

Vinay Kumar Vs. Smt. Purnima Devi

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Court : Rajasthan

Decided On : Sep-15-1972

Reported in : AIR1973Raj32; 1972()WLN698

Judge : Kan Singh, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 19, Rule 3

Appeal No. : Civil Misc. Appeal No. 51 of 1972

Appellant : Vinay Kumar

Respondent : Smt. Purnima Devi

Advocate for Def. : T.L. Tibrewal, Adv.

Advocate for Pet/Ap. : G.N. Singhvi, Adv.

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. This is a husband's appeal directed against an order of the learned District Judge, Jhuniunu, dated 22-12-1971 awarding pendente lite maintenance to the respondent wife under Section 24 of the Hindu Marriage Act, hereinafter to be

referred as the 'Act', during the trial of the application moved by the wife under Section 10 of the Act for judicial separation.

2. Respondent Smt. Purnima Devi had filed the application against the appellant-husband in the court of the learned District Judge under Section 10 of the Act. The respondent also filed the application under Section 24 of the Act on 26-7-1971. She averred in this application that she had no movable or immovable property and had no source of income. As regards the appellant's income she averred that his monthly income was Rs. 400/-. Therefore, she prayed that an amount of Rs. 125/- per month be granted to her as pendente lite maintenance and Rs. 561/- be awarded as litigation expenses. The appellant-husband contested the application. He submitted that his own income was only Rs. 200/- per month and that the respondent wife had been earning rupees 4 to 5 daily on account of tailoring or sewing work.

3. The learned District Judge held that the husband was earning Rupees 282/- per month. The husband had admitted that his pay was Rs. 307/- including dearness allowance and Rs. 25/- was P. F. deduction. Thus, he was left with the net income of Rs. 282/- per month. The learned Judge observed that 20% of this could be allowed to the respondent wife and in the circumstances he awarded Rs. 55/- to the wife both for maintenance as well as for the expenses of litigation.

4. In assailing this order learned counsel for the appellant-husband contended that the learned Judge has passed this order without taking any evidence in support of the pleadings of the parties and without even having regard to the income of the wife which, according to the husband, was Rupees 4 to 5 per day. Learned counsel maintained that the learned Judge has passed the order in a mechanical manner without really applying his mind to the materials before him. Learned counsel placed reliance on Smt. Snehalata Dansena v. Jagadish Dansana, AIR 1964 Orissa 122; Bhalu v. Hemo, AIR 1969 Orissa 236 and Mary Therosa Parker v. George Douglas Parker, AIR 1955 NUC (Mad) 3940.

5. Learned counsel for the respondent, on the other hand, submits that the learned District Judge had a wide discretion in the matter and he could pass an order on the basis of the affidavits that were before him and it was not necessary for him to

record any evidence of the parties. He further submitted that whereas the wife had filed a proper affidavit in support of her application, the affidavit filed by the husband in answer is defective in the extreme as it does not conform to the requirements of Order 19, Rule 3, Civil Procedure Code in that the deponent had not disclosed what paragraphs of the affidavit were based on his personal knowledge and what paragraphs were based on his belief; the deponent having said in one breath that the several paragraphs in the affidavit were true to his knowledge and belief. Learned counsel then pointed out that this amount of Rs. 55/- per month covers both maintenance as well as expenses of litigation and in the circumstances is reasonable.

6. I may read Section 24 of the Act :

'Section 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, it 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.'

7. Now what is to be noticed at the very outset is that the words used in the section are

'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 proceedings,'

The word 'appears' is suggestive of what should be the degree of conviction of a court before it passes an order under the section. The word 'proved' has not been used. Therefore, an application under Section 24 has to be disposed of by and large, by way of a summary proceeding and the court need not try the issue at any length. Such a matter should ordinarily be decided on affidavits of the parties concerned. I am confirmed in this by Rule 801 (b) of the Rajasthan High Court

Rules made under the [Hindu Marriage Act, 1955](#). Clause (a) of the Rule lays down what an application for maintenance pendente lite should contain. It provides that the application shall state the average monthly incomes of the petitioner and the respondent, the sources of these incomes, particulars of other movable and immovable property owned by them, the number of dependents on the petitioner and the respondent and the names and ages of such dependents. Clause (b) provides that such application shall be supported by an affidavit of the applicant.

It is noteworthy that the main petition under Section 10 of the Act is not required to be supported by an affidavit. Therefore, the idea in enacting this Rule 801 (b) seems to be that the matter arising under Section 24 of the Act has, by and large to be decided on the basis of affidavits. This is, however, not to say that no evidence ever should be recorded. In an appropriate case where the court finds that the matter cannot be disposed of properly on the basis of affidavits alone then it may proceed to record evidence and then decide the matter. The section vests the court with the widest discretion regarding the award of pendente lite maintenance and costs of the proceedings, but the discretion has to be exercised judicially. One may draw an analogy from the way the Courts decide the applications for grant of temporary injunctions and the like. Such matters too are normally decided on affidavits. The section lays down when an order for maintenance pendente lite and the expenses can be passed. Firstly, the spouse concerned should have no independent income sufficient for her or his support and the necessary expenses of the proceedings and then secondly for passing an appropriate order the court should have regard; (i) to the petitioner's own income, and (ii) to the income of the respondent, and then it should award such sum as may seem to the court reasonable. A passing of an order under this section will necessarily turn on the circumstances of each case and no fixed rules can be expected on the subject. In cases of ordinary income a rough working rule has been adopted by some courts on the analogy of other enactments, such as, the Indian Divorce Act, but that is not a hidebound formula though the working rule may be of some use in fixing the amount of interim maintenance. In cases of substantial income the court need not have regard to any notional rule in exercising its discretion in the matter regarding what proportion of the income of one spouse has to be awarded by way of maintenance to the other.

8. In Smt. Snehalata Dansena's case, AIR 1964 Orissa 122 the wife had applied for interim maintenance asserting that she had absolutely no independent income to support her and to defray the expenses of the proceedings. The learned District Judge rejected the application and against his order the wife went up in appeal to the High Court. It was, inter alia, urged by the appellant wife that the learned District Judge had not considered the various elements required to be considered under Section 24 of the Act before passing the order. It was in this context that the learned Judge observed as follows:--

'The various elements prescribed in the section must be enquired into and it is the bounden duty of the Court to record findings after enquiry on each of the elements and then come to the conclusion whether interim maintenance and expenses of the proceeding should be awarded. The learned District Judge failed to exercise his jurisdiction in refusing to go into this question on the ground that a consolidated sum of Rupees 100/- had already been received by the petitioner to defray the expenses. Judicial determination cannot be deferred on other consideration. The order under appeal cannot be upheld'.

It is true, the various elements prescribed in the section have to be inquired into, but I am afraid, the mode of inquiry need not always be as in the case of the trial of a regular suit or for that matter regarding the main petition. The mode of inquiry normally would be summary and the court could dispose of the matter on the basis of the affidavits of the parties unless there are special circumstances which would merit the recording of evidence.

9. In AIR 1969 Orissa 236 on the wife's application the order for pendente lite maintenance was passed against the husband. The husband went up in appeal to the High Court. It appears from the judgment that the wife's application was not supported by any affidavit of the wife. Rule 13 of the Hindu Marriage and Divorce Rules, 1956 was relied upon. That rule is analogous to the Rule 801 (b) of the Rajasthan High Court Rules which has been extracted above. Since the wife's application was not supported by an affidavit as required by the Rules, the High Court allowed the appeal and set aside the order of the Subordinate Judge and remanded the case with the direction that he shall afford an opportunity to the

wife-applicant to take steps to conform to Rule 13 of the Hindu Marriage and Divorce Rules, 1956 and thereafter he shall call upon the applicant to adduce such evidence as she may think fit and proper in support of her plea. Therefore, that case is distinguishable.

10. As I have already observed above, recording of evidence may not always be necessary and it will depend on the nature of the rival affidavits before the court for determination of the application under Section 24 of the Act Evidence may have to be recorded if the matter cannot justly be determined on the basis of the affidavits. In the circumstances I do not find anything wrong with the order of the learned District Judge in the present case if he did not proceed to record the evidence of the parties. Learned counsel for the appellant is right in saying that under Section 24 of the Act it is necessary to have regard to the income of both the spouses. The order of the learned District Judge does not take note of the husband's assertion regarding the income of the wife. If everything were alright I might have interfered with this order, but there is one difficulty in the path of the appellant. Whereas the affidavit of the wife has been properly verified, the verification on the affidavit of the husband is as follows:--

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eSa fou;dqekj xksaM vk;q 32o'kZ iq= Jh eljke xksaM fiykuh 'kiFk iwoZd dFku djrk gw fd mijksDr 'kiFk&&i;=esjs-----;dhu esa lgh o nq:Lr gS A**

Such an affidavit is not in conformity, with the provisions of Order 19, Rule 3, Civil Procedure Code as it has to be. It was pointed out by this Court regarding the form of an affidavit in *Pritam Singh v. Ranjit Singh*, 1971 Raj LW 330 = (AIR 1972 Raj 59) as to how an affidavit has to be verified. It was pointed out that it was necessary for an affidavit that it should be properly verified and must be restricted to matters of fact within the personal knowledge of the deponent. Regarding the facts which are not within the personal knowledge of the deponent but they are statements regarding facts based on his belief then the grounds for the belief have also to be disclosed. An affidavit in the form that several paragraphs of the affidavit are true to the knowledge and belief was not a proper affidavit Therefore, the resultant position here is that whereas there is a proper affidavit in support of the

wife's application under Section 24 of the Act. the husband's answer is not supported by a proper affidavit. That being so, the order of the learned District Judge does not call for interference.

11. The result is that the appeal fails and is hereby dismissed. The parties are, however, left to bear their own costs.

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