

S. Jayanthi Vs. S. Jayaraman

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Court : Chennai

Decided On : Mar-24-1997

Reported in : II(1997)DMC697

Judge : S.S. Subramani, J.

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

Appeal No. : Civil Revision Petition No. 313 of 1997

Appellant : S. Jayanthi

Respondent : S. Jayaraman

Advocate for Def. : S. Somasundaram, Adv.

Advocate for Pet/Ap. : V.P. Venkat, Adv.

Disposition : Petition allowed

Judgement :

S.S. Subramani, J.

1. This Revision arises from a divorce proceeding initiated by the respondent herein as H.M.O.P. 478 of 1994, on the file of Subordinate judge, Krishnagiri. When the wife received notice of the divorce petition, she filed an application under Section 24 of the Hindu Marriage Act, seeking interim alimony and litigation

expenses. According to her, she has no means to support herself and she is completely depending on others for her maintenance. It is further averred that her husband is getting more than Rs. 5,500/- as monthly income. So, according to status, she requires to least Rs. 1,500/- p.m. as maintenance. She also claimed Rs. 5,000/- as litigation expenses.

2. Respondent herein filed a detailed counter. According to him, the wife has got other means to support herself and, therefore, the petition is not maintainable. He also said that the monthly income alleged in the petition is not correct, though he admitted that he is an employee as alleged by the wife. He said that he is not getting Rs. 5,500/- as monthly income, but only Rs. 3,000/-. He said that his aged mother and other relations are depending on him for their subsistence and therefore, the petitioner's claim is exaggerated. He prayed for dismissal of the petition.

3. By the impugned order, Court below awarded Rs. 750/- as monthly maintenance effective from the date of the Order and also Rs. 2,000/- towards litigation expenses.

4. Not satisfied with the order, wife has filed this petition challenging the correctness of the Order. According to her, she is entitled to claim maintenance from the date of petition and the quantum awarded is also too low. The litigation expenses awarded is also meagre, and it will not be sufficient to meet even the travelling expenses from her residence to Court very often.

5. When the Revision came for admission, I ordered notice of motion. After receipt of notice, respondent has also entered appearance. The entire matter was heard.

6. The only question that has to be considered is, whether the order of the Court below requires interference.

7. There is a finding by the Court below that the wife is not in a position to maintain herself and she has no independent income of her own. Challenging the same, the husband has not filed any Revision, nor has he questioned the same, though in the counter statement, he takes a stand that the wife has got income of her own.

In view of the said finding, her entitlement to get interim maintenance cannot be doubted. The object of Section 24 of the Hindu Marriage Act is to enable the husband or wife, as the case may be, who has no independent source of income, for his or her support and the necessary expenses of the proceeding, to apply under the Act and obtain interim maintenance pendente lite. The intention is that the person should not suffer due to poverty and submit to the demand made in Court.

8. He or she must be capable of getting independent legal advance. The provisions of the said section are mandatory and the Court has to assess reasonable amount to be paid to the opposite party, who has no independent source of income. It is also settled law that the Court cannot insist on the opposite party to file written statement if his and her financial position is not good. Regarding the quantum payable, the petitioner in an application under Section 24 of the Act, can not insist that a particular share of the income should be given. In page 343 of Mayne's 'Hindu Law & Usage' - 14th Edition (1996), the learned Author says :

'The payment of maintenance pendente lite and litigation expenses can be decided on the basis of affidavits of parties without recording evidence. Generally, one-fifth of the net income of the husband should be awarded depending upon other circumstances of the case, a working rule adopted by the Courts under the Indian Divorce Act. But this is not an inflexible rule, the main consideration being that the maintenance must be reasonable. There is no hard and fast rule for allowing one-fifth or one- third of the income of the husband as maintenance allowance. The amplest discretion is conferred on the Court. The decision on the quantum of alimony must necessarily turn on the circumstances of each case and no fixed rules can be expected on the question. Therefore, neither the 'minimum nor the maximum in terms of the percentage can be fixed for the maintenance allowance. The section does not stipulate anything about the standard to be maintained by either of the parties, that the wife must be maintained at the same standard as the husband or vice versa. Nevertheless, it has also to be considered that while awarding alimony, the Court must keep in view that one cannot live like a lord and the other like a maid nor one can live like a princess and the other like a

servant. There must be some balance. It cannot be that while one lives in penury the other lives in grand style....' (Emphas is supplied)

The learned Author further says :

'(For fixing the quantum) the income from the property of the husband as well as his joint family and its business and the social status of the parties are to be taken into account. For the purpose of determining maintenance, the total income of the husband is required to be taken into account and not the taxable income after granting statutory allowances, deductions, depreciation, etc., the deductions from salary towards GPF and insurance are savings and not expenditure.'

At page 344, the learned Author says that in fixing the quantum Court has to act in accordance with sound judicial principles. The following principles appear to be relevant, (a) position and status of the parties, (b) reasonable wants of the claimants, (c) income of the claimant, (d) income of the opposite party, (e) Number of persons the opposite party is to maintain. It is further said thus :

'The income-tax returns filed by the husband are not conclusive. It is common knowledge that income-tax returns do not reflect the true income for several reasons and cannot be taken as a sole guide for determining it...'

9. On the basis of the above law, let us consider whether the quantum fixed by Court is proper or not. It is the case of the wife, petitioner herein, that apart from the income as salary, her husband is also getting not less than Rs. 1,200/- by way of rent. The only objection that was raised by the husband was that he is paying a similar amount to the Government towards house-loan which he has availed. Court below has found in paragraph 12 of the order that the same has not been proved. That means, the case put forward by the wife is true. If so, the monthly income comes to more than nearly Rs. 4,500/-.

10. It is the case of the husband that he has a dependent mother. I do not think in this case the mother is a dependent on the respondent herein (son), in view of the admission made by respondent himself that his mother is getting a family pension of more than Rs. 900/-. If that be so, that claim by the husband also has to be

found against. So, the total income which the husband is getting comes to Rs. 4,500/-. It is on that ground, the interim maintenance for the wife is to be considered.

11. In view of the principles stated above, this Court has to take into consideration the needs of the petitioner/wife according to the status of the husband. Under law, wife is entitled to have the same status as her husband. She must have the necessary medical facility, food, clothing, etc. The Court should also take into consideration the inflation and cost of living and accordingly fix the rate. Now that it is seen that the husband has no other dependent, and he is getting a better income, naturally, the quantum fixed at Rs. 750/- by the Court below requires interference.

12. Even if we fix at one-fourth, it comes to more than Rs. 1,000/- per mensem. In such circumstances, I feel the wife is entitled to Rs. 1,000/- per mensem as interim maintenance. The quantum fixed by the Court below at Rs. 750/- is modified as Rs. 1,000/-.

13. The further question that requires consideration is, from which date the same has to be awarded.

14. By the impugned Order, the Court below has awarded the same from the date of Order. The Divorce Petition was filed in 1994, and immediately after the receipt of summons, wife has filed the petition for getting interim maintenance.

15. In Mayne's 'Hindu Law & Usage', referred to above, while commenting on Section 24, learned Author has dealt with the aspect 'Date from which maintenance to be paid', on the basis of various precedents. The relevant paragraph reads thus :

'Section 24 does not specify that the amount of maintenance which is awarded under the said provision is to be paid from the date the petition for divorce is filed. It is for the Court to award the maintenance from the date the divorce petition is filed or from the date the order of maintenance is passed. It is the discretion of the Court after taking into consideration the various facts.

Normally, the point of time for granting 'maintenance pendente lite would be from the date of application. But, if specific prayer is made in the application, then the order may be made operative in consonance with the prayer made in the application i.e., either from the institution of the suit in favour of the plaintiff or first appearance made by the respondent...' (Emphas is supplied)

16. In 2 (1991) DMC 401 Smt. Indira Gangele v. Shailendra Kumar Gangele, the Madhya Pradesh High Court held that normally the point of time for granting maintenance pendente lite would be from the date of the application. In that case, the Court held thus :

'...But, if specific prayer is made in the application, then the order may be made operative in consonance with the prayer made in the application i.e., either from the institution of the suit in favour of the plaintiff or first appearance made by the respondent.

However, it is expected of the Matrimonial Court to decide such application on priority basis at its earliest opportunity on the basis of the affidavits and counter affidavits as far as possible so as to cut short' the time. However, exception to above rule cannot be ignored where parties found guilty of protracting the proceedings by any manner and delay caused in deciding application on account of such a party, in such a case Court can certainly order for payment of maintenance amount from the date of order.

However, where the application is kept pending and the party making application is not responsible for protracting the proceedings, in, such cases Court has to bear in mind two maxims of equity which are well settled, namely, 'Actus' Curiae Neminem Gravabit. An act of the Court shall prejudice no one. In Broom's Legal Maxims, 10th Edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is 'Fiat Justitia', Justice be done and that Justice should be fair causing prejudice to no one.'

17. This Court, in the decision reported in 1991 1 M.L.J. 297, Venkatesan v. Lalitha, held that applicant in an application for interim maintenance, is entitled to payment of interim maintenance from the date of her application.

18. In 1 (1993) DMC 502 C. Krishnan v. Ponmudi, this Court had occasion to consider a similar question. Abdul Hadi, J. elaborately considered the entire case-law decided by various High Courts and held that the normal rule is that the wife must be given the interim alimony from the date of filing of the application for divorce.

19. In 1994 Madhya Pradesh Law Journal 285, Archana v .Yogendra, also, their Lordships granted interim maintenance from the date of application.

20. Learned Counsel for the husband/respondent submitted that when the Court exercises the discretion as to the date from which the maintenance should be paid, the order of the Court below should not be ordinarily disturbed. I agree with the submission that the discretion exercised by Court below should not be disturbed in Revision. But, if the discretion is not properly exercised, and if no exceptional circumstance is also brought forth to deviate from the ordinary rule, it cannot be said that even in such a case this Court may not disturb the discretion exercised by the Court below. In view of the earlier decisions, the normal rule is, that the wife is entitled to get maintenance either from the date of interim application or from the date of her application seeking maintenance, that is being awarded by Courts. But, in certain circumstances, deviation is made. In those cases, it is seen that the application for maintenance itself is pending for years together. So, by the time the husband is directed to pay, it becomes a huge liability on him. That is a circumstance on the part of the wife for protracting the litigation. The other encumbrances or dependents on the husband, are also taken into consideration, in certain circumstances. In this case, none of those circumstances is existing. Immediately after the divorce petition was filed, the wife filed the application for interim maintenance. It is also found that she has no independent source of income. Respondent (husband) said that his mother is depending on him. It is also belied by the fact that his mother is getting family pension. The husband has no case that the wife is protracting the litigation. No

other circumstance has been made out to deviate from the ordinary rule. In that view of the matter, the judicial discretion exercised by the Court below cannot be said to have been judicially exercised. In fact, no reason has been given for awarding maintenance from a future date. This, according to me, requires interference. I make it clear that the wife is entitled to get interim maintenance from the date of her application, namely, 3.11.1995.

21. The other question that requires consideration is, whether the wife is entitled to litigation expenses which she claims at Rs. 5,000/-. Court below has awarded only Rs. 2,000/-. While granting litigation expenses, it is not the Advocate's fee alone that has to be taken into account. The Court has to take into consideration the expenses which the wife has to incur for travelling from her residence to the Court-house, to the Counsel's office, etc. Since she is alone, she should also seek the help of others to accompany her. Sometime, she will have to even stay in a hotel during the period of litigation, at least when the trial of the case begins. Number of trips that she will have to go to her Counsel's office and Court also will have to be taken into consideration. If all these heads are taken into consideration, I feel that the amount of Rs. 2,000/- awarded by the Court below is too meagre. The wife has asked for only Rs. 5,000/- as litigation expenses. I feel that the claim ought to have been allowed in full.

22. In the result, the Revision is allowed, and the order of the Court below is modified as follows :

The interim maintenance awarded by the Court below at Rs. 750/- is enhanced to Rs. 1,000/-. The same shall be paid from 3.11.1995 by the husband, till the entire litigation comes to an end. Towards litigation expenses, Rs. 2,000/- awarded by the Court below is enhanced to Rs. 5,000/-.

23. Before proceeding for trial, Court below is bound to see that the entire amount payable as on that date is paid by the husband to the wife. The entire litigation expense should also have been paid by that time. Only thereafter, the wife should be compelled to enter the box to adduce her evidence. This does not mean that the wife can take her own time for getting on with the case.

24. The husband is directed to pay the entire amount towards interim maintenance that has become due as on this date, i.e., the date of Order of this Revision and also the litigation expenses of Rs. 5,000/- within a period of two months from today. If any of these amounts is not paid by that time, wife is at liberty to move the Court below to have the matter dismissed for default. In case the husband's petition is dismissed for default in view of the non-compliance of the above conditions, and later he seeks restoration of the same, the Court below shall see that the above stipulations or directions are complied with before ordering restoration. At any rate, the Court below will see that the trial is taken up only if the entire amount is paid. In this case, the wife was compelled to move this Court with this Revision in view of the attitude of the respondent. She is aggrieved by the impugned order. Her grievance seems to be justified. Hence the costs of this Revision Petition also form part of the litigation expenses, and the husband is bound to pay the same. I fix the same at Rs. 3,000/- (Three thousand only).

The same must also be paid by the husband within two months period mentioned above. The Civil Revision Petition is allowed as indeed above with costs of Rs. 3,000/-. C.M.P. 1734 of 1997 for stay is also dismissed.