

Ram Pal Vs. Smt. Nisha

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Court : Rajasthan

Decided On : May-11-1994

Reported in : AIR1994Raj204; 1994(3)WLC12

Judge : J.R. Chopra and; Y.R. Meena, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 24

Appeal No. : D.B.C.S.A. No. 2 of 1991

Appellant : Ram Pal

Respondent : Smt. Nisha

Advocate for Def. : R.K. Singhal, Adv.

Advocate for Pet/Ap. : M.C. Bhoot, Adv.

Judgement :

J.R. Chopra, J.

1. The case comes up for orders on an application filed by the wife-respondent under Section 24 of the [Hindu Marriage Act, 1955](#) (for short 'the Act') for grant of maintenance pendente lite and expenses of the proceedings already incurred by her and to be incurred by her in future from the husband-appellant.

2. It may be stated here that during the pendency of this matter before the learned District Judge, Bikaner, the wife-respondent did not claim the maintenance pendente lite and the expenses of the proceedings, under Section 24 of the Act. However, the learned District Judge passed the decree of divorce in favour of the husband-appellant but that decree of divorce was set aside by a learned single Judge of this Court in S.B. Civil Misc. Appeal No. 243 of 1989 (Smt. Nisha v. Rampal, decided on Nov. 29, 1990). Hence, the husband-appellant has filed this D.B. Civil Special Appeal No. 2 of 1991, in which, the wife-respondent has filed this application under Section 24 of the Act.

3. We have heard Mr. R.K. Singhal, the learned counsel for the applicant (wife-respondent) and Mr. M.C. Bhoot, the learned counsel appearing for the non-applicant (husband-appellant) on the application under Section 24 of the Act and have carefully gone through the record of the case.

4. The case of the wife-respondent is that she has not been paid a single pie as maintenance or expenses, although she had to attend the Court of District and Sessions Judge, Bikaner from village Dhabban in Tehsil Sangaria, where she is employed as a Teacher, with her father and brother. She had to attend this Court also a number of times, when the matter was pending before the learned single Judge and in this way, she had to spend Rs. 1,000/- every time. She has submitted that after the judgment of the learned single Judge, she thought that the husband-appellant may agree to keep her with him as his wife and at that time, her father was also alive and now, she is unable to meet out her expenses of day to day life as well as expenses of the proceedings. She is facing these proceedings for the last about 7 years, as a result of which, she had to spend thousands of rupees. She has further submitted that though she is employed as a teacher in Village Dhabban in Tehsil Sangaria but she is unable to live according to the status of her husband. Her husband is serving in the Bank in the Officer Grade and is getting Rs. 4000/- per month as pay. He has also constructed a house at Bikaner, from which, he is getting rental income of Rs. 2000/- per month. According to the wife-respondent, her monthly income is Rs. 2000/- and if the income of both the spouses is clubbed together, the total income comes to Rs. 8,000/- per month. She has, therefore, submitted that she being the wife of the

husband-respondent is entitled to half of the income of both the spouses meaning thereby that she is entitled to Rs. 2,000/-per month from her husband as maintenance.

5. The wife-respondent has further contended that she has already spent a sum of Rs. 10,000/- as litigation expenses and she will have to spend Rs. 5,000/- for prosecuting this appeal and, therefore, she has claimed Rs. 15,000/- towards the expenses of the proceedings. This application under Section 24 of the Act has been supported by the affidavit of the wife-respondent.

6. A reply to this application supported by the affidavit of the husband-appellant has been filed, in which, it has been claimed that the wife-respondent is living separately at her own will. She has not been subjected to any matrimonial cruelty. According to the husband-appellant, the contention of the wife-respondent that she had to spend Rs. 1,000/-on her every visit to Jodhpur is false. The husband-appellant has submitted that the wife-respondent is an earning member and, therefore, she is not entitled to move this application under Section 24 of the Act. She is able to meet out her expenses because she is earning Rs. 2300/- per month as a Teacher. Of course, it was not denied that the husband-appellant has constructed a house at Bikaner but it has been denied that this house is fetching any rental income. The husband-appellant has not disclosed his net income from his pay but it has been submitted that he is getting Rs. 3300/- per month after various deductions. As regards the net emoluments, his father, who is dependant on him gets Rs. 800/- as pension and, therefore, the total income of his family comes to Rs. 4100/- per month.

7. It has been contended by Mr. M. C. Bhoot, the learned counsel appearing for the husband-appellant that this application filed by the wife-respondent under Section 24 of the Act is not maintainable because Section 24 of the Act clearly provides that 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. Mr. Bhoot has, therefore, argued that since the wife-respondent is employed as a Teacher and has independent income sufficient for her maintenance and to meet out necessary expenses of the proceeding, she is not entitled to any maintenance. It was because of this that no maintenance was claimed by her during the pendency of the proceedings before the learned District Judge and the learned single Judge of this Court.

8. Mr. Bhoot has further contended that the total monthly income of the family of the husband-appellant is Rs. 4100/- i.e. Rupees 3300/- from his pay and Rs. 800/- from his father's pension whereas the total monthly income of the wife-respondent is Rs. 2300/- and since, she has more than one fifth of the total monthly income of both the spouses, she is not entitled to receive any more maintenance from the husband-appellant. In this respect, Mr. Bhoot has placed reliance on a decision of this Court in *Mukan Kunwar v. Ajeetchand*, AIR 1958 Raj 322, wherein it has been observed as under:

. 'The leading principle which the Court has to bear in mind is that unless good cause is shown for depriving the claimant she or he, if not possessed of independent means, is entitled to maintenance pendente lite and the expenses of litigation. That the applicant is being supported by an adulterer and that the respondent has not sufficient means may properly constitute good cause for the deprivation. If the Court comes to the conclusion that the applicant is entitled to pendente lite maintenance, it may, although there is no provision in the Act itself prescribing the quantum allow one fifth of the net income of the respondent as interim maintenance.'

9. On the other hand, it has been argued by Mr. R.K. Singhal, the learned counsel appearing for the applicant (wife-respondent) that even if the wife-respondent has not claimed maintenance earlier during the pendency of the proceedings before the learned District Judge and the learned single Judge of this Court, she is very much entitled to claim pendente lite maintenance and the expenses of litigation now. In this respect, he has placed reliance on a Division Bench decision of this

Court in *Priti Parihar v. Fit. Lt. Kailash Singh Parihar*, 1974 Raj LW 420 : (AIR 1975 Raj 7). In that case, this Court had awarded a sum Rs. 500/- by way of expenses of proceedings to the wife-appellant and, therefore, it was held that additional maintenance can be claimed by her keeping in view all the facts and circumstances of the case. This Court has held that the expression employed in Section 24 of the Act is 'necessary expenses of the proceeding' and such expenses can always be allowed.

10. Mr. Singhal has next placed reliance on a decision of the Delhi High Court in *Dev Dutt Singh v. Rajni Gandhi*, AIR 1984 Del 320. In that case, the wife-respondent was a teacher in a School and was earning Rs. 1344.79P. per month as salary and after deductions, she was getting the net emoluments of Rs. 1269.78P. i.e. around Rs. 1270/-per month. The husband-appellant was having a total income of Rs. 64,916/-, after admissible deductions of Rs. 20,990/-, the total income shown by him in his return was Rs. 43,926/-. The wife-respondent claimed expenses for taking a house on rent separately and that demand was held to be reasonable. In that case, a plea was raised that the wife is not entitled to more than one third of the husband's income but that plea was repelled.

11. Reliance was also placed on a decision of their Lordships of the Supreme Court in *Anita v. Laxmi Narainsingh*, 1992 AIR SCW 1053 : (AIR 1992 SC 1148). In that case, the wife-appellant had to go to Bombay from Delhi for pursuing the proceedings and, therefore, the Family Court awarded Rupees 700/- towards travelling expenses for herself and her companion. Their Lordships of the Supreme Court held that it seems to us that the interim order passed by the Family Court is, for reasons best known to it had before it this Court's order granting Rs. 2500/- by way of expenses to visit Bombay, which provided sufficient guideline for determining the quantum of expenses to be awarded. Besides, the Family Court has not awarded any amount to meet the cost of the proceedings on the specious plea that she is gainfully employed. To say the least the order is far from satisfactory and has resulted in gross denial of justice. The order made it impossible for the wife to meet the expenses of frequent visits to Bombay and facilitated an ex parte divorce decree in favour of the husband.

12. In this case, the monthly income of the husband-appellant is Rs. 6100/- (Rupees 3300/- from pay + Rs. 800/- father's pension + Rs, 2000/- income from renting the house as claimed by the wife whereas the monthly income of the wife-respondent is Rs. 2300/-. The wife-respondent is residing in village. Dhabhan in Tehsil Sangaria, where she is employed as a Teacher and, therefore, it cannot be said that she cannot meet out her day to day expenses. She can easily maintain herself according to the status of her husband out of her monthly pay of Rs. 2300/- . In this view of the matter, we are firmly of the view that the wife-respondent (applicant) is not entitled to receive any amount of maintenance to meet out her day to day expenses from her husband.

13. So far as the litigation expenses are concerned, she did not claim any litigation expenses during the pendency of the proceedings before the learned District Judge as also before the learned single Judge and, therefore, this ex post facto claim cannot be entertained. If she was not in a position to meet out the litigation expenses, she could have claimed those expenses from the Court. Of course, now she has claimed that she will have to spend about Rs. 5000/- for defending this appeal, which has been filed by the husband-appellant. This litigation has been foisted on her by her husband. She has claimed that she cannot meet out these litigation expenses out of her monthly income. Since this litigation has been foisted upon the wife-respondent by the husband-appellant, it is expected of the husband-appellant that he will pay her litigation expenses for defending this appeal before this Court and that amount is quantified as Rs.5,000/- , keeping in view the distance between Sangaria and Jodhpur and the Advocate's fee etc. This claim does not appear to be unreasonable.

14. In the result, this application under Section 24 of the Hindu Marriage Act is partly allowed. The wife-respondent (applicant) be paid Rs. 5,000/- as litigation expenses for defending this appeal. However, the claim of the wife-respondent to grant her pendente lite maintenance and the ex post facto claim for grant of litigation expenses borne by her during the pendency of the proceedings before the learned District Judge as also before the learned single Judge of this Court is rejected. The husband-appellant is directed to pay Rs. 5,000/- as litigation expenses for defending this appeal to the wife-respondent within a period of two

months from today.

15. The application under Section 24 of the Hindu Marriage Act stands disposed of accordingly on merits.

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