

SUPREME COURT OF INDIA

Kalyan Dey Chowdhury

Vs.

Rita Dey Chowdhury Nee Nandy

C.A.No.5369 of 2017

(R.Banumathi and Mohan M.Shantanagoudar,JJ.,)

19.04.2017

JUDGMENT

R.Banumathi, J.,

SLP(C) No.34653 of 2016

1. Leave granted.

2. Challenge in this appeal is to the order dated 15.09.2016 passed by the High Court at Calcutta in RVW No.85 of 2016 in C.O. No.4228 of 2012, reviewing an order dated 02.02.2015 passed earlier in an application filed under Section 25(2) of the Hindu Marriage Act, 1955, thereby enhancing the amount of maintenance from Rs.16,000/- per month to Rs.23,000/- per month.

3. Parties are entangled in several rounds of litigation. Background facts in a nutshell are as follows: The marriage of the appellant and the respondent was solemnized on 10.08.1995 as per Hindu rites and customs at the appellant's residence at Kalna. A male child was born on 04.10.1996 at Chandannagore who is now a major pursuing his college education. After the birth of child, it is alleged that the respondent continued in her parent's house. The appellant-husband requested the respondent to return to the matrimonial home at Kalna alongwith the child. It is alleged that instead of acceding to the request of the appellant-husband and returning back to the matrimonial home, the respondent-wife insisted that the appellant-husband shifts to her father's place at Chandannagore.

4. Appellant filed an application under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights against the respondent-wife in Matrimonial Suit No.370 of 1997 before the District Judge, Burdwan on 23.12.1997. On receipt of summons in the above matrimonial suit on 9.02.1998, the respondent-wife lodged an FIR bearing P.S. Case No.25 dated 13.02.1998 under Sections 498A and 406 IPC against the appellant and his parents at P.S. Chandannagore. The appellant and his parents were granted anticipatory bail by the Sessions Judge, Burdwan on 20.05.1998 in the FIR filed by the respondent-wife. The

respondent-wife also filed a maintenance case being Misc. Case No.24/98 under Section 125 Cr.P.C. against the appellant-husband claiming maintenance for herself and the minor son.

5. On 10.08.2000, the Additional District Judge, Burdwan passed decree of restitution of conjugal rights in favour of the appellant-husband. However, the respondent did not reconcile and preferred an appeal against the said decree of restitution of conjugal rights before the High Court being F.A. No.198 of 2001. In the High Court, by an order dated 24.05.2001 an interim arrangement was made directing the appellant herein to go to the parental home of the respondent-wife at Chandannagore and take back the wife and the child to his residence at Kalna and make necessary arrangement for living with his wife and child separately from the parents of the husband in the first floor of the matrimonial home. Subsequently, the interim arrangement was recalled. The interim arrangement did not work and the appeal filed by the respondent-wife was allowed on 13.08.2003.

6. In the year 2003, respondent-wife filed a Matrimonial Suit No.533 of 2003 before the District Judge Hooghly against the appellant-husband under Section 10 of the Act for judicial separation. According to the appellant, though he filed written objections denying allegations made against him, he could not attend the hearing and it is alleged that he was manhandled in the court premises by some men of the respondent-wife. Ex parte decree for judicial separation was ordered on 19.05.2006, as a consequence of which decree for permanent alimony was also ordered under Section 25 of the Hindu Marriage Act to the respondent-wife amounting to Rs.2,500/- per month and Rs. 2,000/- per month to the minor son.

7. In the meanwhile, the appellant-husband and his parents were acquitted of all the charges by the Additional District and Sessions Judge, 2nd Fast Track Court, Serempore on 20.07.2006 in the case filed alleging dowry harassment. Being aggrieved by the order hereinabove, the respondent-wife filed a revision petition being CRR No. 3087 of 2006 before the High Court at Calcutta which came to be dismissed on 21.03.2011.

8. The appellant-husband filed a divorce petition being Matrimonial Suit No.71 of 2007 which was renumbered as Suit No.193 of 2010 under Section 13(1)(ia) of the Hindu Marriage Act for dissolution of marriage. In the said divorce petition, the respondent-wife filed an application for permanent alimony under Section 25 of the Act. By an order dated 19.05.2006, passed by the Additional District Judge, 1st Court, Hooghly in Matrimonial Suit No.533 of 2003, enhanced the amount of maintenance to Rs. 8,000/- per month in F.A. No. 193 of 2008.

9. On 10.10.2010, the respondent filed an amendment application before the Court being Misc. Case No.2 of 2010 in Matrimonial Suit No.533 of 2003 under Section 25(2) of the Act praying for enhancement of maintenance amounting to Rs.10,000/- per month for herself and Rs. 6,000/- for her minor son. Vide order dated 10.10.2012, the said application was allowed and maintenance at the rate of Rs.6000/- each was ordered for the respondent and her minor son.

10. Aggrieved by this order, respondent-wife preferred a revision petition under Article 227 of the Constitution of India before the High Court being C.O. No.4228 of 2012. During its pendency, the Matrimonial Suit No.193 of 2010 was decreed and the marriage between the parties came to be dissolved by the order of the Additional District Judge, 1st Fast Track Court, Serampore on 30.11.2012. Post-divorce, the appellant herein re-married and has a male child born out of the second wedlock.

11. By an order dated 02.02.2015, the High Court disposed of the above revision petition by directing the appellant-husband to pay a sum of Rs.16,000/- towards the maintenance of the respondent-wife as well as her minor son. Aggrieved by this order, the respondent-wife preferred a Special Leave Petition (C) No.12968 of 2015 which was disposed of as withdrawn with liberty to approach the High Court by way of review. Pursuant to the above order, respondent-wife filed a review application being RVW No.85 of 2016 arising out of CO NO.4228 of 2012. Upon hearing both the parties, by order dated 15.09.2016, the learned Single Judge of the High Court modified the order under review and enhanced the amount of maintenance from Rs.16,000/- to Rs.23,000/- which is the subject matter of challenge in this appeal.

12. Learned counsel for the appellant Mr. Pijush K. Roy submitted that in exercise of review jurisdiction, the High Court ought not to have enhanced the maintenance amount from Rs.16,000/- to Rs.23,000/-. It was further submitted that the appellant-husband is posted at Malda Medical College, Malda, West Bengal and gets a net salary of Rs.87,500/- per month and while so, the appellant would find it difficult to pay enhanced maintenance amount of Rs.23,000/- per month to the respondent-wife. It is also submitted that the respondent is a qualified beautician and Montessori teacher and earns Rs.30,000/- per month and the son has also attained eighteen years of age and hence the enhanced maintenance amount of Rs.23,000/- per month is on the higher side and prayed for restoring the original order of Rs.16,000/- per month.

13. Per contra, learned counsel for the respondent-wife Ms. Supriya Juneja submitted that the High Court on perusal of the pay slip and the expenditure of appellant-husband has arrived at the right conclusion of granting Rs.23,000/- as maintenance to the respondent. The learned counsel has also further submitted that even though the son has attained majority and since the son is aged only eighteen years and is presently studying in a college and for meeting the expenses of higher education and other requirements, enhanced maintenance amount of Rs.23,000/- per month is a reasonable one and the impugned order warrants no interference.

14. We have considered the rival contentions and perused the impugned judgment and other materials on record.

15. Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may

have been made in any proceeding under the Act under the provisions contained in sub-section (1) of Section 25. In exercising the power under Section 25 (2), the court would have regard to the “change in the circumstances of the parties”. There must be some change in the circumstances of either party which may have to be taken into account when an application is made under sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem just.

16. The review petition under Order XLVII Rule 1 CPC came to be filed by the respondent-wife pursuant to the liberty granted by this Court when the earlier order dated 02.02.2015 awarding a maintenance of Rs.16,000/- to the respondent-wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant-husband was getting a net salary of Rs.63,842/- after deduction of Rs.24,000/- on account of GPF and Rs.12,000/- towards income-tax. In February, 2016, the net salary of the appellant is stated to be Rs.95,527/-. Following *Dr. Kulbhushan Kumar vs. Raj Kumari and Anr*¹. in this case, it was held that 25% of the husband’s net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependant on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February, 2016, the net salary of the husband was Rs. 95,000/- per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs.23,000/- to Rs.20,000/- per month as maintenance to the respondent-wife and son.

17. In the result, the maintenance amount of Rs.23,000/- awarded to the respondent-wife is reduced to Rs.20,000/- per month and the impugned judgment is modified and this appeal is partly allowed. The maintenance of Rs.20,000/- per month is payable to the respondent-wife on or before 10th of every succeeding english calendar month. No costs.

Judgment Referred.

¹(1970) 3 SCC 0129