

Mukesh Mittal Vs. Seema Mittal

Mukesh Mittal Vs. Seema Mittal

SooperKanoon Citation : sooperkanoon.com/711026

Court : Delhi

Decided On : Dec-12-2005

Reported in : AIR2006Delhi145; 125(2005)DLT566; I(2006)DMC23; 2006(86)DRJ102

Judge : Mukul Mudgal, J.

Acts : Hindu Marriage Act - Sections 13(1), 24 and 26; Code of Civil Procedure (CPC) - Sections 151 - Order 11, Rules 12 and 14; [Constitution of India](#) - Article 227

Appeal No. : CM(M) 62/2005

Appellant : Mukesh Mittal

Respondent : Seema Mittal

Advocate for Def. : Deepak Kr. Vijay and ; Neeru Sharma, Advs.

Advocate for Pet/Ap. : Anuj Gupta, Adv

Disposition : Petition dismissed

Judgement :

Mukul Mudgal, J.

1. This petition under Article 227 of the Constitution challenges the orders dated 10th November, 2004 granting interim maintenance to the respondent/wife by the petitioner/husband. The judgment was delivered on 6th June, 2005 after being reserved by the order dated 23rd May, 2005.

2. The petitioner filed a review petition in this Court which is recorded in the order dated 9th September, 2005 allowing the review petition as follows:-

'There is merit in one of the pleas raised by the petitioner in this application that on 23rd May, 2005 while reserving the orders, this Court has directed the parties to exchange offers for settlement and the case was listed for orders on 20th July, 2005. When this Court pronounced orders on 6th June, 2005, this fact had escaped the attention of this Court. Accordingly, the order dated 6th June, 2005 is set aside. The review petition and the delay application stand allowed and are disposed of accordingly.

CM(M) No. 62/2005

To await the response of the respondent to the offer of the petitioner, list the matter on 23rd September, 2005.'

3. Thus the review petition was allowed as this Court did not notice that the matter was fixed for a possible settlement and the judgment was inadvertently delivered on 6th June, 2005. The review petition was allowed on this ground on 9th September, 2005. Subsequently on 23rd September, 2005 this Court recorded the finding that the settlement was not possible between the parties and accordingly orders were again reserved.

4. Apart from the apparent error as pointed out in the review petition No. 187/2005 several other grounds were sought to be raised by the respondents in the review petition. However, none of the other grounds raised by the petitioner fall within the purview of the review jurisdiction and indeed the other grounds urged in support of the review were nothing but an attempt to reargue the matter or pleas which were best left for the appellate remedy. Since the review was allowed and on 23rd September, 2005 it was recorded that the settlement was not possible. However,

no other plea was urged before this Court on 23rd September, 2000 when the matter was listed after the review was allowed on 9th September, 2005. Accordingly this Court finds that no case is made out to take any view different from than that was taken in the decision dated 6th June, 2005 particularly when the purpose for which the matter was adjourned for 20th July, 2005 in which settlement between the parties is not possible. Since no other plea was urged before this Court in the rehearing after the review was allowed, accordingly this Court reiterates its earlier order dated 6th June, 2005 in the following terms:-

'1. This petition under Article 227 of the Constitution challenges the orders dated 10th November, 2004 granting interim maintenance to the respondent/wife in an application filed under Section 24 and 26 of the Hindu Marriage Act passed by the learned Additional District Judge, Delhi (hereinafter referred to as the `ADJ') in HMA. No. 289 of 2003 titled 'Mukesh Mittal v. Seema Mittal' and also dismissing the petitioner's application under Order XI Rule 12 and 14 read with Section 151 CPC filed in HMA. No. 289/03 seeking direction to respondent/wife to to furnish the copies of income tax returns of the year 2002-2004 in her possession.

2. The facts of the case in brief are:-

(a) that the petitioner/husband and the respondent No. 1/wife got married on 3rd March, 1991. Three children (1 son & 2 daughters) were born to them. One son tested HIV positive and died. One of the daughters was given in adoption and the other namely Disha, respondent No. 2 is with the respondent No. 1. Differences arose between the parties which led to the filing a petition for divorce under Section 13(1)(i-a) of the Hindu Marriage Act by the petitioner/husband.

(b) In the above petition respondent No. 1/wife filed an application under Section 24 and Section 26 of the Hindu Marriage Act for grant of maintenance pendente lite for herself and her minor daughter.

(c) that the learned ADJ granted interim maintenance at the rate of Rs. 6,000/- per month to respondent No. 1/wife and Rs. 4,000/- per month to respondent No. 2/daughter on the ground that the respondents No. 1 and No. 2 are suffering from HIV positive and are being treated at AIIMS and the respondent No. 1 has no

source of income for her support and the respondent No. 2 is a school going child and requires a heavy diet, good education and proper care and for this they are totally dependent upon the petitioner/husband who is leading a luxurious life, owning several flats, cars and mobile phones and other facilities by running his business of shares and electrical goods smoothly.

3. The learned ADJ recorded the following findings:-

(i) that the husband never contended that the wife was earning anything;

(ii) that both wife and minor daughter are the patients of HIV positive and the minor daughter is a school going student;

(iii) that the husband is the owner of 8 flats and derived rental income from them;

(iv) that as per the husband only three flats out of the eight owned by the husband are on rent which according to the husband fetch only a rental income of Rs. 2,200/- per month.;

(v) that the husband filed the income-tax returns of the respondent/wife in Court without filing his own income-tax returns;

4. After taking into account the ownership of 8 flats the income of the husband was assessed by the ADJ, Delhi by the impugned order at Rs. 30,000/- per month and by the order dated 10th November, 2004 the total maintenance of Rs. 10,000/- per month was granted to the wife and minor daughter along with litigation expenses of Rs. 5,000/-. This order has been assailed in this Court by the present petition under Article 227 of the Constitution.

5. The learned counsel for the petitioner, Shri Rajesh Gupta states that only three out of the eight flats owned by the petitioner were on rent and the total rental income was only Rs. 2,200/- per month. When these pleas were advanced by the petitioner's counsel in Court on 17th May, 2005, this Court on an offer to set out the flats made by the respondent/husband had asked the petitioner's counsel to obtain instructions from his client, in view of his submission that 5 flats were lying vacant and that he was not in a position to let out these 5 flats. The respondent's

counsel, Shri Deepak Kr. Vijay had made a submission that the respondent/wife will forego her maintenance and survive from the rental income of the 5 flats said to be lying vacant which she will put on rent and in case there is collection of more than Rs. 10,000/- the amount so collected in excess shall be given back to the petitioner/husband. Since this offer made by the respondent's counsel was declined on 23rd May, 2005 by the counsel for the petitioner, arguments were heard and orders were reserved leading to the present order.

6. The learned counsel for the petitioner, Shri Rajesh Gupta vehemently urged that the additional reply should have been brought on record. In my view, the attempt to bring the additional reply on record was obviously nothing but a smoke screen to hide the petitioner's non-filing of his own income-tax returns. This factor had been taken into account by the ADJ. In my view since the petitioner himself declined the offer of the Court to permit the respondent/wife to let out the 5 flats which according to him are lying sterile and do not fetch any income, the bonafides of the petitioner's assertions about his income are in serious doubt particularly his claim that the three flats let out by him are fetching only a rental income of Rs. 2,200/- per month.

7. The learned counsel for the respondent states that the income-tax returns filed by the petitioner/husband on her behalf and were not filed by the respondent/wife herself and they cannot be given any credence. There is merit in this plea of the learned counsel for the respondent. Even if the respondent No. 1/wife and the respondent No. 2/minor daughter, Disha who are suffering from HIV positive, this cannot be a ground to refuse the interim maintenance to them particularly when respondent No. 1/wife has submitted that she acquired the disease by virtue of blood transfusion during her pregnancy. The learned counsel for the petitioner/husband has also highlighted the fact that the husband is not an HIV positive patient. In my view, this is no ground to deny the maintenance to the HIV positive wife and minor daughter. There is no finding as yet as to how the HIV positive status was acquired by the wife and the minor daughter. Coupled with the fact that the respondent/wife has asserted the cause of HIV positive status to be blood transfusion the denial of interim maintenance to the respondent No. 1/wife and minor daughter/respondent No. 2 will be wholly unconscionable.

8. Reliance was placed by the learned counsel for the petitioner, Shri Rajesh Gupta on the judgment of the Hon'ble Supreme Court in Amarjit Kaur v. Harbhajan Singh and Anr. reported as : (2003)10SCC228 to submit that relevant consideration for grant of interim maintenance in an application under Section 24 of the H.M. Act is that the spouse seeking maintenance should not have independent income sufficient for her support. In my view the only factor cited for the income of the respondent No. 1/wife is the income-tax returns which according to the respondent No. 1/wife were filed by the petitioner/husband himself on her behalf. This cannot be a ground to deny the maintenance assessed by the ADJ who has given cogent reasons for assessing the income of the husband to be Rs. 30,000/- and such findings are not amenable to challenge in the jurisdiction of this Court under Article 227 of the [Constitution of India](#). Even if other avenues of income of the husband are not taken into reckoning, the income derived from the eight flats is sufficient to support the findings of the learned Additional District Judge. Significantly the petitioner husband never produced his own income- tax returns which factor also demonstrates that he is not willing to disclose his true income. Since the petitioner/husband declined the offer of the respondent to let out the vacant flats, his assertions about the total rental income from eight flats in Delhi to be only Rs. 2,200/- has to be rejected.

9. Accordingly, there is no cause for interference with the order of interim maintenance dated 10th November, 2004 awarded by the ADJ and the petition deserves to be dismissed.

10. Consequently, the petition is dismissed. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com