

Ms. Shanthi Vs. P. Pandian

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Court : Chennai

Decided On : Dec-02-2002

Reported in : (2003)1MLJ315

Judge : K. Raviraja Pandian, J.

Acts : Hindu Marriage Act - Sections 13 and 24; [Hindu Adoptions and Maintenance Act, 1956](#)

Appeal No. : C.R.P. No. 926 of 2002 and C.M.P. No. 7644 of 2002

Appellant : Ms. Shanthi

Respondent : P. Pandian

Advocate for Def. : Supraja, Adv. for T.R. Rajaraman, Adv.

Advocate for Pet/Ap. : R. Venkatesh, Adv.

Disposition : Revision partly allowed

Judgement :

ORDER

K. Raviraja Pandian, J.

1. The petitioner/ wife who had obtained an order of grant of litigation expenses in a sum of Rs.2000/- and the monthly maintenance of Rs.750/- per month against

the respondent husband in an application filed under Section 24 of the Hindu Marriage Act pending the divorce petition under Section 13 of the Act filed the present Revision Petition as she is aggrieved against the order of quantum of monthly maintenance and also the order directing the respondent to pay the monthly maintenance from the date of filing of the application under Section 24 of the Act.

2. Though the main divorce application is pending from the year 1992, the petitioner filed the application for grant of maintenance on 6.8.1998. In that application, she prayed for the grant of interim maintenance at the rate of Rs.5000/- per month and also the litigation expenses in a sum of Rs.2000/- In the affidavit filed in support of the application, the petitioner averred that she was earning a sum of Rs.750/- per month as a teacher in a private school. The respondent is an Engineer in the State Government Service and he is earning more than Rs.10,000/- per month . In the aforesaid facts, she claimed that a sum of Rs.5000/- be directed to be paid by the respondent husband as monthly maintenance and a sum of Rs.2000/- for litigation expenses.

3. The respondent filed a counter, wherein he admitted the liability to pay the maintenance to the petitioner. However, he agreed to pay a sum of Rs.500/- as monthly maintenance and agreed to pay Rs.2000/- as litigation expenses. In view of the agreement as to the litigation expenses, there is no dispute and as such it was granted by the trial court. So far as the monthly maintenance is concerned, the trial Court after taking into consideration of the judgment referred to by the Counsel for the petitioner and also the material evidence adduced before it, had directed the respondent husband to pay the monthly maintenance at the rate of Rs.750/- from the date of filing of the application under Section 24. The correctness of the said order is now put in issue in the present revision petition.

4. Learned counsel for the petitioner has made elaborate argument to the effect that the scope and amplitude of Section 24 of the Hindu Marriage Act with reference to the date from which interim maintenance has to be granted has not been decided by this Court but the same has been decided by various other High Courts and held that the interim maintenance has to be granted from the date of

service of notice of the main divorce petition on the petitioner and not from the date of filing of the petition under Section 24. For that purpose he relied on the following judgments.

1. SOBHANA SEN VS . AMAR KANTA : AIR1959 Cal455
2. N. SUBRAMANYAM VS. MRS. M.G.SARASWATHI (AIR 1964 MYSORE 38)
3. S.RADHAKUMARI VS.K.M.K.NAIR : AIR1983 Ker139
4. NALINI VS . VELU : AIR1984 Ker214
5. HEMA VS.S.LAKSHMANA BHAT : AIR1986 Ker130
6. JWALA PRASAD VS. MEENA DEVI AND OTHERS (I (1986)DMC 252)
7. GOURI DAS VS. PRADYUMNA KUMAR DAS (II (1986) DMC 189)
8. SMT.INDIRA GAGELE VS . SHAILENDRA KUMAR GAGELE : AIR 1992 MP72

5. In respect of quantum of maintenance to granted also he submitted that the maintenance granted to the wife is an incident of status or estate of matrimony and the interim maintenance awarded should match to defray the expenses so as to maintain the status of the wife as that of the status, she maintained when she was living with her husband. For that purpose learned counsel for the petitioner relied on the following judgments.

1. PRALHAD NARASIMHA JOSHI VS. VEDAVATHI @ LEELAVATHI
2. SAWINDERJIT SINGH VS.KULDIP KAUR I(2002) DMC 39
3. PREM KUMARI VS.OM PARKASH 1 (2001) DMC 399
4. ALKA VS. VARDHAMAN @ PUSHKARAJ @ NARENDRA
5. SATISH BEHL VS. RITU BEHL AND ANOTHER
6. JYOTIBEN SAMIR PAWAR VS. SAMIR BHASKARRAO PAWAR AND ORS

6. On the other hand Ms. Supraja, learned counsel for the respondent submitted that the interim maintenance under Section 24 is only to maintain the wife during the pendency of the litigation . Though the divorce application has been filed by the respondent as early 1992, the petitioner though it fit to file the application for interim maintenance only in the year 1998, which by itself manifestly made it clear that the petitioner is not in the position to lead her life depending only on the maintenance directed to be granted by the Court. She further submitted that the petitioner herself had admitted that she is employed but did not come forward with correct salary , which she was receiving. The petitioner as a B.T. Teacher in an aided school would have received a minimum more than Rs.5000/- but she has not produced any evidence towards her salary, but submitted that she was only receiving a sum of Rs.750/-. But taking into consideration of the argument advanced, in the absence of any documentary evidence and also taking into consideration the averments and also the very fair and honest attitude of the respondent husband offering to pay the litigation expenses as prayed for before the Court and a sum of Rs.500/- as monthly maintenance, the trial Court has granted the monthly maintenance for a sum of Rs.750/- . In arriving at the amount, the trial Court has also taken into consideration the standard of living of the parties. As such no exception could be taken to that order. She further contended that the petitioner has not made out any case, which warrants interference by this Court.

7. I heard the arguments of the learned counsel on either side and perused the materials on record.

8. The two grounds taken in the revision petition and argued in an elaborate manner by the learned counsel for the petitioner is not the point for the first time to be decided by this Court or by the Apex Court. The exposition of law on this point has been enunciated by the Supreme Court in JASBIR KAUR SEHGAL VS . DISTRICT JUDGE : AIR 1997 SC3397 and it would be appropriate to put it in the words of the Supreme Court , which runs as follows:-

'8. Wife has no fixed abode of residence she says, she is living in Gurudwara with her eldest daughter for safety. On the other hand husband has sufficient income

and a house to him. Wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the Courts. No set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstances of each case. Some scope for liverage can however, be always there. Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under the law and statutory but involuntary payments or deductions. Amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.'

9. In respect of the question from which date, the wife would be entitled to claim the maintenance is also answered by the Supreme Court in the following words:

'9. The question then arises as to from which date the wife would be entitled to claim the enhanced amount of maintenance pendente lite. If wife has no source of income it is the obligation of the husband to maintain her and also children of the marriage on the basis of the provisions contained in the [Hindu Adoptions and Maintenance Act, 1956](#). Her right to claim maintenance fructifies on the date of the filing of the petition for divorce under the Act. Having thus fixed the date as the filing of the petition for divorce it is not always that the Court has to grant the maintenance from that date. The Court has discretion in the matter as to from which date maintenance under Section 24 of the Act should be granted. The discretion of the court would depend upon multiple circumstances which are to be kept in view. These could be the time taken to serve the respondent in the petition; the date of filing of the application under Section 24 of the Act; conduct of the parties in the proceedings; averments made in the application and the reply thereto; the tendency of the wife to inflate the income out of all proportion and the like.'

In view of the clear exposition of law by the Supreme Court, it is unnecessary for this Court to go into detail the various decisions of other High Courts cited by the learned counsel for the petitioner across the bar.

10. Now coming to the facts of the case before the trial Court, the petitioner has not come out with clear facts as to her salary though she had admitted that she is working as a B.T teacher in a private school and receiving salary in a sum of Rs.750/-. The another feature in this case, as rightly pointed out by the learned counsel for the respondent, is that though the divorce petition has been filed in the year 1992, the petitioner thought it fit to file the application for interim maintenance in the year 1998 . That implies that for the past period, after filing of the divorce petition, the petitioner was able to maintain her out of her salary. Now before this Court, she has filed a xerox copy of a certificate dated 29.5.2002 issued by the Head Master of the School, in which she is admittedly working to the effect that the petitioner is working as B.T.Teacher, her appointment by the Parent-Teachers' Association of their School is purely temporary and she was paid salary till June 2001 Rs.1050/- per mensum and from July 2001 till issuance of certificate Rs.1150/- per mensum. Learned counsel for the respondent has not disputed the certificate. Hence from the certificate it is clear that the petitioner is receiving salary of Rs.1150/- per mensum.

11. It is also evident from the records that though the petitioner got married in the year 1986, from June 1988 onwards, she is living apart from the respondent/ husband. During that period of two years, they were living at Papparapatti village. It is also evident from the records that the respondent is an Engineer working in Government Service and he voluntarily offered to pay litigation expenses as claimed by the petitioner and also offered to pay Rs.500/- as maintenance. He has also not adduced any materials to prove the income. The contention that the respondent would have received a sum of Rs.10,000/- is not denied by him.

12. Hence having regard to the status of the parties and the needs of the petitioner and also taking into consideration of the fact that the petitioner is employed and she is also earning a sum of Rs.1150/- per month and the standard of living of the petitioner and cost of living at Papparapatti Village, Dharmapuri District and having

regard to the capacity of the husband, who is serving as an Engineer in the State Government, I am of the opinion that the ends of justice would be met , if the respondent is directed to pay a sum of Rs.1000/- instead of Rs.750/- as directed by the trial Court as monthly maintenance.

13. As enunciated by the Supreme Court, the Court has the discretion in the matter as to from which date the maintenance under Section 24 of the Act should be granted . Having regard to the fact that the petitioner is living away from her husband right from the year 1988 i.e immediately after two years of the marriage and having regard to the fact that though the divorce petition has been filed in the year 1992, the petitioner has filed the application under Section 24 of the Act only in the year 1998, which implies the petitioner is all along able to maintain her in a sum of Rs.750/-, apart from her own income, so as to match the position she enjoyed in the school, I am of the considered view that the petitioner is entitled to receive the enhanced maintenance from the date of filing of the petition under Section 24 of the Act.

14. In the result, the order of the trial Court is modified and the revision is partly allowed as indicated above. However, there is no order as to costs. Consequently, the connected C.M.P is closed.

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