**Sunil Kumar Vs. Pinki and Another**

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**SooperKanoon Citation** : sooperkanoon.com/948268

**Court** : Delhi

**Decided On :** Apr-16-2012

**Judge** : Sanjay Kishan Kaul &Amp; Rajiv Shakdher

**Appeal No.** : FAO No. 164 of 2012

**Appellant** : Sunil Kumar

**Respondent** : Pinki and Another

**Judgement** :

**RAJIV SHAKDHER, J**

CM No.6643/2012 (condonation of delay of 73 days in filing the appeal)

For the reasons stated in the application, the delay of 73 days in filing the appeal is condoned and the application is allowed.

FAO No. 164/2012 and CM No.6642/2012 (stay)

1. This appeal is directed against the order dated 19.12.2011 passed by the Family Court, Rohini. By virtue of the impugned order, the Family Court has disposed of an interim maintenance application moved by the respondents, under section 125 of the Code of Criminal Procedure, 1973 (in short Cr.PC).

2. The learned Family Judge in the impugned order has prima facie, assessed the income of the appellant at Rs.25,000/- p.m. and accordingly, awarded Rs.9,000/-

p.m. towards maintenance of the respondents w.e.f. the date of filing of the interlocutory application i.e., 22.11.2010 till further orders. In addition, the appellant has also been directed to pay litigation expenses to the respondents to the tune of Rs.10,000/-.

3. The appellant is aggrieved by the impugned order and therefore, seeks to challenge the same before us by way of the present appeal.

4. Dr. Kanwal Sapra, who appeared for the appellant has assailed the impugned order on the following grounds :-

(i). that there was no basis for assessing the appellant's total income at Rs.25,000/- p.m. The appellant does not earn more than Rs.5,000/- p.m. and hence, would be unable to pay the interim maintenance of Rs.9,000/- awarded by the Family Court;

(ii). the Family Court wrongly put the onus on the appellant to establish his stand, that he earned Rs.5,000/- p.m. In other words, it was submitted that because the appellant could not furnish documentary proof of his earnings, he could not be put to a disadvantage by the Family Court. The Family Court's conclusion with regard to the earnings of the appellant were based on a mere ipse dixit;

(iii). the respondent no.1 i.e., the wife of the appellant, was a suitably qualified person capable of earning enough to look after her personal needs as well as those of respondent no.2;

(iv). the appellant does not own any landed property in his own name. The agricultural land to which reference is made in the impugned order is owned by the members of the joint family.

5. Based on the aforesaid arguments, Mr.Sapra sought our intercession qua the directions contained in the impugned order.

6. Having heard the learned counsel for the appellant, we are of the view that the impugned order deserves to be sustained for the reasons set out hereinafter. However, before we proceed further, we may notice the circumstances in which

the present appeal came to be filed :-

6.1 The appellant entered into matrimony with the respondent no. 1 on 11.03.2007. From wedlock, respondent no.2 was born. According to appellant on 29.09.2008, respondent no.1 left the matrimonial home. Respondent no.1 on the other hand, has adverted to the ill-treatment meted out to her, and the demands for dowry made on her and her father. As a matter of fact, the appellant also avers in the pleadings filed before the Family Court that respondent no.1 was acting at the behest of her father who was interested in grabbing the property of the appellant.

6.2 It appears that the appellant had instituted proceedings for divorce and had obtained an exparte decree in that behalf. On respondent no.1 moving the concerned court under the provisions of Order 9 Rule 13 of the Code of Civil Procedure, 1908 (in short the code), the exparte decree was set aside; though that did not prevent the appellant from remarrying during the pendency of the application for setting aside the exparte decree of divorce. The exparte divorce was obtained on 22.04.2010, and the appellant remarried on 31.07.2011.

6.3 It is in this background, on 22.11.2010, an application under section 125 of the Cr.PC for claiming maintenance, came to be filed by the respondents.

6.4 In the application, as noticed in the impugned order, respondent no.1 has alleged that the appellant is in the real estate business, which is carried on by the appellant, in the name and style of S.K. Enterprises. It is further alleged that the appellant also owns a photo studio; and together from both businesses, the appellant earns about Rs.35,000/- p.m. In support of her allegations, respondent no.1 has produced the visiting card used by the appellant to promote his business.

6.5 It is also alleged by respondent no.1 in her pleadings before the Family Court that the appellant is in possession of huge bank balance, share in family properties and that at the time of marriage 30-35 tolas of gold had been gifted to her which presumably is with the appellant.

7. As would be expected, the appellant has refuted these allegations. It may also be noticed that amongst others, proceedings were also taken out under the Guardians and Wards Act, 1890. Strangely, in those proceedings, the stand of the appellant was that respondent no.1 did not have sufficient means to maintain respondent no.2 and that it was the appellant who had the necessary wherewithal to provide good education, medical facilities, clothing and food to respondent no.2.

8. Based on the aforesaid pleadings, the learned Family Court has returned the following prima facie findings :-

8.1 The appellant has been less than candid in disclosing the details of his property and income. On the aspect of properties, it transpires that during the course of the hearing, the appellant admitted when confronted by the Family Court that, out of the sale consideration of Rs.3.14 Crores (approx.), a sum of Rs.7.7 Lakhs had come to their family's share (the figure evidently should be Rs.77 Lacs as mentioned in paragraph 16 of the impugned order). As regards, disclosure of details of his business, once again, the learned Family Judge records that a mere denial of the visiting card filed by the respondent would not suffice as the said visiting card filed by the respondents contained details of telephone numbers and address of properties. The appellant did not place anything on record to suggest that, neither the mobile numbers mentioned therein nor the property details given in the visiting card-had no connection with him;

8.2 Based on the above, the Family Court observed that it is quite possible that the assertion of respondent no.1 that 30-35 tolas of gold may have been given in marriage, and that, the appellant was owner of landed property with interest in dairy, agricultural and construction, may be prima facie correct; and

8.3 The Family Court also noticed the aspect, noticed hereinabove, which is that in the Guardianship petition, the appellant had asserted his financial capability as against that of respondent no.1.

9. We have taken note of the observations made by the Family Court qua the aspects referred to above. In our view, the Family Court has correctly concluded, of course, on a prima facie basis, that the appellant is a man of means. Therefore,

the reasoning of the learned Single Judge in awarding interim maintenance in the sum of Rs.9,000/- cannot be faulted with since the appellant chooses to keep back the relevant information from the court. The appellant's stand before the Family Court that he assists his father in construction and wood work seems hollow in the circumstances adverted to above.

10. Therefore, having regard to the state of the pleadings and the material placed before the learned Family Court, it could have only adopted a rough and ready method. The admission of the appellant in court before the learned Family Court that his family had a share in landed properties liquidated was, in our view, a sufficient clue with regard to the financial means available to the appellant. While it is true that the appellant could not have been asked to prove the negative, what has worked against the appellant is, his approach both in the pleadings and his apparent demeanour in court which is suggestive of his attempt to suppress the correct facts obtaining in the case. At this stage, the Family Court could only have adopted the course, which it took recourse to, in the present matter.

11. For the foregoing reasons, the appeal being without merit is liable to be dismissed. It is ordered accordingly.