

SUPREME COURT OF INDIA

Manish Jain

Vs.

Akanksha Jain

C.A.No.4615 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

30.03.2017

ORDER

R.Banumathi,J.,

SLP (Civil)No.7670 of 2014

1. Leave granted.

2. The present appeal has been filed by the appellant-husband against the order dated 21.02.2014 passed by the High Court of Delhi at New Delhi in C.M.(M) No.910 of 2010. In the said judgment, the High Court while setting aside the order dated 15.03.2010 passed by the Additional District Judge-II (West), Tis Hazari, Delhi who declined to award maintenance pendente lite to the respondent-wife under Section 24 of the Hindu Marriage Act, 1955 has granted interim maintenance to the respondent-wife at the rate of Rs.60,000/- per month to be paid by the appellant-husband Manish Jain with effect from 1st February, 2012 till the disposal of divorce petition. The said amount was fixed in addition to Rs.10,000/- which the appellant-husband has already been paying by way of interim maintenance as per the order passed in Criminal Appeal No.65 of 2008 under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 [for short 'the D.V. Act'].

3. This is a case of marital discord which has a chequered history. Brief facts leading to this appeal by way of special leave are as under:- Both the appellant and the respondent got married on 16.02.2005 and they were living at V-38, Green Park, New Delhi. The couple shifted to an accommodation at 303, SFS Apartment, Hauz Khas, New Delhi on 15.04.2007. In or about July, 2007 relationship between the parties got strained. In September, 2007 the appellant-husband filed a divorce petition HMA No.553/2007 under the Hindu Marriage Act, 1955 [for short 'the HM Act'] seeking divorce on the grounds of cruelty.

4. In November, 2007 the respondent-wife filed a petition under the D.V. Act along with interim relief i.e., maintenance. She also filed a complaint on 23.11.2007 under Section 498-A and Section 406 IPC with CAW Cell, Amar Colony, Nanakpura, New Delhi against the

appellant-husband and his family members which was later on registered as FIR bearing No.190 of 2008, Police Station, Friends Colony, New Delhi on 04.03.2008. In December, 2007, respondent filed yet another Complaint Case No.381 of 2008 under Section 125 Cr.P.C. before the Mahila Court, Patiala House, New Delhi. Her interim application seeking maintenance amongst other reliefs under Section 23(2) of the D.V. Act was dismissed by the Metropolitan Magistrate, Patiala House, New Delhi by order dated 23.04.2008 on the ground that the respondent was employed and was getting a stable income and that no document was placed on record by the respondent to show that respondent had again become jobless as the publication of the Magazine FNL had been stopped. Against the dismissal of application for maintenance, the respondent had filed appeal before Additional Sessions Judge, Patiala House in Criminal Appeal No.65 of 2008. In the said appeal and in Criminal Revision No.66 of 2008, Additional Sessions Judge, Patiala House by an order dated 01.09.2009 granted maintenance of Rs.10,000/- per month to the respondent-wife.

5. The appellant-husband filed an application under Section 438 Cr.P.C. on 22.04.2008 for grant of bail in anticipation of his likely arrest. The High Court granted anticipatory bail to the appellant-husband subject to return of Toyota Corolla and dowry/jewellery articles to the respondent-wife within a week from the date of order till the next date of hearing which is said to have been complied with. Order was also passed directing the respondent to deposit Rs.12,00,000/- towards alleged return of dowry articles.

6. The respondent-wife filed application under Section 24 of the HM Act claiming interim maintenance pendente lite of Rs.4,00,000/- per month and also a sum of Rs.80,000/- to meet litigation expenses during the pendency of the divorce petition. In the said application, the respondent-wife pleaded that she was having no source of income to maintain herself and that she is dependent upon others for her day to day needs and requirements. The said application was resisted by the appellant-husband contending that the respondent-wife is an educated lady and that she had completed her one year course of Fashion Designing from J.D. Institute, Hauz Khas, New Delhi and that she is capable of earning monthly salary of Rs.50,000/-. The application filed under Section 24 of the HM Act was dismissed by Additional District Judge-II, Tis Hazari, Delhi by order dated 15.03.2010. Being aggrieved, the respondent-wife filed Crl. M.A. No.17724 of 2012 before the High Court, Delhi. The High Court in its order dated 08.11.2011 in C.M.(M) No.910 of 2010 filed by the wife against the order dated 15.03.2010 directed both the parties to file an affidavit truthfully disclosing their correct income. Both the husband and the wife filed an affidavit as to their income in compliance of the aforesaid order. After so directing the parties to file affidavit regarding their income and after referring to the income of appellant-husband and the properties which the appellant and his family are owning and also the standard of living of the respondent-wife which she is required to maintain, the High Court by the impugned order directed the appellant-husband to pay interim maintenance of Rs.60,000/- per month in addition to Rs.10,000/- which was directed to be paid to the respondent-wife in the proceedings under the D.V. Act.

7. Aggrieved by the order of the High Court, the appellant-husband came in appeal before this Court by way of special leave. After giving opportunity to the parties to work out a

settlement which ultimately failed, the same was dismissed on 15.04.2014. Being aggrieved by the dismissal of the above petition, a review petition was filed on 13.05.2014 in which notice was issued by this Court on 06.08.2014 and on 03.02.2016 the same was allowed and the Special Leave Petition was restored to its original number which is the subject matter before us.

8. Learned counsel for the appellant-husband submitted that the respondent-wife has concealed her employment and independent source of income on several occasions throughout the matrimonial proceedings before the courts below and also that the High Court has committed a grave error in interfering with the well-reasoned order of the trial Court under Section 24 of the HM Act. The learned counsel for the appellant-husband submitted that the trial court after analyzing the evidence that the wife was educated, professionally qualified in the Fashion industry and had sufficient independent income rejected the application of the wife seeking maintenance under Section 24 of the HM Act. It was submitted that the High Court without proper appreciation of the income of the parties had wrongly set aside the order of the trial Court and fixed an abnormal amount of Rs.60,000/- as maintenance to the respondent-wife under Section 24 of the Hindu Marriage Act. Learned counsel further submitted that in Criminal Appeal No.65 of 2008 under Section 23(2) of the D.V. Act, the appellant-husband is paying an interim maintenance of Rs.10,000/- per month to the respondent-wife and the appellant-husband has so far made a total payment of Rs.7,50,000/- in the proceedings under D.V. Act, apart from returning a Toyota Corolla car worth Rs.13,00,000/- besides depositing a sum of Rs.12,00,000/- and a sum of Rs.2,75,000/- towards untraced admitted dowry articles in compliance with the order passed by the Court. It was further submitted that the appellant-husband's firms/companies have been either shut down due to heavy loss and/or under the stage of winding up and the appellant-husband is not in a position to pay the exorbitant amount of Rs.60,000/- per month as maintenance pendente lite to the respondent-wife.

9. Learned counsel for the respondent-wife at the outset submitted that the principle of providing maintenance is to ensure the living conditions of respondent-wife similar to that of appellant-husband whereas in the present case the respondent-wife is yet to receive any money.

10. We have heard the matter at considerable length. Parties are entangled in several rounds of litigation making allegations and counter allegations against each other. Since various proceedings are pending between the parties, we are not inclined to go into the merits of the rival contentions advanced by the parties. The only question falling for consideration is whether the respondent-wife is entitled to maintenance pendente lite and whether the amount of Rs.60,000/- awarded by the High Court is on the higher side.

11. The Court exercises a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and neither arbitrary nor capricious. It is to be guided, on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim

alimony and would not allow its discretion to be fettered by the nature of the allegations made by them and would not examine the merits of the case. Section 24 of the HM Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the appellant's own income and the income of the respondent.

12. At the time of filing application under Section 24 of the HM Act in December, 2007, the respondent-wife was doing her internship in fashion designing in J.D. Institute of Fashion Technology and just completed the course and was not employed at that time. Only in the Page No. 8 of 13 month of May, 2008, she became a trainee and joined FNL Magazine of Images Group as Junior Fashion Stylist and was earning an approximate/stipend income of Rs.21,315/- per month and due to recession, the same is said to have been reduced to Rs.16,315/- for three months that is July, August and September in the year 2009. It is stated that thereafter the respondent-wife has become jobless and associated with Cosmopolitan Magazine and according to the respondent-wife, she was working as a Stylist and is paid nominal amount of Rs.4,500/- per shoot and the said amount is inclusive of expenses like travelling etc. On a perusal of the judgment of the High Court and also the affidavit of the respondent-wife, it is clear that the respondent-wife has no permanent source of employment and no permanent source of income.

13. Appellant-husband is stated to be a partner in the firms of his family business. It is also stated that the appellant-husband and his family own several valuable properties and has flourishing business. Insofar as the properties/income of appellant-husband, the High Court has made the following observations:-

"38. From the pleading of the respondent before other Courts, it has come on record that the respondent's family is having successful and flourishing business of electrical and non-ferrous metals for the last 22 years. They are successful in their business. His mother belongs to a family of journalists and lawyers..

39. From the material placed on record by the petitioner, prima facie it appears to the Court that even the respondent has not made full disclosure about his income and correct status of the family in the affidavits filed by him. The statements made by him are contrary to the statement made in the bail application. Prima facie, it appears to the Court that the respondent is hiding his income by trying to show himself as a pauper, however, the documents placed on record speak differently. At the same time the family members have a reasonably flourishing business and many properties as admitted by him. It has now become a matter of routine that as and when an application for maintenance is filed, the non-applicant becomes poor displaying that he is not residing with the family members if they have a good business and movable and immovable properties in order to avoid payment of maintenance. Courts cannot under these circumstances close their eyes when tricks are being played in a clever manner."

14. Section 24 of the HM Act empowers the Court in any proceeding under the Act, if 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 any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. Heading of Section 24 of the Act is “Maintenance pendente lite and expenses of proceedings”. The Section, however, does not use the word “maintenance”; but the word “support” can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.

15. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife’s parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.

16. In the present case, at the time of claiming maintenance pendente lite when the respondent-wife had no sufficient income capable of supporting herself, the High Court was justified in ordering maintenance. However, in our view, the maintenance amount of Rs.60,000/- ordered by the High Court (in addition to Rs.10,000/- paid under the proceedings of the D.V. Act) appears to be on the higher side and in the interest of justice, the same is reduced to Rs.25,000/- per month. The maintenance pendente lite of Rs.25,000/- is to be paid to the respondent-wife by the appellant-husband (in addition to Rs.10,000/- paid under the proceedings of the D.V. Act).

17. The order impugned herein is set aside and the appeal is allowed. The amount of Rs.60,000/- awarded as maintenance pendente lite is reduced to Rs.25,000/- per month which is in addition to Rs.10,000/- paid under the proceedings of the D.V. Act. The appellant-husband is directed to pay the arrears w.e.f. 01.02.2012 till the disposal of the divorce petition, within four weeks from today. The appellant-husband shall continue to pay Rs.25,000/- per month in addition to Rs.10,000/- paid under the proceedings of the D.V. Act on or before 10th of every English calendar month till the disposal of the divorce petition. If the appellant-husband has paid or deposited any amount of maintenance pursuant to the order of the High Court dated 21.02.2014, the same shall be set-off against the arrears to be paid by the appellant-husband. The respondent-wife is at liberty to withdraw the amount, if any, deposited by the appellant-husband Pursuant to the order dated 21.02.2014. We make it clear that we have not expressed any opinion on the merits of the matter. In case the appellant-husband does not comply with the order, as above, including for payment of arrears, he would be visited with all consequences including action for contempt of Court.

