

**Prem Kankhedia and ors. Vs. Rajinder Kumar Kankhedia**

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**Court :** Delhi

**Decided On :** Jan-24-1994

**Reported in :** 1994IAD(Delhi)550; 53(1994)DLT587

**Judge :** J.K. Mehra, J.

**Acts :** Hindu Adoption and Maintenance Act, 1956 - Sections 18; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 125

**Appeal No. :** Suit No. 1851 of 1992

**Appellant :** Prem Kankhedia and ors.

**Respondent :** Rajinder Kumar Kankhedia

**Advocate for Pet/Ap. :** M.M. Kalra, Adv

**Judgement :**

**J.K. Mehra, J.**

(1) This is a suit filed by the wife and two minor children of the defendant for maintenance under Sections 18 and 20 of Hindu Adoption and Maintenance Act, 1950. Summons of the suit were served on the defendant, but he has not entered any appearance despite service and was proceeded against ex-parte on 25.8.1993. Ex-parte evidence was led on affidavits.

(2) From the evidence, I find that plaintiff No. 1 was married to the defendant at Delhi on 5th March, 1981 according to Hindu rites and customs and that plaintiffs No. 2 and 3 were born out of the wedlock between plaintiff No. 1 and the defendant on 3rd March, 1982 and 17th October, 1984 respectively. Plaintiffs No. 2 and 3 are study ing in Rose and Rose School in Jaipur. At the institution of the suit, they were studying in classes Vi and lii respectively. The defendant is employed with the State Bank of Bikaner and Jaipur at Shashtri Nagar Branch, Jaipur in Rajasthan. As per the statement of salary and allowances for July, 1993, which has been filed in the Court along with the plaintiff's evidence, the defendant is currently drawing a gross salary of Rs. 7399.17 inclusive of all allowances. Out of that, the deduction on account of subscription to the provident fund comes to Rs. 366 and income tax as Rs. 600 p.m. and Rs. 458.50 on account of insurance premium. There is also a deduction being made from his salary of Rs. 500 p.m. towards payment of provident fund loan and another sum of Rs. 350 p.m. towards the repayment of other loans which he had taken from the office. The defendant had taken another loan, known as conveyance loan for acquiring a two-wheeler conveyance towards the repayment whereof a sum of Rs. 450 p.m. was being deducted. A total sum of Rs. 400 p.m. is being deducted for subscribing to NSC. There is a further deduction shown in the said statement of salary and allowances of Rs. 500 and Rs. 220 on account of repayment of the amount taken as advance against salary. Thus a total amount of Rs. 3644.50 is being deducted from his salary, leaving a net balance of Rs. 3754.67, which is being paid to the defendant per month.

(3) It is alleged by the plaintiff and which fact has been proved on affidavit by her that the defendant was constantly misbehaving with plaintiff No. 1 and was treating her with extreme cruelty right from the inception of that marriage. He was resorting to abusing and beating plaintiff No. 1 so much so that the cruelty and misbehavior in June, 1988 reached the point where the defendant physically turned plaintiff No. 1 out of the house with a threat to murder her in case plaintiff No. 1 tried to enter the house again. This incident took place on 13th June, 1988. On that occasion, the defendant did not allow plaintiff No. 1 to take the children with her. This led to the proceedings by plaintiff No. 1 against the defendant under Section 125 of Criminal Procedure Code bearing case No. 223/88 and another petition under

Section 25 of the Guardians and Wards Act, 1819 for the custody of plaintiffs No. 2 and 3 vide Suit No. 162/88. In August, 1989, both the proceedings ended in a compromise and as a consequence of the compromise, plaintiff No. 1 went back to her matrimonial home at Jaipur to stay with the defendant. It has further been proved that the attitude of the defendant remained normal only for a couple of weeks and the family went to Srinagar and Vaishno Devi in that period in the last week of September, 1989. However, on return from there, the defendant again started misbehaving and starting teasing and taunting plaintiff No. 1 and went to the extent of raising doubts about her character and used to humiliate her in the presence of the relatives and parents by using filthy language. He Used to drink heavily and used to beat plaintiff No. 1 even in the presence of the children, whom also he started neglecting. The matter continued tod rag on like this for some time giving rise to various ugly situations including the matter being taken to police where the defendant again apologised. In April, 1991, plaintiff No. 1 was turned out of the matrimonial home again and the defendant refused to maintain her resulting in plaintiff No. 1 along with plaintiffs No. 2 and 3 moving out of that house and taking a rental accommodation bearing No. 973, Ram Nagar, Shashtri Nagar, Jaipur on monthly rent of Rs. 500. Plaintiff No. 1 is managing the affairs of plaintiffs No. 2 and 3 by paying their school fee, paying the monthly rent with the help of her own relations. Plaintiff has further proved that she has no source of income of her own. The plaintiffs have sought a total sum of Rs. 4,500.00 p.m. by way of maintenance, i.e., Rs. 2,000.00 for plaintiffs No. 2 and 3 and Rs. 2,000.00 for plaintiff No. 1 apart from Rs. 500.00 as reimbursement for the rent being paid.

(4) The relevant provisions of the Hindu Adoption and Maintenance Act are as under :-

'SECTION18 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 willfully 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..... Section 20. Maintenance of children and aged parents - Subject to the provisions of this Section, a Hindu is bound, during or his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.....'

(5) I have considered the position in the light of the aforesaid provisions of law and the facts proved on record. I find that the plaintiffs have succeeded in establishing their entitlement in the light of the salary statement of the defendant, which has been produced by the plaintiffs themselves, which reveals that the net take-home salary of the defendant is only Rs. 3754.67, I cannot accept the claim of the plaintiffs for a maintenance @Rs. 4500 .00 p.m. as justified and I think, it is highly exaggerated. But looking to all the facts and circumstances, I consider that it will be just and fair to award maintenance at the rate of Rs. 600.00 p.m. for the wife (plaintiff No. 1) and Rs. 350.00 p.m. for each of the children (plaintiffs No. 2 and 3) plus Rs. 500.00 towards house rent for the three plaintiffs, making a total sum of Rs. 1,800 .00 p.m. The plaintiffs shall be entitled to this amount from the date of the institution of the suit. The plaintiffs will also be entitled to proportionate costs of the suit. Let a decree be drawn up in terms of the above.

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