

Jasbir Kaur Sehgal

Vs

The District Judge Dehradun & Ors.

(Sujata V.Manohar, D.P.Wadhwa JJ)

27.08.1997

JUDGMENT

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D.P. WADHWA, J.

1. Leave granted

2. This is wife's appeal against the judgment dated October 14, 1996 of the High Court of Judicature at Allahabad. She is aggrieved by the impugned judgment under which she was awarded maintenance pendente lite under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act') at the rate of Rs.1500/- per month. On an application filed by the wife in the trial court in proceeding for divorce initiated by her husband, respondent No. 3 herein, she was awarded Rs. 2,500/- (Rupees two thousand and five hundred only) as expenses of litigation and maintenance pendente lite at the rate of Rs. 1000/- per month. Her revision before the District Judge Dehradun against this order was dismissed. She further filed writ petition under Article 227 of the Constitution of India in the High Court. By the impugned judgment the High Court enhanced the maintenance to Rs. 1500/- per month.

3. Respondents 1 and 2 in this appeal are respectively the District Judge, Dehradun and the Additional Civil Judge (IInd), Dehradun who are described as proforma respondents. It is not proper or even justified on the part of the appellant to implead the courts as respondents and respondents 1 and 2 are, therefore, struck off from the record of this appeal.

4. Parties were married on October 2,1963. The husband at that time was an army officer. He retired as Lt. Colonel on August 10, 1986. On September 28, 1989 he filed the petition for divorce against his wife under Section 13 of the Act on the alleged grounds of cruelty and desertion. He stated that within two years of the marriage the wife started creating problems for him and she persisted in her behavior right till the years 1989. In this span of 26 year in their married life, they have become the parents of four children, two son and two daughters. Eldest daughter who is 34 years old and unmarried is living with her mother who maintains her. Second child is son who is working with Mukul Overseas Pvt. Ltd. On a monthly salary of Rs. 7500/- per month and is living in a house in Safdarjung Enclave in New Delhi. Third child is a daughter aged 26 years. She is also unmarried and unemployed and is living with the father. Fourth child is a son of 20 years of age, he is unemployed and had studied upto 11<sup>th</sup> class. Husband says that being head of the family he is to maintain two sons and a daughter as they are dependent on him. His claim is that he is presently having a meagre salary of Rs.5000/- per month and is employed as consultant/adviser with M/s. Mukul International Private Limited. Both Mukul Overseas (P) Ltd. and Mukul International (P) Ltd. belong to same group.

5. After retirement from the army, respondent-husband joined the Oil and Natural Gas Commission (ONGC) as a Director and was posted at Dehradun. He retired from that post on August 21, 1995. Thereafter from January 1, 1996 husband is working with M/s. Mukul International Pvt. Ltd. as aforesaid. After deduction of income-tax at source, husband says he is getting an amount of Rs. 4700/- per month. Husband admits that he has a house in NOIDA which was on rent with the army and lease was terminated by letter dated January 29, 1996 from the Ministry of Defence. He says repairs are being carried on in the house and presently he is living with her eldest son in his house. He further says he is not getting any pension as on his permanent absorption in ONGC, he had opted to receive lumps amount in lieu of pension and prorata gratuity amounting to Rs. 2,60,456/-. In addition the husband also received an amount of Rs. 55,775/- on account of D.C.R. Sty. Husband has also filed his computation of taxable income for the assessment years 1992-93, 1995-96 and 1996-97. He has though not filed any assessment order. Since he retired from ONGC in August, 1995 it would be appropriate to see his computation of taxable income for the year ending March 31, 1995. His gross salary income is Rs. 1,88,281/- and after deduction of House Rent Allowance it comes to Rs. 1,78,614. Income from house property he says is Rs. 22,716/-, interest income in Rs. 3179/-. Total of these three items would be Rs. 2,04,509/-. Then there are claims of standard deduction, repairs in the house and tax rebate on saving amounting to Rs. 68,922/- which include payment on account of LIC, PF, PPF, MEP, NSC and general insurance. The amount of tax payable comes to Rs. 35,716/- on a taxable income of Rs. 1,81,790/-. For the assessment year 1996-97 (year ending on March 31, 1996) the salary income shown is 1,18,151/-, income from house property is Rs. 18,930/- and after standard deduction, and other deduction and the rebate the income tax payable is Rs. 18,464/- on the net income of Rs. 1,31,200/-.

6. Wife says that the husband has not given true account of his assets and income and has rather suppressed the same. Though the wife has not been able to give any specific evidence to support her contention but circumstances shows that the husband has not given true state of affairs of his income. He has pleaded that both his wife and his eldest daughter are earning Rs. 10,000/- per month but there is no basis for such an allegation. The fact remains that the wife has no source of income and she is also maintaining her eldest unmarried daughter. Under the Hindu Adoption & Maintenance Act, 1956 it is the obligation of a person maintain his unmarried daughter if she is unable to maintain herself. In this case since the wife has no income of her own, it is the obligation of the husband to maintain her two unmarried daughters one of whom is living with wife and one with him. 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 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.

7. Husband has filed his counter affidavit in the appeal before us and on our direction both the parties have filed additional affidavits. On one date when this appeal came up for hearing we were told that the husband had left that morning itself for Canada for further treatment after his bypass surgery in India and that his expenses visiting the Canada and as well as the expenses for treatment there were being met by his friend. In his affidavit husband has stated that his friend Santokh Singh who is resident of Canada paid his fare. He is, however, silent about the expense if any met by Santokh Singh for his treatment in Canada. A copy of the statutory declaration of Santokh Singh which is dated March 21, 1997 has also been filed. In this Santokh Singh does say that he has

undertaken to bear the cost of passage and maintenance of respondent during his stay in Canada and North America. It is a matter of common knowledge that medical treatment in Canada is high and an ordinary person cannot afford the expenses which are met by taking medical insurance. As to what expense husband incurred for his bypass surgery in India has not been disclosed. On our query as to how much foreign exchange husband incurred for his bypass surgery in India has not disclosed. On our query as to how much foreign exchange husband obtained while going to Canada, it was stated that Dollar U.S. 1,350 were obtained at a cost of about Rs. 50,000/-. From where all these monies came from we are left in dark. Husband has not filed any certificate of his salary from his present employer though the wife has contented that both the firms Mukul Overseas Pvt. Ltd. and Mukul International Pvt. Ltd. are owned by the husband himself which fact husband has denied. Though we are not concerned with the income of his son which is stated to be Rs. 7,500/- per month, it would have been better if the husband had given complete details as to the perquisites enjoyed by his son, the rent he is paying for his rented accommodation at Safdarjung Enclave and the like. Claim of the husband that though his house in NOIDA fell vacant in January, 1996, it has neither been further let nor the husband himself living there because of certain repairs and on that account he is residing with his son does not appeal to us. It does appear to us from the affidavit of the husband that it conceals more than what is tells of his income and other assets. Attempt has been made to conceal his true income and that leads us to draw an adverse inference against the husband about his income that it is more than what is being disclosed to us. The claim of the husband that from an income of Rs. 4,750/- per month which is getting from Mukul International Pvt. Ltd. has to maintain himself, his two sons and daughter is absurd particularly when the eldest son is earning more than the husband and it is the husband who is living with him. Husband has also not disclosed retiral benefits if any from the ONGC and the amount or provident fund he obtained from Unit Trust of India and also from the fixed deposit receipts but again he has not disclosed the number of units he is holding and the amount of the fixed deposits in his name. From all these we have to hold that the annual income of the respondent-husband is even on modest estimate to be Rs. 2,40,000/- annually which would come to Rs.20,000/- per month. Considering the diverse claims made by the parties one inflating the income and the other suppressing an element of conjecture and guess work does enter for arriving at the income of the husband. It cannot be done by any mathematical precision.

8. Wife has no fixed abode of residence. She say 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 no claimed any litigation expenses in this appeal. She is aggrieved only because of the partly 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. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs. 5,000/- per month payable by respondent-husband to the appellant-wife.

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 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 that of the husband to suppress the same; and the like. There has to be honesty of purpose for both the parties which unfortunately we find lacking in this case. We are therefore of the opinion that ends of justice would be met if we direct that maintenance pendente lite as fixed by this judgment to be payable from the date of impugned order of the High Court which is October 16, 1996. We order accordingly. The impugned judgment of the High Court shall stand modified to that extent. All arrears of maintenance shall be paid with a period of two months from today and then regularly every month.

10. The appeal is allowed with costs. Counsel fee Rs. 2,500/-.