

Baboolal Vs. Smt. Prem Lata

Baboolal Vs. Smt. Prem Lata

SooperKanoon Citation : sooperkanoon.com/752031

Court : Rajasthan

Decided On : Nov-06-1973

Reported in : AIR1974Raj93; 1973()WLN809

Judge : Kan Singh, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24 and 26

Appeal No. : Civil Misc. Appeal No. 154 of 1972

Appellant : Baboolal

Respondent : Smt. Prem Lata

Advocate for Def. : R.L. Purohit, Adv.

Advocate for Pet/Ap. : D.S. Shishodia, Adv.

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. This is a husband's appeal directed against an order of the District Judge, Partabgarh, passed under Section 24 of the Hindu Marriage Act. 1955, hereinafter referred to as the 'Act', awarding Rs. 25/- as alimony pendents lite to the respondent-wife. The order being a short one, I may read it in ex-tenso :

20&6&72

odqyk, QjhQsu gkftj gS A

cgl nj[kkLr ij lquh xbZ A

izkFkhZ us viuh bUde 100A&:- ekfld crkbZ gSog vdsyk gS tcfD ukWu &fiVh;'kuj dks vius vykok nks ekbuj cPpksa dks HkhLikS VZ djuk iMrk gS ukWu&fiVh;'kuj dh bUde 175A&ekfld; crkbZ tkrh gS ,SlhifjLFkfr esa ukWu&fiVh;'k;j dks fiVh'kuj ls 25A&ekfld; crkSj esufVuWUlisUMsUVhykbV fnyk;k tkuk mfpr gS A vr,o vkKk gS fd izkFkhZ ukWu&fiVh;'kuj dks25A&ekfld; vkt ls ml nj[kkLr ds QSlys rd nsr jgs A ,DlisUI vk WQ izksflfMaXtds fy, tc Hkh ukWu fiVh'kuj dh vko';drk gks nj[kkLr is'k djs mlds fy, vyx lsgqDe fn;k tk;xk A fely rk- 30&10&72 dks okLrs tokc is'k gks A

lgh] Hkkuq dqekj tSu]

fMLVh DV tWt]

izrkix<+

From the above order it is evident that the monthly income of the husband was taken to be Rs. 100/- and that of the wife at Rs. 175/- and yet Rs. 25/- were allowed to the wife as maintenance pendente lite.

2. In assailing the order learned counsel for the husband contends that the necessary condition for grant of maintenance pendente lite to the wife did not exist. Learned counsel maintains that maintenance could be granted to the wife if she had no independent income sufficient for her support and, therefore, the order is illegal.

3. It appears that parties were married according to Hindu rites. Two children were born of the wedlock, one was 2[^] years old and the other 8 years' old. Both the children were admittedly living with the wife at Ujiain. On 22-3-1972, the husband moved the petition under Section 10 of the Act in the Court of the District Judge, Partabgarh for judicial separation on the ground of desertion by the wife for a period exceeding two years. The wife entered appearance and on 28-4-1972 she applied for maintenance pendente lite and for expenses of litigation under Section

24 of the Act. The application was supported by an affidavit. In the application the wife stated that she was maintaining the two children and educating them and she was able to carry on with great difficulty. Consequently she prayed that maintenance at Rs. 150/- per month be allowed to her. In the affidavit in support of the application she stated that she was paying Rs. 35/- as house rent and for electricity expenses, Rs. 25/- for going to and coming from Nagda to Ujjain she being employed at Nagda as a teacher. She further stated that she was spending Rs. 30/- per month over the education of the children besides maintaining them.

4. The husband contested the application. He, however, admitted that the two children were living with their mother, but he expressed his readiness to maintain the children, if they were given over to him. He also stated that the wife was living with her parents and was, therefore, saving her own income. He gave his own income as Rs. 75/- to Rs. 100/- per month.

5. 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.'

6. Learned counsel for the appellant contends that as the wife was having an independent income of her own she was not entitled to any maintenance pendente lite under Section 24 of the Act, Learned counsel is right here. The plain language of Section 24 bears out the submission. It is only when the concerning spouse has no independent income sufficient for her or his support that the Court may order the other spouse to pay to him or her maintenance pendente lite and expenses of the litigation. In the present case the learned Judge has not ordered the payment of expenses of litigation and I am not concerned with it at this stage. The only

question is whether maintenance pendente lite should have been allowed to the wife.

7. In *Mukan Kunwar v. Ajeet Chand*, ILR 8 Raj 843 = (AIR 1958 Raj 322), Jagat Narayan J., as he then was, in dealing with the scope of Section 24 of the Act observed:

'The award of maintenance pendente lite and expenses of proceedings under Section 24 of the Hindu Marriage Act is in the discretion of the Court. But this discretion has to be exercised on sound legal principles and not by caprice or chalice or humour. If the applicant has no independent means, he or she is entitled to maintenance and expenses under this section, unless good cause is shown for depriving him or her of it. The matters that may properly be considered in this connection are (1) whether the applicant is being supported by an adulterer and (2) whether the respondent has not sufficient means. Where the wife was prepared to go and live with the husband, but the husband did not wish to keep her with him as he alleged that she was incapable of consummation of marriage, it was held that there was no reason for depriving her of maintenance and expenses. It was further held, that the fact that the wife had taken no steps to claim maintenance before the husband's petition of divorce or that she was being maintained by her parents were no grounds for depriving her of maintenance under Section 24. Further in the absence of special circumstances, maintenance should be allowed at one-fifth of the net income of the respondent after deductions on account of income-tax and provident fund.'

Learned Judge went on to say that first the Court has to consider whether or not it should grant maintenance pendente lite and expenses of proceedings under this section at all. The leading principle to remember in this connection is that if the applicant has no independent means he or she is entitled to maintenance and expenses under this section, unless good cause is shown for depriving him or her of it. One of the good causes, according, to learned Judge, was whether the respondent has no sufficient means.

8. I am in respectful agreement with the observations of the learned Judge. However, I am afraid this does not dispose of the aspect of the order concerning

the maintenance of the children. The order of the learned District Judge clearly brings out that he had given due regard to the fact that the wife was maintaining the two children,. The application of the wife as also her affidavit go to show that she had relied on the Fact that she was maintaining the two children. The husband did not dispute his liability to maintain the children, but he made it a condition for maintaining them that the children should be handed over to him. One of the children is admittedly below 5 years and the other is about 8 years old. It is for the husband to seek the custody of the children, if at all. according to law, but so long as the children are in the custody of their mother a provision has to be made for their maintenance. According to the provisions of Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is bound during his or her lifetime to maintain his or her legitimate or illegitimate children and the obligation continues so long as a child is a minor. The petitioner, therefore, cannot escape his liability to maintain his children and cannot legitimately refuse to maintain them only on the ground that they are not under his custody. The application moved by the respondent for the claim of maintenance is inclusive of what she is spending for the maintenance of the children. Section 26 of the Act lays down that in any proceeding under the Act the Court may from time to time pass such interim orders as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible. Section 26, therefore, vests a discretion in the Court to make an order, for the maintenance of the children pendente lite. The learned Judge has taken the income of the husband to be Rs. 100/- per month and that of the wife at Rs. .175 per month. Considering that the wife is also earning, Rs. 25/- per month has been fixed for her maintenance. The order on the whole appears to be just and equitable. If the parties were living together they could have pooled their respective income and Rs. 275/- would have been available to the family which consisted of the husband, the wife and the two children. Making allowances for emergencies and for the periods during which one may not have the full income about Rs. 60/- could be spent on the children. Then also taking note of the fact that the liability to maintain a child is primarily on the parent who earns, the wife could be left with the maintenance of one of the two children. In other words, the husband had to contribute his share to the joint burden by providing maintenance

to at least one of the two children. If the matter is considered on this criterion then Rs. 25/- per month that has been awarded to the wife in view of the fact that she was maintaining the children is not out of proportion to the estimated income of the husband, which was only a rough estimate.

9. In *Akasam Chinna v. Parbati*, AIR 1967 Orissa 163 under Section 24 of the Act maintenance had been granted to the wife and the daughter. The learned Judges observed 3

'In view of the clear provisions in Section 24 there cannot be any dispute that the wife is entitled to a pendente lite maintenance when she has no independent income sufficient for her support and also the necessary expenses of the proceedings. There is no evidence in this case that the wife had sufficient income for her support. In that view of the matter the order for pendents lite maintenance granted to defendant No. 1 at the rate of Rs. 30/- must be maintained. Section 24, however, does not authorise grant of any pendente, lite maintenance to the daughter and in terms applies either to the wife or the husband as the case may be. The maintenance of Rs. 10/- awarded in favour of the daughter must therefore be set aside.'

I am in respectful agreement with the above observation to the extent that Section 24 of the Ad does not authorise grant of any pendente lite maintenance to the Wife (sic) (children), but I cannot help observing that the attention of the learned Judges was not directed to the provisions of Section 26 of the Act which clearly empowers the Court to order maintenance pendente lite for the children of the wedlock during the continuance of the proceedings between the spouses under the Act for judicial separation or for other reliefs.

10. It is true, no separate application for the maintenance of the children was made by the respondent under Section 26 of the Act, nor was any separate maintenance demanded for the children, but on reading the wife's application and her affidavit I have no doubt that in making a demand for her own maintenance the wife had included the expenditure that she was incurring over the maintenance of the children. Therefore, it cannot be said that the Court was not justified in fixing the amount of maintenance taking note of the fact that, the wife was maintaining

the two children out of her own income.

11. Having considered the matter I am of opinion: (1) that there was no justification for ordering maintenance pendente lite for the wife as such, as she was undoubtedly having independent income of her own sufficient to support herself, (2) the learned District Judge could have awarded maintenance pendente lite for the children. Although the learned District Judge has not dealt with the matter in a proper manner by keeping the two questions, one regarding the maintenance of the wife and the other regarding the maintenance of the children separately, which are governed by separate provisions, the order that he has passed is eminently just and I am not therefore, disposed to interfere with it though I may make it clear that the order shall be taken to cover the maintenance of the children only.

12. Accordingly, In the light of the above observations I hereby dismiss the appeal, but leave the parties to bear their own costs.

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