

S.Sumathi Vs. R.Sharavanakumar

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Court : Chennai

Decided On : Apr-30-2013

Judge : S.Nagamuthu

Appellant : S.Sumathi

Respondent : R.Sharavanakumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

30. 04.2013 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU CRP (PD) No.486 o

1. S.Sumathi 2.Minor daughter Meenatche Pooja (Rep. By Mother and Natural Guardian) .. Petitioner -Versus- R.Sharavanakumar .. Respondent Petition filed under Article 227 of the Constitution of India, to dispose of I.A.No.1924 of 2010 in H.M.O.P.No.137 of 2010 now pending before the Family Court, Coimbatore expeditiously. For Petitioner : Mr.R.Sankaranarayanan for Ms.K.Sumathi O R D E R On the representation, from time to time, by several Associations of Women, other Organizations and individuals, The Family Courts Act, 1984 came into being and Family Courts were established with exclusive jurisdiction for speedy settlement of family disputes [see the statements of object and reasons of The Family Courts Act]. But, in reality, whether the said object is anywhere near accomplishment? Nodding her head in the negative, a woman , who is locked in a matrimonial dispute, has come up with this Civil Revision Petition under Article 227

of the Constitution seeking a direction for speedy disposal.

2. The first petitioner in this Civil Revision Petition is the wife of the respondent and the second petitioner is their minor daughter. The respondent has filed H.M.O.P.No.137 of 2010 before the Family Court, Coimbatore, seeking a decree of divorce. While so, the petitioners herein have filed I.A.No.1924 of 2010 seeking alimony pendente lite and also litigation expenses. To be precise, the wife claims interim alimony of Rs.31,000/- per month and the daughter claims a sum of Rs.3,700/- per month and Rs.35,100/- towards yearly expenses to the wife and Rs.28,600/- towards yearly expenses of the daughter and Rs.5,000/- towards the litigation expenses. The said Interlocutory Application is still pending along with H.M.O.P.No.137 of 2010. At this stage, the petitioners have come up with this Civil Revision Petition seeking a direction to the Family Court to dispose of I.A.No.1924 of 2010 within a time frame to be fixed by this Court.

3. This Civil Revision Petition has come up for admission. I have heard the learned counsel Mr.R.Sankaranarayanan assisted by Ms.K.Sumathi for the petitioner and I have also perused the records carefully. No notice is ordered to the respondent as this order will not in any manner be prejudicial to the interest of the respondent.

4. As I have already pointed out, I.A.No.1924 of 2010 has been filed under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) both by the wife and the daughter of the respondent jointly. During the course of hearing, a doubt arose in the mind of this Court as to how a daughter of the litigating spouses can be a party to a petition under Section 24 of the Act, claiming maintenance pendente lite. Therefore, this Court invited the learned counsel for the petitioner to advance arguments on the very maintainability of the Interlocutory Application under Section 24 of the Act by the daughter.

5. In this regard, before entering upon any further discussion, let us have a look into Section 24 of the Act which reads as follows:- 24. Maintenance Pendente lite and expenses proceedings-. 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 income 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

respondent 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: Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.

6. A plain reading of the above provision would show that a claim for maintenance pendente lite and litigation expenses can be filed either by the wife or by the husband against the other and by none else. The phrase in the opening sentence of Section 24 of the Act either the wife or the husband will reflect the same. Thus, at the first blush, it gives an impression that such a claim for maintenance pendente lite and litigation expenses can be made only by the wife or the husband for herself or himself, as the case may be, and not for the children.

7. This question came up for consideration before the Hon'ble Supreme Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun* (AIR 1997 SC 3397). Factually, in the said case, a Hindu wife was awarded maintenance pendente lite of Rs.2,500/- per month under Section 24 of the Act and Rs.1,000/- towards litigation expenses by the trial court. The same was reduced by the High Court to Rs.1,500/- per month. Challenging the same, the wife took up the matter to the Hon'ble Supreme Court. Before the Hon'ble Supreme Court, it was contended that she had an unmarried daughter who was also under her care and custody. Her grievance was that the Court below did not take into account the fact that she had to maintain the unmarried daughter. It was opposed by the husband on the ground that a petition under Section 24 of the Act cannot be over stretched to order for maintenance pendente lite in favour of the child. The further argument was that such maintenance for the child can be claimed only under Section 26 of the Act. On considering the said contention, the Hon'ble Supreme Court answered the question in paragraph No.6 as follows:-Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since

wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife. We are aware of the provisions of Section 26 of the Act providing for custody of minor children, their maintenance and education but that section operates in its own field.

8. From the above judgment, it is crystal clear that an order for maintenance pendente lite and litigation expenses can be made only in favour of the wife/husband as the case may be. But, while fixing the maintenance pendente lite for the wife/husband, the Court is required to keep in view the fact that there is a child who also needs the support of the wife or husband, as the case may be. Thus, a petition under Section 24 of the Act, can be filed by the wife/husband claiming maintenance pendente lite and in order to arrive at a just amount, she/he can plead that she/he has got a child also to maintain.

9. In such a petition filed under Section 24 of the Act, except the wife or the husband, as the case may be, none else can be the petitioner/claimant.

10. Now, let us now have a look into Section 26 of the Act which reads as follows:-
26. Custody of children-. In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such, orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the Court may also from time to time revoke, suspend or vary any such orders and provisions previously made: Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.

11. Though the above provision is captioned as custody of children, it contains the provision for passing interim orders for maintenance and education of minor

children as well. If the wife wants to claim maintenance for the child, separately, she will be at liberty to make such an application representing the minor child under Section 26 of the Act. This view of mine draws support from Ninety-Eighth Report of the Law Commission of India of April 1984. The points that were the subject matters of the study in the report pertain to a survey of various provisions of the Hindu Marriage Act, more particularly, Sections 24 to 26 of the Act. In the said report, the Law Commission recommended for amending the Hindu Marriage Act. Chapter 3 of the said report deals with the interim maintenance under the Hindu Marriage Act wherein, the Commission has stated as follows:-

CHAPTER 3
MAINTENANCE FOR CHILDREN WITHOUT A FORMAL APPLICATION

Interim
3.1. The first question that maintenance has arisen with reference to for the provisions of the Children Hindu Marriage Act quoted above [Chapter 2, supra] is this Can interim maintenance be granted for children under section 24 of that Act [Paragrap

2. supra], where there is no separate application under section 26 in respect thereof? [Paragraph 2-3 , supra] Conflict of view 3.2. There is a conflict of as to Section judicial decisions on the point. 24 and 26 The following High Courts take the view that even where there is no separate application for the grant of maintenance to children under section 26, the court should, in a proceeding initiated by the wife under section 24, exercise its discretion and award maintenance to the children:- (i) Andhra Pradesh; [Narendra Kumar v. Suraj Mehta, AIR 198.A.P. 100] (ii) Delhi; [Damodar v. Bimla, (1974) P.L.R. (Del.) 33] (iii) Karnataka; [D.Thimmappa v. Nagaveni, AIR 197.Karn. 215; Subhashini v. Umakanth, AIR 198.Karn. 115] (iv) Kerala; [Radha Kumar v. K.M.K.Nair, (1981) K.L.T. 417 (Sukumaran.J.)] (v) Punjab & Haryana; [Balbir Kaur v. Raghubir, AIR 197.P & H 225.and (vi) Rajasthan [Baboo Lal v. Prem Lata, AIR 197.Raj. 93] 3.3 The contrary view, denying the court such a power without a formal application under section 26 has been taken by the following High Courts:- (i) Jammu & Kashmir; [Puran Chand v. Kamala Devi, AIR 198.J & K 5.(ii) Orissa [Akasam Chinna Babu v. Akasam Parvati, AIR 196.Orissa 163]; and (iii) Patna [Bankim Chandra v. Anjali, AIR 197.Pat. 80]. Review of case law 3.4. The extensive case law on the subject has been reviewed in some of, the rulings, of which an Andhra Pradesh [Narendra Kumar v. Suraj Mehta, AIR 198.A.P. 100] one is very useful.

Incidentally, the Kerala judgement [Radha Kumar v. K.M.K.Nair, (1982) K.L.T. 417 (Sukumaran.J.)] taking the wider view attracted a number of favourable as well as unfavourable comments in articles published in a Law Journal [See articles by Shri P.V.Ayyappan, Shri.S.Balachandran, Shri Siby Mathew and Shri V.K.Francis, respectively in (1982) K.L.T. (Journal) pages 65, 79, 83 and 90].

Another question 3.5. The above case law relates to application under orders for interim maintenance of section 26 children under the if necessary for Hindu Marriage Act. A somewhat similar question, permanent which also seems to have led to some maintenance of judicial controversy, has arisen in connection with children orders for permanent maintenance of children. The precise question is as follows:- Can maintenance be granted to a child (section 26, Hindu Marriage Act) on an application by the wife under section 25, Hindu Marriage Act, even though no specific mention of section 26 is made in the application of the wife? According to the Madras High Court [Munuswamy Rajoo v. Hansa Rani, AIR 197.Mad. 15], this can be done. According to the Bombay [Dalli Ram Jain v. Taravati, AIR 198.Bom. 15] and Gujarat [Dharamshii Premji v. Bai Sekar Kanji, AIR 196.Guj. 150] High Courts , this cannot be done.

Amendment needed in 3.6. On considering the two questions that have created Section 26, trouble as above [Paragraphs 3.1 and 3.5, supra] it would appear that Hindu Marriage Act there is need to settle the legal position on both of them which are of a recurring nature. As to the tenor of the amendment required, the better course would be to give a wide scope to the power of the Court, under section 26 of the Hindu Marriage Act [Paragraphs 2.3, supra], so as to make it clear that the power there-under can be exercised with or without an application. The object could be achieved by inserting, in section 26 of the Hindu Marriage Act [Paragraphs 2.6, supra], after the words "from time to time", the words "and whether or not an application for the purpose is made on behalf of the minor children? Such an amendment should suffice to make it clear that (i) interim orders regarding children, (ii) as well as permanent orders regarding them, can be made without a formal application. Of course, the court will pass such orders only where the existence of children and the need to pass orders regarding their custody, education and maintenance are known to exist. That need not be specifically emphasised while amending the section. In any case, what the section envisages is a power, and not a duty.

Incidentally, the present structure of section 26 imposes some strain on the reader. Opportunity should, therefore, also be taken of breaking up the section into clauses so as to facilitate reading.

12. But, the Ninety-Eighth Report of the Law Commission was not fully implemented. It was in the year 2001, a proviso to Section 24 and proviso to Section 26 were introduced by the Parliament to the HM Act. As per proviso to Section 24, an application for litigation expenses, etc., shall, as far as possible, be disposed of within a period of sixty days and similarly, as per proviso to Section 26, an application with respect to the maintenance and education of the minor children, pending proceedings for obtaining such decree shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent. The above said proviso to Section 26 removes doubt, if any, that pending disposal of the main proceeding between the husband and wife, an interim order in respect of maintenance of the minor children can be made by the court only under section 26 of the HM Act.

13. Superficially, it may appear as though there is no much of difference between Section 24 and Section 26 of the HM Act for grant of maintenance to the minor child. But, in fact, it is not so. For instance, an order for maintenance to a minor child made under Section 26 of the HM Act, if it is not an interim order, is appealable under Section 28(2) of the HM Act, whereas, if such an order for maintenance for a minor child is made under Section 24 of the Hindu Marriage Act, it is not appealable since Section 24 has been consciously omitted from the purview of Section 28(2) of the HM Act by the legislature. Similarly, if maintenance is awarded under section 26 of the HM Act to a minor child, the decree-holder shall be the minor child and not the mother or the father. Since the decree can be executed by a decree-holder, the minor child represented by any next friend can execute the said decree. Thus, it is manifestly clear that if a minor child needs interim maintenance pendente lite or permanent maintenance, an application can be made only under Section 26 of the HM Act by the minor child being represented by a next friend or guardian. Instead of doing so, if the mother or father of the child claims maintenance to herself or himself under Section 24 of the Hindu Marriage Act, then, as has been held by the Hon'ble Supreme Court in

Jasbir Kaur Sehgal's case [cited supra], while fixing the quantum of maintenance pendente lite, the court shall take into account the fact that the mother / father has to maintain the minor child as well and in any event, in an application under Section 24 of the HM Act, the minor child shall not be a party to the proceeding. Thus, it is obvious that there is no overlapping between Section 24 and Section 26 of the HM Act as they function in different spheres.

14. In this context , I may refer to a judgement of Karnataka High Court in Smt.Padmavathi v. C.Lakshminarayana, Air 2002 Karnataka 424. In the said judgement, while dealing with an identical situation in paragraph 10, the Karnataka High Court has held thus:- 10. Section 24 of the Act does not provide for award of maintenance to the children separately, but, if the children are under the protection of the wife, the Court would be justified in taking that into consideration in awarding maintenance to the wife. I hasten to add. when the wife makes an application under Section 24 of the Act for grant of interim maintenance to the children also, the Court can grant relief to the children also under Section 26 of the Act, whenever it considers just and proper.

15. Nextly, we may refer to a judgement of Calcutta High Court in Manoj Kumar Jaiswal v. Smt. Lila Jaiswal, AIR 198.Cal 230 wherein the Culcutta High Court has held thus it is true that Section 24, in terms, provides for pendente lite maintenance for the spouse only and not for the children of marriage. But Section 26 invests the Court with full jurisdiction to pass, from time to time, such interim orders for maintenance of minor children as the Court may deem just and proper. It should also be noted that while Section 24 requires for its operation an application from the spouse concerned, the provision of Section 26, so far it relates to interim maintenance, may be invoked even without any application in writing and a formal application in writing is necessary under Section 26 only for awarding maintenance and other reliefs after the decree.

16. The Rajasthan High Court has also taken a similar view in Baboolal vs Smt. Prem Lata, AIR 197.Rajasthan 93 wherein the Rajasthan High Court has held thus where no separate application for the maintenance of the children was made by the respondent under Section 26 of the Act, nor was any separate maintenance

demand for the children, but on reading the wife's application and her affidavit I have no doubt that in making a demand for her own maintenance the wife had included the expenditure that she was incurring over the maintenance of the children. Therefore, it cannot be said that the Court was not justified in fixing the amount of maintenance taking note of the fact that the wife was maintaining the two children out of her own income.

17. The Allahabad High Court in *Amit Kumar Sharma v. VI Addl. District and Sessions Judge, Bijnor*, AIR 199 Allahabad 4, while examining the scope of Section 24 and Section 26 of the HM Act has in paragraphs 14 and 22 held as follows:- 14. A plain reading of the Section shows that it contemplates maintenance either to the wife or to the husband. It does not include maintenance either for the children or the mother of the husband. Whether the children would be entitled or not would be examined later on. At the moment, it is clear from Section 24 that the provisions thereof apply for the purpose of securing maintenance to the wife or the husband. The maintenance under the Hindu Marriage Act is available to the parties to the proceedings with regard to the lis involved. The lis is confined to the extent of marriage between the wife and the husband. There cannot be any lis for the mother in respect of the proceedings between the husband and wife involving their marriage. The mother is in no way connected with the lis relating to the marriage between the husband and the wife and, therefore, the provisions of Section 24 can never be stretched to include the maintenance of the mother in a proceedings under Section 24 of the Hindu Marriage Act.
... ..

24. If no application is necessary for the custody and maintenance of the children under Section 26 when it is within the first stage, then it can very well be exercised under Section 24, while making provision for the wife's maintenance which will include the maintenance and education of the children.

18. The judgments referred to above would also support the view, which I have taken hereinabove in paragraph 12 of this order. In the case on hand, as I have already pointed out, though the application in I.A.No.1924 of 2010 has been filed under section 24 of the HM Act, the minor daughter of the 1st petitioner has also

been made as a party to the said application. As I have concluded above, this is procedurally incorrect. When this was pointed out, the learned counsel for the petitioners submitted that the minor child may be deleted from the array of parties in I.A.No.1924 of 2010 with liberty to the 1st petitioner to make a separate application for maintenance under Section 26 of The HM Act for the minor child.

19. Now, turning to the facts of the instant case, why the petitioners have been impelled to approach this court under Article 227 of The Constitution of India?. Admittedly, I.A.No.1924 of 2010 was filed in the year 2010 seeking maintenance pendente lite and litigation expenses. But, no progress has admittedly been made for the past three years by the trial court. The very concept of the Family Court is to provide speedy settlement of family disputes. The Act has simplified the rules of evidence and the procedure so as to enable the Family Court to deal effectively with a dispute. In Chennai City, there are four Family Courts and in other cities, such as, Madurai, Coimbatore and Salem also there are Family Courts. Though the Family Courts Act has simplified the rules of evidence and the procedure, it is disappointing that the interlocutory application, now under consideration, could not be disposed of by the Family Court, Coimbatore, for three years. The major reason for the same is obviously inadequacy of number of Family Courts to cope with the demands of the litigant public. Take for instance, in the four Family Courts in Chennai City, a total number of about 12000 cases are pending. The statistics relating to the pendency of cases in the Family Courts in Chennai City is thus:
PENDENCY OF CASES AS ON 28.02.2013 BEFORE THE FAMILY COURTS,
CHENNAI-104

Original application	Original I.A.s	Maintenance U/s.24	Interim of	Other-wise the	Total Suits	Petition HM	Case Act
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Principal Family Court, Chenna

1255. 6

236.

1832

I Addl. Family Court, Chennai

1724. 39

382.

3083

II Addl. Family Court, Chennai

1422. 30

1395.

3604

III Addl. Family Court Chennai

1648. 45

250.

3279

Tota

6049. 122

2263.

11798

20. Having seen the above statistics , none can deny the fact that it is practically impossible for these four Family Courts to dispose of the cases expeditiously so as to provide speedy settlement of the family disputes, aimed at by The Family Courts Act, 1984. In dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceeding and that it should make reasonable efforts for settlement before the commencement of the trial. However, our experience shows that not much progress has been made by the Family Courts in the State. In the above back drop, I am of the view, that unlike the Civil Courts, the Family Courts should receive special attention of the Government. The people, who are parties before the Family Courts, are almost the unfortunate lot in the society who are at the brink of the collapse of their marital lives. Unless, the stake holders in this system show

more concern, going by the huge pendency of the cases in the Family Courts, I am sure that speedy settlement of family disputes, as aimed at by the Act, will only be a mirage. It is high time for the Government to establish more number of Family Courts in the City of Chennai and other places as early as possible so as to instill a ray of hope in the minds of the litigant public that speedy settlement of Family Disputes by the Family Courts is a reality.

21. Turning to the relief sought for in this revision petition, simply because the petitioners have approached this court, their request for fixation of upper time limit cannot be given preference over the others who are also placed in similar situation standing in the queue. Therefore, the question of fixing a time limit for disposal of the interlocutory application is not feasible. At the most, this court can only issue a direction to the trial court to expedite the enquiry in the interlocutory application and to dispose of the same as early as possible.

22. In the result, the civil revision petition is disposed of in the following terms:- (i) The learned Judge, Family Court, Coimbatore, is directed to expedite the enquiry in I.A.No.1924 of 2010 in HMOP No.137 of 2010 and dispose of the same as early as possible. (ii) The name of the minor Child Meenatche Pooja shall stand deleted in the array of parties in I.A.No.1924 of 2010 in HMOP No.137 of 2010. No costs. Consequently, connected MP is closed. Note: The Registry is directed to furnish a copy of this order to the (i) The Chief Secretary , Government of Tamil Nadu, Fort St. George, Secretariat, Chennai, (ii) The Home Secretary, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai and (iii) The Law Secretary, Government of Tamil Nadu, Fort St. George, Secretariat, Chennai and to the learned Advocate General, High Court, Madras directly. jbm kmk

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