Gita Chatterjee Vs. Probhat Kumar Chatterjee

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Court : Kolkata

Decided On : Apr-30-1987

Reported in : AIR1988Cal83,92CWN302

Judge : A.M. Bhattacharjee and ;Ajit Kumar Nayak, JJ.

Acts : Hindu Marriage Act, 1955 - Sections 24 and 25; ;Hindu Adoptions and Maintenance Act, 1956 - Section 23(2); ;Code of Criminal Procedure (CrPC) , 1974 - Section 488

Appeal No. : F.A. No. 292 of 1986

Appellant : Gita Chatterjee

Respondent : Probhat Kumar Chatterjee

Advocate for Def. : Bhaskar Bhattacharjee and ;Asit Kumar Bhattacharjee, Advs.

Advocate for Pet/Ap. : Indrajit Mondal, Adv.

Judgement :

Bhattacharjee, J.

1. The petitioner-wife, who is the respondent in this appeal, has filed this application under Section 24, Hindu Marriage Act, for maintenance pendente lite and expenses of this appeal against the husband who is the appellant in this

appeal. In the Court below, the husband did not contest the wife's application for pendente lite maintenance and on consent of the parties, the Court passed an order directing the husband to pay a sum of Rs. 350/- per month as maintenance during the trial. Before us, however, the present application by the wife-respondent for pendente lite maintenance during the period of this appeal and for expenses for this appeal has been very seriously opposed by the husband-appellant on the ground that he has now come to learn that the wife owns two pieces of valuable lands in Calcutta and as such she cannot be regarded to be one who 'has no independent income sufficient for her support' within the meaning of Section 24, Hindu Marriage Act, and is, therefore, not entitled to -invoke that Section.

2. The wife has not denied that she owns those two plots of lands but has averred in her affidavit that those two plots of vacant land measuring about 3 Cottahs and 2 Cottahs yield no income at all. This averment has not been countered by the husband in any way, but it has been very strongly urged by his learned Counsel, Mr. Bhattacharjee that even if there is no return, in cash or in kind, coming in out of those properties, still then those must be taken into consideration in deciding the maintainability of this application at the instance of the wife under Section 24. Mr. Bhattacharjee has urged that Section 24 mandates the Court to have regard to the 'income' of the petitioner as well as of the opposite party and in the context of the language of Section 24, the expression income would also include properties, whether presently yielding any return or not. Since (to borrow from Tennyson) words, like nature, may only half-reveal and may very well half-conceal the soul within and since such half-concealed soul may only be discovered from the context in which a particular word has been used, we propose to reproduce the provisions of Section 24 hereinbelow :--

'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 ingoing 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 respondents 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.'

3. It is generally said that income is an expression of elastic ambit, a word of the broadest connotation, a term difficult to define in any precise general formula. But even in its widest amplitude, the expression, in our view, cannot take within its sweep the capital assets like lands and hereditaments and can only include the return accruing from those assets. Fruits of the tree are income, but not the tree; crops from the field are income, but not field, rents from land or house are income, but not the land or the house. Even our law relating to taxes on income, with its far-flung and ever-widening tentacles, has not covered capital assets for which a separate law relating to wealth-taxes had to be enacted. It is true that by an artificial definition, our Income-tax law has brought within the ambit of income, not the capital assets, but only the capital gains, i.e., profits or gains arising from the transfer of capital assets. But it is not the case of the husband that the wife has transferred any of those lands and has earned or is earning any income in the shape of capital gains.

4. in support of his contention Mr. Bhattacharjee has placed strong reliance on the following comments in Raghavachariar's Hindu Law under Section 24, Hindu Marriage Act (8th Edition, page 762) : --

'The expression 'independent income' has not the meaning of regular receipt of money periodically from a given source as the expression income is used in the Income-tax Act. It merely means the wherewithal or funds or assets from which the maintenance and the costs can be met. Hence the use of the expression 'income' is unfortunate and the expression 'means' may well have been used instead of the word 'income'. It surely could not have been the intention of the Legislature that a party who has large assets by way of landed property or palatial house or a big hoard of money, none of which yields any rent or interest, but which can easily be converted to meet the expenses of the maintenance and expenses of the proceeding, can be permitted to apply for interim maintenance and costs against the respondent.'

5. We, however, respectfully express our dissent from the view noted above. We cannot but note that in the statutory law relating to maintenance operating in our country for about a century, the expression 'means' or 'sufficient means' is well

known to our Legislature. As early as in 1898, the expression 'sufficient means' was used by our Legislature in Section 488 of the Code of Criminal Procedure of 1898 and has again been used in Section 125 of the present Code of Criminal Procedure of 1973. That being so, it would be perfectly legitimate to infer that the Legislature intended a departure and has deliberately used the word income instead of the word means to exclude all means not yielding any income.

6. As is obvious from the scheme of the Hindu Marriage Act, the Legislature in enacting Section 24 intended to provide for some interim ad hoc relief to the applicant spouse during the carriage of the proceeding to enable such spouse to prosecute or contest the proceeding. In making such an interim order, which is to operate only during the continuance of the proceeding, the Legislature is not expected to require the Court to prepare a balance sheet, so to say, of all the income and also of other capital assets and properties of the parties and that is why the Legislature has deliberately used the word income only and has required the Court to have regard only to the income of the parties. In making an order of permanent alimony, as under Section 25 of the Act, which would remain operative for the whole life of the petitioner, the Court should obviously be required to have regard not only to the income but also all other assets and properties of the parties. That is why Section 25, Hindu Marriage Act, dealing with permanent alimony clearly provides that :

'the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum 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'.

7. The use of the words 'income and other property' in Section 25, as distinguished from the use of the word 'income' only in Section 24, should, in our view, leave no room for doubt that the Legislature has not used the word 'income' in Section 24 to include other property and asset and while it has required the Court to take into account the income as well as Other properties of the parties in granting permanent alimony under Section 25, it has required Court to have regard only to

the 'income' of the parties in ordering interim pendente lite maintenance under the preceding Section 24. Our conclusion becomes more fortified when we note that in the Hindu Adoptions and Maintenance Act, enacted in any very next year, the Legislature has in Section 23(2) of that Act, required the Court, while fixing the amount of maintenance, to have regard to 'the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source'. This is, therefore, a very clear demonstration of the practice of our Legislature that when it intends that in determining maintenance the Court shall have regard also to the other assets and properties of the applicant in addition to the applicant's own income, it would clearly say so in so many words. We take Section 25, Hindu Marriage Act as an instance of a simultaneous exposition, and Section 23(2), Hindu Adoptions and Maintenance Act as an instance of a contemporaneous exposition, of law and would accordingly hold that in view of the express mention of property in those provisions in addition to income and the conspicuous omission of the expression property in Section 24, Hindu Marriage Act, the omission was deliberate and the expression income, in the latter provision would not include other properties and assets. We, therefore, hold that in ordering maintenance pendente lite under Section 24, Hindu Marriage Act, the Court shall have regard only to the income of the applicant and not to her or his any asset or property not presently yielding any return.

8. Now, if those two plots of lands owned by the petitioner-wife, are, as they should be excluded from our present consideration, then the petitioner has made out a case for maintenance pendente lite and also for expenses of the proceeding under Section 24, Hindu Marriage Act. Mr. Bhattacharjee has produced before us a copy of the Income-tax Assessment order of the husband and we find therefrom that the income of the husband is to the tune of Rs. 12,000/- to Rs. 15.000/- per annum. In that veiw of the matter, we think that the amount of Rs. 350/- per month, as ordered by the Court below, and to which both the parties agreed in the trial Court, would be quite reasonable and we would order accordingly. We would also further direct that the husband shall pay to the petitioner-wife a sum of Rs. 500/- as expenses of the proceeding before this Court.

9. We have been told that the wife has obtained an order in her favour under Section 125, Criminal P.C. from the Criminal Court directing the husband to pay to the wife Rs. 200/- per month. We would, therefore, direct that the opposite party/husband shall pay to the wife a sum of Rs. 350/- per month after deducting therefrom the amount that he would be paying in compliance with the order of the Criminal Court and he shall do so with effect from the month of Feb., 1987. The amount payable for each month shall have to be paid within the 15th of the succeeding month while the amount in arrears shall have to be paid within the month of July, 1987 and the amount of Rs. 500/- as expenses of the proceeding shall have to be paid within the month of June, 1987. The petition is accordingly disposed of, but without any order as to costs.

Nayak, J.

10. I agree.