

Alice Baldev Singh Vs. Baldev Singh

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Court : Delhi

Decided On : Sep-19-2001

Reported in : 95(2002)DLT755; I(2002)DMC357; 2002(62)DRJ112

Judge : Mahmood Ali Khan, J.

Acts : Indian Divorce Act - Sections 22 and 36; Hindu Marriage Act

Appeal No. : Civil Revision No. 1034/2000

Appellant : Alice Baldev Singh

Respondent : Baldev Singh

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Party in perso

Judgement :

Mahmood Ali Khan, J.

1. This revision petition is directed against an order of an Additional District Judge dated 29.7.2000 by which an application filed by the petitioner wife for enhancement of the pendente lite alimony was dismissed.

2. Briefly the facts are that the respondent husband had filed a suit against the petitioner under Section 22 of the Indian Divorce Act for grant of a decree of

judicial separation. It is pending. On the application of the petitioner the court fixed on 27.3.1999 her pendente lite alimony at Rs. 500/- per month. Thereafter on 23.5.2000 she submitted an application for enhancement of her pendente lite alimony on the ground that alimony fixed at Rs. 500/- per month is very low as compared to the monthly salary of Rs. 12,000/- which the respondent is getting. Besides she has to pay electricity bill of Rs. 15000/-, water bill for Rs. 2100/- and incur Rs. 1000/- on maintenance of flat payable to the locality management. She has also to meet house tax liability. She was keeping ill and has no other source of income. The allegation of the respondent that she has rented out the flat has been found false by the Local Commissioner who was appointed by the trial court. She has requested that her maintenance allowance be increased from Rs. 500/- per month to Rs. 5000/- per month.

3. Notice of the petition was sent to the respondent who failed to contest it.

4. The relevant provision which applies to the grant of pendente lite alimony to the wife in a petition filed under Indian Divorce Act is Section 36 which is reproduced as under:

'36. Alimony pendente lite - In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution or marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

5. This section postulates: (1) the matrimonial suits is filed by the husband or wife under the provisions of Indian Divorce Act for (a) nullity of marriage, (b) dissolution

of marriage, (c) judicial separation; and (d) restitution of conjugal rights of marriage, and it is pending; (2) the application for grant of alimony during the pendency of the matrimonial suit may be filed by the wife irrespective of fact whether she had obtained an order of protection or not; (3) the notice of the application has to be served on the husband and opportunity of hearing provided to him; (4) the court must be satisfied of the truth of the statement contained in the application for alimony; (5) the court may fix interim alimony of the wife at such amount as it may deem just and may direct the husband to make the payment to the wife; (6) the alimony pending the matrimonial suit will in no case exceed 1/5th of the husband's average net income for three years next preceding the date of the order; and lastly the order of payment of interim alimony shall continue in operation in case of a decree of dissolution of marriage or nullity of the marriage until the decree is made absolute or confirmed. In the case of a decree for judicial separation it will remain in operation during the pendency of the suit while in the case of suit for restitution of conjugal rights the alimony may be granted up to the time appointed by the Court for compliance with the decree.

6. Salient features of the provisions of Section 36 which distinguishes it with similar provision in the matrimonial statute, in particular Hindu Marriage Act with which the courts have frequent encounter are (i) only wife can ask for alimony pending the litigation; (ii) the alimony is fixed at a sum which courts deems just keeping in view of the income of wife and husband and the standard of living of the wife to which she is accustomed; (iii) the husband's income that is taken into account is the average net income for three years preceding the date of the order of alimony; (iv) the maximum amount which can be granted as alimony pendente lite is one-fifth of the husband's income as calculated above; (v) maintenance of child of the parties cannot granted under this provision and, (vi) expenses of the proceedings cannot be claimed by the wife under this provision.

7. Needless to mention that pendente lite alimony fixed in a suit may be varied, enhanced, reduced or even suspended during the pendency of the suit or during the period when such order remains in operation, depending upon the change in the factors which are counted for determination of pendente lite alimony. Of course each variation in the income of the husband and wife will not necessitate change

in the amount of alimony but if where is significant or substantial change in the facts and circumstances which are reckoned for fixing the rate of alimony change in the rate of interim alimony may become necessary.

8. Though in modern times the limit of one-fifth of husband's average net income with mathematical precision on the wife's pendente lite alimony is difficult to appreciate but so long as this incongruity is not corrected by a legislative action the courts have to fix the rate not more than the maximum amount allowed under Section 36. While calculating the average net income of the husband care should be taken that the husband does not artificially reduce his monthly income by increasing voluntary deductions/expenses so as to deprive the wife of her due share in the income as alimony. Ordinarily a husband cannot be allowed to reduce his income by contributing to the provident fund much above the rate required under rules, taking out life insurance of an inordinately high amount which required payment of high premium, payment of Installments of loan and advances taken from the employer or others or incurring other liabilities which the court considers not bonafide.

9. Reverting to the facts of this case it is note-worthy that the petitioner wife had disputed the allegation of husband that she has rental income from her flat in which she is admittedly residing. The Local Commissioner appointed by the trial court had found presence of a few person in the flat but did not report about her earning anything and enquiry made by him from neighbourers did not reveal sub-letting or paying guest accommodation being provided by the wife. All the neighbourers told the Local Commissioner that the petitioner is living in the house alone. There is no material for the trial court to have reached the conclusion that she had income from the house. The house is in the name of the respondent and she must necessarily by paying house tax to the municipal authorities and incurring expenditure on its up-keep. So, the learned trial court erred in holding that the respondent had income from house or had such income which is available for her maintenance.

10. At the time of fixation of pendente lite alimony the respondent's salary was Rs. 7018/- per month and after allowing some deductions the trial court had assessed

it to be Rs. 5500/- per month. Conversely, the petitioner alleged that at present the respondent pay and allowances are Rs. 12,000/- per month. The Court directed Central Road Research Institute where the respondent worked as Electrician to file his salary details from January 2001 onwards and in reply the pay slips from January 2001 to August 2001 have been filed. The pay and allowances and the deductions made from his salary are tabulated below:

January 2001	August 2001	Pay	5125	5250	DA	2204	2258	HRA	1538	1575	CCA	200	
200CA	100	100	Total	9167	9383	DEDUCTIONS	SRGIS	30	30	Festival Advance	150	150	
GPF	1500	1500	CGHS	166	166	Coop Society	940	1100	W/Fund	6	6	B/Fund	3
3	CSIR R/Fund	5	52840	3000	Net payable	6327	6383						

11. The increase in the emoluments of the respondent since the time of fixation of pendente lite alimony is by no means marginal. It is a hefty sum of Rs. 2365/- which will certainly require an upward revision of the interim alimony of the wife. In addition it cannot be stated that she had now income of Rs. 1000/- per month from house any more.

12. The pendente lite alimony of wife is to be fixed on average net income of the husband during the period of three years next preceding the date of order. The other words the average net income is to be calculated taking into account the emoluments of respondent from August 1998 to date. It is stated that the last pay revision of the respondent was in pursuance to the IV Pay Commission Report w.e.f. 1.1.1996. Thereafter the increase in the Pay and allowance is only on account of annual increment and the six monthly DA increase. For assessing the net average income some guess work, assumption and presumption may be necessary at times. At this stage we need not call the entire record of the past three years from the respondent's employer. It can be worked out on the basis of the present record as it is not stated that the respondent got promotion to a higher post during this period. On 27.3.1999 when the interim alimony was fixed by the trial court gross salary of the respondent was Rs. 7018/- per month at present it is Rs. 9383/- per month, an increase of Rs. 2257/- per month and average of Rs. 1128.50 per month as the increase seem to be steady on account of annual increment and additional DA, HRA and CCA over the year. Keeping in view that

income to be taken into account is from August 1998 it can be safely held that average net gross income of the respondent during the period of 3 years next to the date of order is Rs. 8,100/- approximately per month.

13. The respondent is getting a sum of Rs. 2840/- to Rs. 3000/- deducted per month from his salary. All deduction, which are being made, are not compulsory. Most of them are voluntary in nature. The respondent cannot be allowed to reduce his salary income artificially by making more contribution than required by rules. The deduction on account of festival advance, more than 9% of his pay in GPF, GPF advance, contribution to Co-operative Society, therefore, cannot be allowed. He cannot be allowed an amount of more than Rs. 600/- per month as compulsory deductions. As such the average monthly net income of the respondent is Rs. 7500/- per month.

14. The maximum alimony pendente lite allowed under Section 36 of the Act is one-fifth of average income of Rs. 7500/- i.e. Rs. 1500/- per month. Keeping in view the present day cost of living the amount of Rs. 1500/- per month may be grossly inadequate for the maintenance of the wife judged from the cost of living of present day but it is the maximum which she can be allowed in terms of Section 36.

15. The trial court failed to exercise jurisdiction vested in it by refusing to enhance interim alimony on the application of the petitioner. The order is not sustainable. It is accordingly set aside. The application for enhancement of interim alimony is dated 23.5.2000. The pendente lite alimony of the petitioner is accordingly fixed at Rs. 1500/- per month with effect from 1.6.2000. The Central Road Research Institute is directed to deduct a sum of Rs. 1500/- per month from the salary of the respondent and remit it by a cheque drawn in the name of petitioner to the Additional District Judge, Delhi before whom the case is pending till the case is disposed off by the court. The arrears may be deducted from the salary of the respondent in Installment to be remitted with monthly alimony of the current period. The petitioner, however, shall bear her own costs.