparent on the face of the record, since the petitioner's case was that the said sum had been given to the respondent to enable her father to construct the second floor of their house. This, it was argued demonstrated non- application

of mind by the learned Additional District Judge.

(7) Considering the pleadings and material on record, in my view, the learned Additional District Judge was fully justified in passing the impugned order. The plea of the petitioner that the immovable property or the assets could not be taken into account is mis-conceived in as much as in the instant case, the said asset had been liquidated and the amount was available to the petitioner. The finding and observations of the learned Additional District that 'having regard to the prevailing prices of property in Delhi, the actual value of the property could have been much higher as against the disclosed sale consideration of only Rs. 1,90,000.00 , for a Dda flat in Rohini, cannot be faulted with. In any case , upon liquidation of the said asset, the sale proceeds of Rs.1,90,000/ -or Rs. 10 lacs as claimed by respondent were available and can safely be presumed to be yielding returns in the absence of anything to the contrary. The sale of the flat after receipt of notice of application for maintenance and alleged payment of the sale consideration to petitioner's father can be viewed as a machination to avoid the liability for payment of maintenance. Considering the attendant circumstances, viz, petitioner staying with his parents in the same house, petitioner claiming to have paid Rs. 1,75,000.00 to his to his father, the withdrawals from the firm M/s. Chhabra Medicos for house expenses, it would appear that the income is being pooled in for the benefit of the family. The impugned order awarding Rs.1500.00 per month as maintenance in such circumstances cannot be said to be unreasonable or vitiated with material irregularity.

(8) The error in the impugned order mentioning Rs. 40,000.00 as having been returned to the petitioner's father and not to the respondent's father is not of much consequence. In any case, it even demonstrates, if the petitioner is to be believed that even in the year 1994, petitioner had ready cash of Rs. 40,000.00 available with him to be lent to the respondent or her father. The petitioner has also failed to give any Explanationn as for non- production of the documents and the record which was in his possession. I find no infirmity or material irregularity in the impugned orders dated 2.1.1997 and 27.3.1997, calling for interference in the revisional jurisdiction. Revision petitions are, accordingly, dismissed.