

Dr. A. Jairam Vs. Dr. A. Suman

Dr. A. Jairam Vs. Dr. A. Suman

SooperKanoon Citation : sooperkanoon.com/760149

Court : Rajasthan

Decided On : May-09-2005

Reported in : II(2005)DMC345

Judge : S.K. Keshote and; Ajay Rastogi, JJ.

Acts : [Family Courts Act, 1984](#) - Sections 19; [Hindu Marriage Act, 1955](#) - Sections 13, 24 and 26

Appeal No. : Civil Miscellaneous Appeal No. 1878 of 2002

Appellant : Dr. A. Jairam

Respondent : Dr. A. Suman

Advocate for Def. : Akhil Simlote, Adv.

Advocate for Pet/Ap. : Ravi Shankar Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Keshote, J.

1. This appeal under Section 19 of the [Family Courts Act, 1984](#) (for short 'the Act, 1984') is directed by the appellant husband against the order, dated 15.5.1999, of the learned Family Court, Ajmer, in Case No. 125/98. Under the impugned order

the learned Family Court, Ajmer directed the appellant husband to pay Rs. 2,000/- per month as interim maintenance for minor children, namely, Gagan and Sameer, for their maintenance, education, etc. This amount of interim maintenance has been ordered to be paid by the appellant husband of his share as the respondent wife, it is not in dispute, is also in employment.

2. Two-fold contentions have been raised by the learned Counsel for the appellant husband challenging the impugned order of the learned Family Court, Ajmer. First contention is that the learned Family Court, Ajmer has committed a serious error of jurisdiction to order against the appellant husband to pay the maintenance for his minor children named above, under Section 24 of the [Hindu Marriage Act, 1955](#) (for short 'the Act, 1955'). Section 24 of the Act, 1955, the learned Counsel for the appellant husband submitted, nowhere empowers the Court to direct the husband to pay the maintenance of the minor children. The second contention raised that the respondent wife is in Government service, Professor (Obest. and Gyn.) in the J.L.N. Medical College, Ajmer and drawing more than Rs. 25,000/- per month as salary, thus the learned Family Court, Ajmer has committed an error to fasten the liability of maintenance upon the appellant husband, of the minor children.

3. The learned Counsel for the respondent wife, on the other hand, supported the impugned order of the learned Family Court, Ajmer.

4. We have given our anxious and thoughtful consideration to the rival contentions made by the learned Counsel for the parties.

5. The appellant husband does not dispute his marriage with the respondent wife; he has also not disputed that out of this wedlock they have been blessed with two sons; the matrimonial dispute i.e., a petition under Section 13 of the Act, 1955 is pending in the Family Court, Ajmer. The petition under Section 13 of the Act, 1955 has been filed by the appellant husband for dissolution of his marriage with the respondent wife by a decree of divorce. In that petition the respondent wife filed an application for grant of interim maintenance for the minor sons. The respondent wife has not disputed the fact that she is in Government service, Professor (Obest. and Gyn.).

6. It is no more *res integra* that where both the husband and wife, are in gainful employment, proportionately they have to share the expenses of maintenance being incurred on their children. Only on the ground that the wife is in service and earning handsome amount, the appellant is not relieved of his legal and pious duty and responsibility to maintain his children. Proportionately he has to share and contribute the expenses towards their maintenance and that what precisely has been done under the impugned order by the learned Family Court, Ajmer.

7. Looking to the salary of the appellant husband, the amount of Rs. 2,000/- of interim maintenance ordered by the learned Family Court, Ajmer, to be paid by him to the children, is not towards the higher side.

8. The application is titled by the respondent wife under Section 24 of the Act, 1955 for the interim maintenance of the children. The learned Counsel for the appellant husband may be correct that under Section 24 of the Act, 1955 the learned Family Court has not been conferred with the power to order for payment of interim maintenance to the children by the husband appellant, but it appears to be a mistake made, a wrong provision is mentioned. It is no more *res integra* that merely on mentioning a wrong provision on the application, the Court ordinarily not to deny the relief to the litigant where it is satisfied that the relief as prayed for by that litigant therein is grantable by it under any other provision of the Act or other Act. Section 26 of the Act, 1955, though headed 'custody of children' but it empowers the Court in any proceeding under the Act, 1955 from time-to-time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time-to-time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the Court may also from time-to-time revoke, suspend or vary any such orders and provisions previously made.

9. Under Section 26 of the Act, 1955, there cannot be two views that the Court has power in a proceeding under this Act to pass the interim order for maintenance and education of the minor children. It is not in dispute that the impugned order of the learned Family Court has been passed in the proceedings initiated by the appellant husband against the respondent wife under Section 13 of the Act, 1955. The appellant husband has been directed to pay Rs. 2,000/- per month as interim maintenance of two minor children of the appellant husband and which was permissible to the Court under Section 26 of the Act, 1955. In the application and in the impugned order the reference has been made to Section 24 of the Act, 1955 but only for this error, when the Court has been conferred with the power to direct the appellant husband to pay the reasonable sum of maintenance and education to the minor children, it will not make any difference and it has no effect on the merits of the order. That apart, the substance of the matter is to be looked into and the Court should not go on technicalities of the laws. The Courts are to have justice-oriented approach in the matter of grant of maintenance to the minor children and to do substantial justice. All endeavours are to be made by the Courts that a litigant merely on the error committed by his Advocate in mentioning the provision in the application or by the Court in its order, they may not be denied of the justice, though they are entitled for the same under the Act, may be under different section. The appellant husband is not burdened to maintain some stranger; the children are his own sons, otherwise also it is his legal and pious obligation and duty to maintain and provide them a good education.

10. It is not expected nor it is fair and reasonable on his part to contest and make attempt to non-suit these two minor children in the matter of their claim for the expenses of interim maintenance and education. He has to exhibit himself a model father. Where the application was filed by the respondent wife, the mother of the children, the appellant husband, being the father, should have voluntarily offered to pay a reasonable sum to them for their maintenance and education but he has acted otherwise which is not befitted to a father in the society. The respondent wife could have made a grievance against this order as, *prima facie*, we do not find any justification therein to award the interim maintenance to the minor children from the date of the order. Ordinarily the maintenance is awarded from the date of the application but we cannot order now as the respondent wife has not come in the

appeal against that order of the learned Family Court, Ajmer.

11. As a result of the aforesaid discussion the appeal fails and the same is dismissed.

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