

SUPREME COURT OF INDIA

Sanjay Kumar Sinha

Vs.

Asha Kumari

C.A.No.3658 of 2018

(R.K.Agrawal and Abhay Manohar Sapre, JJ.,)

09.04.2018

JUDGMENT

Abhay Manohar Sapre, J.,

SLP.(C)No.6301 of 2017

1. Leave granted.
2. This appeal is filed by the husband against the final judgment and order dated 27.10.2016 passed by the High Court of Judicature at Patna in CMJC No.965/2016 whereby the High Court dismissed the application filed by the appellant herein and upheld the order dated 15.07.2016 passed by the Principal Judge, Family Court, Begusarai in Divorce Case No.42 of 2010.
3. Few facts need to be mentioned to appreciate the short issue involved in the appeal.
4. The dispute is between the husband and wife. The appellant is the husband whereas the respondent is the wife.
5. The appellant (husband) has filed the divorce petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) against the respondent (wife) being Divorce Case No. 42/2010 before the Principal Judge, Family Court, Bagusarai. It is pending for its final disposal.
6. The respondent (wife) filed an application under Section 24 of the Act in the aforesaid Divorce petition and claimed from the appellant (husband) pendente lite monthly maintenance for herself and her daughter. The appellant contested it.
7. By order dated 15.07.2016, the Family Judge awarded Rs.8000/- per month to the wife and Rs.4000/- per month to her minor daughter towards the maintenance and Rs.2500/- per month towards the litigation expenses.

8. It may be mentioned here that the respondent (wife) had also filed one application under Section 125 of the Criminal Procedure Code, 1973 (hereinafter referred to as "Cr.P.C") seeking maintenance before the Principal Judge, Family Court, Samastipur. By order dated 03.01.2011, the Family Judge allowed the application and awarded Rs.4000/- per month to the wife (petitioner therein) and Rs.2000/- per month to the daughter towards the maintenance and Rs.5000/- towards the litigation expenses.

9. The appellant (husband) felt aggrieved by the order dated 15.07.2016 by the Family Judge and filed civil miscellaneous application in the High Court at Patna. By impugned order, the Single Judge upheld the order dated 15.07.2016 of the Family Judge, Begusarai and dismissed the application filed by the appellant herein, which has given rise to filing of the present appeal by way of special leave before this Court by the husband.

10. Heard Mr. Abhishek Vikas, learned counsel for the appellant and Mr. Ranjit Kumar Sharma, learned counsel for the respondents.

11. Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to dispose of the appeal finally as under:

12. First, the Family Court shall decide the main Divorce Case No. 42/2010 preferably within 6 months on merits.

13. Second, consequent upon passing of the maintenance order dated 15.07.2016 under Section 24 of the Act by the Family Court, the order passed by the Family Court, Samastipur under Section 125 of Cr.P.C. stands superseded and now no longer holds the field. Indeed, this fact was conceded by the learned counsel appearing for the respondent (wife).

14. Third, the appellant (husband) shall, during pendency of main divorce case, continue to pay in cash a sum of Rs.8000/- p.m. (Rs.6000/- to the wife and Rs.2000/- to the daughter) and for the balanced sum, i.e., Rs.4000/- p.m., the appellant would furnish security.

15. Fourth, depending upon the outcome of the main case, appropriate orders towards permanent maintenance and its arrears be also passed.

16. Fifth, the arrears towards monthly maintenance be paid by the appellant to the respondent (wife) within one month from the date of this order, if any, at the rate fixed by this Court above.

17. Sixth, payment of monthly maintenance amount, as fixed by this Court, be paid on 1st of every month by the appellant to the respondent.

18. Seventh, security for the balance amount (at the rate of Rs.4000/- per month) be furnished within one month to the satisfaction of the Family Judge after calculating the monthly maintenance and arrears liability.

19. Parties are at liberty to adduce evidence on the issue of grant of permanent maintenance in the main case.

20. Parties are also granted liberty to mediate and settle the issue amicably by appearing before the Family Court and if the issue is not settled amicably, the Family Court would decide it on merits, as directed above.

21. We have not expressed any opinion on the merits of the issue and, therefore, the Family Court will decide the case, without being influenced by our order, only on the basis of pleadings and evidence adduced by the parties in the main case.

22. With these directions, the appeal stands disposed of.