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Court : Kerala

Decided On : Apr-11-1984

Reported in : AIR1984Ker214

Judge : K.S. Paripoornan, J.

Acts : Hindu Marriage Act, 1955 - Sections 24

Appeal No. : C.M.P. No. 5939 of 1984 in M.F.A. No. 652 of 1983

Appellant : Nalini

Respondent : Velu

Advocate for Def. : C.P.D. Nair, Adv.

Advocate for Pet/Ap. : Mathew Zachariah, Adv.

Judgement :
ORDER

K.S. Paripoornan, J.

1. The respondent in M.F.A. No. 652 of 1983 is the petitioner herein. The sole appellant in M.F.A. No. 652/83, the respondent in this petition is the petitioner's husband. This petition is filed by the wife, petitioner, under Section 24 of the Hindu Marriage Act, 1955 which is to the following effect:

'24. Maintenance pendente lite and expenses of proceedings: Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, if may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding and monthly during the proceeding such sum as having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.'

The respondent married the petitioner on 20-10-1974. There are two male children in the wedlock. The parties are Hindus. The petitioner is the second wife of the respondent. The respondent herein (husband) filed O. P. No. 51 of 1980 under Section 9 of the Hindu Marriage Act, 1955 praying for restitution of conjugal rights. The court below found that the respondent treated the petitioner cruelly and as such the petitioner had reasonable excuse to withdraw from the society of her husband. The O. P. filed by the respondent-husband was dismissed. He has filed M.F.A. No. 652 of 1983 in this court from the aforesaid decision of the court below.

2. Pending the appeal. C.M.P. No. 3906 of 1984 was filed by the petitioner (wife) under Section 24 of the Hindu Marriage Act, 1955 praying to direct the respondent (husband) to deposit in Court for payment to the petitioner reasonable sum towards maintenance and expenses of the proceedings and to pass appropriate orders. This petition was filed on 3rd February. 1984. In the affidavit filed in support of the petition dated 29th Jan., 1984 the petitioner has stated that she has no independent income sufficient for her support and that she requires at least Rs. 200 per month for maintenance, and that such reasonable sum towards maintenance may be granted. inclusive of the period during which the O.P. was pending and also some reasonable amount towards expenses in these proceedings. By order dated 17-2-1984, this court ordered that the respondent should pay a sum of Rs. 200 per mensem towards maintenance besides a sum of Rs. 500 towards expenses for the proceedings, within one month. It was also held, that the said direction shall be without prejudice to the right of the petitioner, to claim the arrears of maintenance, ever-since the O.P. was filed in the lower court. C.M.P. No. 5939 of 1984 has been filed since then, claiming that the respondent

may be directed to pay the petitioner a sum of Rs. 10.100 or such reasonable amount as this court may deem proper, towards arrears of maintenance and the expenses of the proceedings in the court below. The arrears are claimed from 3-3-1980 till 17-2-1984, the date on which orders were passed in C.M.P. No. 3906 of 1984, at the rate of Rs. 200 per mensem, which will be about Rs. 9.600 and the expenses for contesting the proceedings in the court below, amounting to Rs. 500 (total Rs. 10,100). The respondent (husband) has filed a counter-affidavit dt. 19th March, 1984. The maintainability of such petition as also quantum asked for are disputed. The petitioner has filed a reply-affidavit dt. 25th March, 1984.

3. At this stage of the proceedings, when the appeal itself is pending, the question as to whether and if so what amount can be granted to the petitioner by way of arrears of maintenance, etc., can be adjudicated only in a summary way. Courts have expressed divergent views regarding the date from which the court can grant maintenance in exerciseof the powers vested under Section 24 of the Act. Three different views have been expressed.

(1) The maintenance can be granted from the date of the original (main) application.

(2) It can be granted from the date when the other spouse was served with notice in the case, and

(3) maintenance can be granted from the date of filing of the application under Section 24 of the Act. The decisions taking the above views are:--

(1) The first view--. In Samir Banerjee v. Sujata. 1966-70 Cal WN 633 at p. 642, it was held that the court can pass a valid order for arrears of maintenance from the date of the original application though the application for maintenance might be made later. Regarding the second view, the Calcutta High Court in Sobhana Sen v. Amar Kanta Sen (AIR 1959 Cal

455) and the Madras High Court in Mahalingam Pillai v. Amsavalli (1956

(2) Mad LJ

289) have held that maintenance can be granted after summons was served on the respondent in such cases. See also, the decision of the Mysore High Court in N. Subramanyam v. M. G. Saraswathi (AIR 1964 Mys 38), wherein it was held that interim maintenance from the date of the receipt of notice of the main petition and up to the termination of the proceedings, can be awarded. The third view is that maintenance can be granted only from the date of filing of the application. This has been highlighted in Dr. Tarlochan Singh v. Mohinder Kaur (1963-65 Pun LR 19): (AIR 1963 Punjab 249), Nirmala Devi v. Ram Dass (AIR 1973 Punj & Har 48). Narendra Kumar v. Suraj Mehta (AIR 1982 Andh Pra

100) and Dr. Yoginder Pal Soni v. Smt. Padma Soni (1970-72 Pun LR 878).

4. In Samir Banerjee v. Sujata (1966-70 Cal WN 633) the Division Bench of the Calcutta High Court took the extreme position and held:

'On the provisions of the Act however I am of opinion that there is no war-rant for holding that the court cannot pass a valid order for arrear maintenance from the date of the original application for judicial separation, though the application for maintenance might be made later. Section 24 of the Act does not lay down that the Court's discretion to pass an order for maintenance must be either from the date of the said application under Section 24 or any period subsequent thereto. It depends in our viewupon the facts and circumstances of each case, having regard to which, the discretion under the said section is to be exercised.'

This decision was referred to with approval in Dr. Yoginder v. Smt Padma (1970) 72 Punj LR 878 but was not dissented. (The actual decision in the case was otherwise). My learned brother Justice Sri K. Sukumaran in Radhakumari v. K. M. K. Nair (1982 Ker LT 417): (AIR 1983 Ker 139) considered the matter and held at page 424: (at p. 145 of AIR) of the reports as follows:

'Though in some cases the view is taken that the grant should commence from the date of application under Section 24. I am unable to share the view. The section does not contain any limiting provision. The object of the enactment docs not justify the court imposing on itself any such fetter, when the Parliament in its wisdom has not chosen to do so. The view taken by the Mysore High Court in N.

Subramaniyam v. M. G. Saraswathy and by the Punjab and Haryana Court in Sarita Mehta v. Aravind Kumar Mehta (1978) 80 Pun LR 213, and the Calcutta High Court in Samir Banerjee v. Sujata Banerjee, (1966) 70 Cal WN 633 at p. 642, according to me, reflects the correct legal position. I would accordingly direct that the payment with be effective from the date of service of summons of the main petition for divorce on the wife.'

The decisions in Samir Banerjee v. Sujata (1966-70 Cal WN 633 at p. 642) and Subramaniyam v. Saraswathy (AIR 1964 Mys 38) were referred to with approval. It is expressly stated in Samir Banerjee's case (1966-70 Cal WN 633 at p. 642) that 'arrear maintenance' can be directed to be paid.

5. I concur with my learned brother Justice Sri K. Sukumaran and hold that, at any rate, there is no legal impediment in directing that maintenance should be paid, to be effective from the date of service of summons of the main petition for restitution of conjugal rights, on the wife. The petitioner was awarded future maintenance at the rate of Rs. 200 per mensem as per orders of this Court dt. 17-2-1984. She has claimed maintenance at the same rate for the entire period from date of filing of the main petition 3-3-1980 till 17-2-1984. The date on which the summons was served on the wife on the main petition was only 13-3-80 though the petition was filed on 3-3-1980.As stated earlier, the Quantum can be fixed only on the basis of the averments contained in the affidavits filed by the parties in this court. In all the circumstances of the case, and in the light of the facts brought out in the various affidavits filed by the parties, I am of opinion, that a sum of Rs. 100 per mensem is a fair and reasonable amount to be awarded towards maintenance for the period, 13-3-80 to 17-2-1984. Accordingly I fix a sum of Rs. 4,700 towards maintenance for the said period plus a sum of Rs. 500 towards expenses for contesting the proceedings in the court below, totalling Rs. 5,200 I direct the respondent (husband) to pay the petitioner, towards the arrears of maintenance and expenses of the proceedings in the court below, a sum of Rs. 5.200 which is fair and reasonable. Considering the totality of facts and circumstances of the case it is only proper that I further direct that the respondent (husband) shall pay the said amount of Rs. 5,200 in lb (fifteen) equal consecutive monthly instalments, beginning from May 1984 -- on the 10th of every month, the first instalment to

commence from 10th May, 1984 -- payable on or before the said date. If any one of the instalments is not paid on the due date, the entire sum due by way of arrears fixed above, will be recoverable in a lump. Ordered accordingly.

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