

**Umarani Vs. D. Vivekannandan**

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**Court :** Chennai

**Decided On :** Jan-18-2000

**Reported in :** 2000(2)CTC449; II(2000)DMC422; (2000)IIMLJ234

**Judge :** S.S. Subramani, J.

**Acts :** [Hindu Marriage Act, 1955](#) -- Sections 13, 24, 25; [Code of Civil Procedure \(CPC\), 1908](#) -- Sections 115

**Appeal No. :** C.R.P. No. 3248 of 1999 and C.M.P. No. 18256 of 1999

**Appellant :** Umarani

**Respondent :** D. Vivekannandan

**Advocate for Def. :** Mr. M.M. Sundresh, Adv.

**Advocate for Pet/Ap. :** Mr. A. Shanmugam, Adv.

**Judgement :**

ORDER

1. Petitioner in I.A.No.43 of 1997 in H.M.O.P.No.22 of 1997 on the file of the Subordinate Judge's Court at Sankari, is the revision petitioner.

2. Respondent herein filed an application for divorce under section 13 of the Hindu Marriage Act. Application was filed on 10.3.1997. An application under Section 24 of the Hindu Marriage Act for getting interim alimony and litigation expenses, was

filed by the petitioner on 28.8.1997. In her application for getting interim alimony, the petitioner alleged that her husband is getting sufficient income and she is not in a position to maintain herself. According to her, herself and her child have been deserted by the husband and they are put to great mental agony and financial difficulty and are living in misery. They are being maintained by her parents and brothers. To the main divorce petition also, the petitioner filed her counter and thereafter 31 postings were given to enquire into the matter. The respondent has changed his vakalath and another counsel was also engaged on 24.6.1999. Finally, on 6.8.1999, respondent's counsel submitted before the lower court that he has no instruction. The husband was called and found to be absent, the main application was dismissed for default. On the same day, the lower court passed an order on I. A. No. 45 of 1997, seeking interim maintenance. The lower court directed the respondent to pay a sum of Rs.500 as interim maintenance and Rs.750 as litigation expenses.

3. The said order is challenged by the learned counsel for the petitioner on the ground that the amount awarded by the lower court is not sufficient to meet the expenses of the wife and child.

4. Respondent has also entered appearance before this Court and I heard both sides.

5. After hearing counsel on both sides, I feel that the attempt of the respondent is only to over reach the petitioner and see that the application has become infructuous. Along with the Typeset of Papers, petitioner has produced dates of postings and I do not know how long the respondent was seeking time to prove the case.

6. It is well settled that if an application under Section 24 of the Hindu Marriage Act is filed, that must be given preference before proceeding with the merits of the case. The reason being that a person complaining that they cannot maintain themselves should not be compelled to fight a litigation, A person in poverty will not be in a position to fight a litigation on equal terms. A husband who is bound to maintain his wife and child, has protracted the proceedings for for about 1 1/2 years and got adjournment in the main application for more than 30 postings and finally,

the counsel submitted that he has no instructions and got the main application dismissed for default. From the above conduct, it is clear that the respondent was successful in delaying the decision in I.A.No.43 of 1997 and petitioner herein was denied maintenance, which she is legally entitled to.

7. The approach of the lower court is also not in accordance with law. When an application is filed for interim maintenance on the allegation that they are not in a position to maintain themselves and they are starving, the lower court was generous enough in granting adjournments. The lower court also took this application as if an ordinary civil suit. The human aspect of the matter was not taken by the lower court in all its seriousness.

8. The further question arises for consideration is, whether the impugned, order is liable to be revised or not. The application was filed on 28.8.1997 in the form of an affidavit and application, no counter has been filed by the respondent, herein. Even though time was granted for about 1 1/2 years, the averments in the affidavit remain unchallenged and that fact also ought to have been taken by the court below. While disposing of the application on 6.8.1999, the lower court has really given only decree for past maintenance and the cost which has already been incurred for conducting the litigation. That is not the purpose of enactment. The Section provided for future maintenance and expenses to be incurred for conducting the litigation. The application should not have been disposed of along with the main application.

9. If the lower court thought that the application, is to be disposed' of alongwith the main application, it should have considered the scope of Section 25 of the Hindu Marriage Act and should have passed an order thereon without insisting on filing further application or filing a suit for getting separate maintenance. Under Section 25 of the Hindu Marriage Act, the court is empowered to pass an order on the maintenance application of the wife or husband as the case may be on the basis of any application filed on their behalf. Section 25 of the Hindu Marriage Act reads thus:.

'25. Permanent Alimony And Maintenance:-(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent

thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent,

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1) it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remarried chaste, or, if such party is the husband that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.'

10. It is true that Section 25 of the Act contemplates an application for the said purpose. When the lower court has not disposed of Section 24 application in time and has disposed of along with the main application, it should have disposed of the application under Section 25 also. Therefore, one more litigation could be avoided and on the basis of very same order, the maintenance could be provided for the wife and child. From the conduct of the respondent, it is clear that he will not pay the maintenance which is legally due to the petitioner. Under these circumstances, asking the petitioner to file another application under Section 25 or asking to file a separate suit and again seeking indulgence of the Court below will be harsh. The Act also does not say that there should be a written application. It only says that an application made to it. It can also be on the basis of oral application. Under these circumstances, I feel that the order of the lower court requires modification when the averments in the affidavit remain unchallenged. The

quantum awarded is also not proper. The order of the lower court is therefore modified and I.A.No.45 of 1997 in H.M.O.P, No.22 of 1997 on the file of the Subordinate Judge's Court at Sankari, is disposed of as follows:

The petitioner alongwith the child will be entitled to monthly maintenance from the date of application i.e. 28.8.1997 at the rate of Rs..2,000 per month till the date of final order and also in future. The petitioner and the child will be entitled to future maintenance at the same rate and an order is also passed under Section 25 of the Hindu Marriage Act. The petitioner is entitled to recover a as if it is decree of the Civil Court and recover the amount from the respondent and all his assets. They will also be entitled to litigation expenses of Rs.4,000 i.e. expenses already incurred and as prayed for in I.A.No.43 of 1997. If circumstances change, the petitioner is also entitled to bring to the notice of the lower court to vary or modify the order and the lower court shall pass appropriate orders after taking into consideration Section 25(2) of the Hindu Marriage Act.

11. In the result, the C.R.P. is allowed with costs, which is quantified as Advocate Fees of Rs.1,500. Connected C.M.P. No.18256 of 1999 is closed.

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