Dr. Kulbhushan Kumar

Vs

Smt. Raj Kumari and Another

Civil Appeals Nos. 2564 and 2589 of 1966

(A. N. Ray, G. K. Mitter JJ)

20.10.1970

JUDGMENT

MITTER, J. -

1. These two appeals are from two judgments and decrees of the High Court of Allahabad granting maintenance to the wife and daughter of the common appellant in both the appeals.

2. Counsel for the appellant did not contest the right of the respondents to claim maintenance. His argument was directed only against the question fixed in both the cases on the ground that the principles laid down in Section 23(2) of the Hindu Adoptions and Maintenance Act, 1956, had not been followed by the High Court. The Act had come into force before the date of the Trial Court's judgment on the 1st June, 1957, and it is the common case of the parties that the Act governs the rights of the parties herein. The relevant portion of Section 23 runs as follows :

> "(1) It shall be in the discretion of the Court to determine whether any, and if so, what maintenance shall be awarded under the provisions of this Act, and in doing so the Court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, as far as they are applicable.
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> (2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged infirm parents under this Act, regard shall be had to -
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> (a) the position and status of the parties;
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> (b) the reasonable wants of the claimant;
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> (c) if the claimant is living separately, whether the claimant is justified in doing so;
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> (d) the value of the claimant's property and any income derived from such property, or from claimant's own earnings of from any other source;
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> (e) the number of persons entitled to maintenance under this Act.
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> #* * * *."##

It was contended on behalf of the appellant that practically all the provisions of sub-clauses of sub-section (2) were disregarded by the High Court, it is necessary to state a few facts about the married life of the appellant, his income out of which maintenance is to be directed, the pecuniary conditions

of himself and his wife and whether the wife has any other income or property which had to be taken into consideration.

3. The marriage of the appellant with the respondent in the first appeal took place in May, 1945, at Gujranwala now in Pakistan. The father-in-law of the appellant who was examined as a witness in the maintenance suit filed by the respondent gave evidence to the effect that he had worked as an agent of the Standard Vacuum Oil Company with agencies at Gujranwala and neighbouring districts and that his annual income at the date of marriage of the respondent was about Rs. 40,000/- out of which he had to pay Rs. 13,000/- by way of income-tax. Further, after the partition of India he came to Dehra Dun and took up his abode at Premnager Refugee Camp but could not engage himself actively in business on account of illness and old age but had become a partner with others in a business of ice and rice mill in which he had a Rs. 0-2-6 share; he had never seen the accounts of the business and was content to accept whatever was given to him by his partners which varied between Rs. 50/- and Rs. 200/- per month. He had to leave all his property in Pakistan and had not received any compensation in lieu thereof the date when he was examined in Court in March, 1966.

4. There is some dispute about the period during which the parties in the first appeal had lived together as man and wife. According to the husband the period had come to an end in March, 1946, while according to the wife it had lasted up to December, 1946. Admittedly, a daughter, the respondent in the second appeal, was born out of the wedlock on August 4, 1946. The wife sent a lawyer's notice claiming maintenance on July 28, 1951, and filed a suit for the purpose adding a claim to ornaments which according to her were left with the husband. The lawyer's notice states that the news of the birth of the daughter had been conveyed to the parents by his father-in-law by registered post but the latter had refused to accept it, that the wife had been sent by the appellant to Gujranwala for the confinement in 1946 and all her Stridhana jewellery, silk clothes, etc., had been left behind with the appellant at Lucknow. On the basis that the appellant was receiving Rs. 560/- per month as salary from Government and was earning Rs. 800/- per month by way of private practice besides income from agricultural lands, the wife's claim to maintenance was laid at the rate of half the earnings of the husband inclusive of the maintenance of the minor girl who had to be educated and brought up according to the husband's status in life.

5. The suit for maintenance was actually filed on April 27, 1964, by the wife claiming besides the value of the ornaments a decrees for arrears of maintenance amounting to Rs. 21,600/- and future maintenance at the rate of Rs. 600/- per month. The claim made in the daughter's suit filed on April 5, 1965, was at the rate of Rs. 150/- per month.

6. The Trial Court decreed the two suits awarding maintenance to the wife at Rs. 100/- per month as from the date of the decree i.e. 1st June, 1957, and at the rate of Rs. 25/- per month for the daughter negativing the claim to the value of the ornaments.

7. The High Court allowed the claim of the wife to a monthly maintenance of Rs. 250/- from the date of the institution of the suit subject to a limit i.e., that the husband would not be liable at any time to pay more than 25% of the total income as accepted by the income-tax authority by way of maintenance. With regard to the daughter, the High Court fixed the amount of maintenance at Rs. 150/- per month subject to a similar limit as in the case of the wife, the quantum being directed not to exceed 15% of the average monthly income of the father.

8. The relevant facts as they emerge from the oral and documentary evidence adduced by the parties so far as the same have a bearing on the factors mentioned in sub-clauses (a) to (d) of Section 23(2)

besides the above may be stated briefly. We have already noted that the father of the wife was a fairly well-to-do person at the time when the marriage had taken place. There was however a serious reversal of his fortunes after the partition of the country. According to him no talk of any dowry had taken place between the parties before the marriage of his daughter. The appellant who had qualified himself in medicine had gone to Gujranwala from Lucknow for the marriage. The appellant's mother had seen the respondent several times before the nuptials. His daughter had accompanied the appellant to Lahore immediately after the marriage but had come back from there within 10 to 15 days.

9. The respondent's evidence was that except for very brief periods from October, 1945 to March, 1946 she had scarcely lived with her husband who was working in a medical college at Lucknow starting on a salary of Rs. 280/- per month. Her evidence was that she was not well received in her husband's family because her mother-in-law was disappointed with the dowry brought by her.

10. From the oral and documentary evidence it appears that the husband was never anxious to have the company of the wife and her attempts to make the married life a normal one by going to Lucknow three times did not have the desired effect. The husband used to write to her but stopped doing so some two months after the birth of her daughter in August, 1946. She had written a number of letters to her husband from 1946 to 1949 without receiving any reply. On the last occasion when she had gone to the husband at Lucknow the latter was absent from home for four days and she could not find out whether he was attending his college during that time. The husband had met her at Lucknow when she went there with her daughter but made himself scarce after the first day. The husband's evidence shows clearly that he was disillusioned about the wife immediately after the marriage inasmuch as he found the wife to be a girl of little education whereas he had been given to understand that she had taken a master's degree in arts. He had however tried to reconcile himself with his lot. His statement even in examination-in-chief does not show that he was at any time anxious to receive his wife or to keep her with him. He had kept up correspondence with her till August, 1946, when he received a registered letter intimating him of the birth of his daughter. For five years thereafter i.e. from the time of the partition of the country, he had no news of his wife and child. In 1951 he received the lawyer's notice. At the time of his marriage he was a resident medical officer drawing a fixed salary of Rs. 280/- p.m. with free quarters. He became a lecturer in medicine in December, 1945, on a salary of Rs. 280/- with prospects of increment up to Rs. 400/-. In 1953 he became a Reader in medicine on a scale of Rs. 500-30-800. His salary at the time of his giving evidence in Court was Rs. 620/- plus 10% by way of dearness allowance. He also had some private practice which came to no more than Rs. 25,000 to Rs. 30,000/- during the entire period from 1945 to 1957. His bank balance had never crossed the limit of Rs. 2,000/-. He had no other assets except a piece of land in Ambala given by way of compensation for lands owned in Pakistan. He had purchased a car for Rs. 10,000/- and his monthly expenses for the upkeep of it including the chauffeur's pay was Rs. 70/- p.m. He had no idea of the financial status of his father-in-law.

11. A few letters which passed between the husband and the wife and exhibited in this case show that from May, 1945 to October, 1945, the husband was writing quite affectionate letters to the wife. There were only two sort letters written on the 3rd and 4th January, 1946, written in an altogether different vein. The copy of the only letter of the wife which was exhibited in this case bearing date 25th August, 1948, starts off with congratulations to the husband for having received a scholarship for going to England as reported in the Tribune. She complained that the husband had forgotten her although she still loved his as usual. She mentioned that the daughter was always asking after her father. She requested the husband to look them up before going abroad. She also sent her respects to her mother-in-law.

12. It will be noted that the documentary evidence noted above was of a period prior to the litigation. The wife complained in the plaint about the strained relations between herself and her mother-in-law on the grounds of insufficiency of dowry, that though she had gone to the husband and tried to persuade him to do his duty by her it was of no avail, and that the she was living upon the charity of her father. The husband pleaded in defence that the wife had gone to him in October, 1945, of her own accord without any traditional invitation and had stayed with him for some time off and on up to March, 1945, adding :

> "During this period the defendant (himself) was constantly under threat to his being in danger and used to take all sorts of precautions and it became further clear on account of the incompatability of temperament that the defendant would not be able to pull on with the plaintiff."

13. Taking all the circumstances into consideration and specially the status of the father of the respondent that he was giving her a sum of Rs. 250/- p.m. by way of pocket expenses, the Civil Judge, Lucknow fixed the wife's maintenance at Rs. 100/- per month and that of the daughter at Rs. 25/- p.m. The High Court held that it was the husband who was guilty of desertion and the wife was entitled to all the amenities and comforts which would have been hers had they lived together. The High Court also found that the total income in the year 1953-54 was Rs. 10,099/- and that in 1957 he was receiving a salary of Rs. 622/- per month and that his private practice which was of the order of Rs. 250/- p.m. in 1953-54 could be reasonably expected to have gone up much higher in 1957. Accordingly it fixed up a monthly allowance to the respondent at Rs. 250/- for maintenance subject to a limit of 25% p.m. of the total income as accepted by the income-tax authorities.

14. Before us counsel for the appellant contended that the Courts below had ignored the fact that on the death of the wife's father in 1960 she had inherited half the properties left by him and that even during his lifetime she was in receipt of Rs. 250/- p.m. which should have been taken into consideration under clause (d) of sub-section (2) of Section 23. We cannot accept this contention. A sum of Rs. 250/- p.m. even if given to the respondent regularly was not her income but was only a bounty from her father which she might or might not continue to get. It is hardly believable that the father who according to his own evidence was getting no more than Rs. 200/- p.m. out of the partnership business could afford to give Rs. 250/- p.m. to his daughter. It would appear this statement was false and only made with a view to strengthening a claim for the recovery of the amount from the husband. If it were true that the wife had inherited any property from her father there certainly was ample opportunity for the husband to have affirmed an affidavit to that effect during the last ten years. Such affidavit could have been used even before the High Court of Allahabad which heard the appeal in 1965.

15. With regard to sub-clause (c) the evidence makes it quite clear that it was the husband who did not want the wife to live with him. The husband never seemed to have cared for the daughter born to him. The fact that a registered letter was sent to him after the birth of the daughter shows that there was complete estrangement between the parties even before that day. Neither in the letters written to her nor in the evidence adduced by the husband is any reason disclosed as to why he took a dislike to the wife unless it be a fact that he was disappointed in his wife and cherished a feeling that she was not possessed of culture and education of the expected standard. There does not appear to be any substance in the wife's allegations that indifference of her husband stemmed from disappointment in the dowry brought by her.

16. Counsel for the appellant also relied on sub-clause (e) to sub-section (2) on the ground that he

had to maintain his aged mother. Unfortunately however the husband had laid no ground to such a claim in his testimony before the Court. He was not the only son of his mother and it appears from the evidence given by him that his family owned some lands which were being looked after by the mother. In the absence of any express statement by the husband himself in this examination no reliance can be placed on the claim made on his behalf.

17. Reference was made on behalf of the appellant to the decision of the Judicial Committee Mst. Ekradeshwari v. Homeshwar (AIR 1929 PC 128 : 33 CWN 637 : 1929 ALJ 695 : 31 Bom LR 816 : 30 MLW 1 : 57 MLJ 50) where the Board had to deal with the case of a widow of a deceased in the junior line of the well-known Darbhanga family in Bihar. The Trial Court had found in that case that the gross income of the estate was Rs. 1,50,000 per annum, but the net income was only Rs. 33,000 per annum after payment of the interest on the heavy encumbrances on the estate in respect of which litigation was pending between the estate and the Maharaja of Darbhanga. In rejecting the claim of the widow to an annual maintenance of Rs. 18,000/- and upholding the concurrent findings of the Courts in India that the maintenance allowance should be fixed at Rs. 4,200/- per annum the Board approved of the observations of the Sub-ordinate Judge to the effect that the said sum would enable the lady "to live as far as may be consistently with the position of a widow in something like the same degree of comfort and with the same reasonable luxury of life as she had in her husband's lifetime". According to the Board maintenance depended :

> "upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families, a survey of the conditions and necessities and rights of the members, on a reasonable view of change of circumstances possibly required in the future, regard being, of course, had to the scale and mode of living, and to age, habits, wants and class of life of the parties."

With respect we are in entire agreement with the above dictum and in out view sub-section (2) of Section 23 makes no departure from the principles enunciated by the Board, except perhaps to a limited extent envisaged in sub-clauses (d) and (e) of the said sub-section.

18. It was argued before us that inasmuch as the Board allowed as quantum of maintenance 1/8th of the net income of the estate we should adopt the same rate. In our view the Board laid down no principle related to the proportion of the free income allowable by way of maintenance from the estate. It is to be borne in mind that the maintenance claim was by a widow of a Brahmin family although highly placed in life. Here we have the case of a wife who was neglected by her husband not in affluent circumstances but certainly with means to support a wife on a reasonable scale of comfort.

19. It was further argued before us that he High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income-tax Department in assessment proceedings under the Income-tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowable for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income-tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e., in case the authorities found that it was necessary for the appellant to maintain a car.

20. The question as to the date from which maintenance would be claimable was also mooted before the Judicial Committee in the above case. The High Court had turned down the widow's claim to arrears of maintenance. Examining the several decisions cited before it the Board took the view that the widow was entitled to maintenance not from the date of the decree as found by the Courts below nor from the date of the suit in April, 1922, but from 1st of January, 1992, in view of the fact that it was towards the end of the year 1921 when the widow had made up her mind to stay on at her father's place. In this case, as already noted, the claim to maintenance was first laid by a lawyer's notice of 1951 but the suit was filed in 1954. The Trial Court decreed maintenance from the date of the decree in 1957 but the High Court thought fit to allow maintenance from the date of the institution of the suit. No exception can be taken to the fixing of the date of institution of the suit as the terminus a quo for the maintenance claimed by the respondent.

21. A sum of Rs. 250/- per month for the maintenance of the wife of a person occupying the position of the appellant cannot be said to err on the liberal side. The High Court in our opinion very rightly fixed that sum making it subject to the limit of 25 per cent. of the income as found by the income-tax authorities. We have no reason to take any different view. Subject to our observation as to the determination of the income of the appellant, the appeal against the wife is dismissed with costs.

22. As regards the appeal in the case of the daughter, the High Court fixed the amount of monthly maintenance at Rs. 150/- till such time as she marries but so as not to exceed 15% on the average monthly income of the father. No ground was shown as to why we should make a variation in the amount fixed in her case. We uphold the finding of the High Court in this respect. There will be one set of hearing fee.

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