

RAJASTHAN HIGH COURT

Mamta

Vs.

Hari Kishan

D.B. Civil Misc. Appeal No. 564 of 2003
(N.N. Mathur and O.P. Bishnoi, JJ.)

16.09.2003

JUDGMENT

N.N. Mathur, J.

1. We have heard Mr. M.S. Singhvi, learned counsel for the appellant and Mr. I.S. Pareek, learned Additional Government Advocate, party necessary for adjudication in the matter of payment of court-fees.
2. The instant appeal under Section 19 of the Family Courts Act, 1984 is directed against the order of the learned Judge, Family Court, Jodhpur dated 10th July, 2003 rejecting the application for maintenance of wife and children by a peremptory order, in case of default of payment of deficit court-fees of Rs. 15,045/- calculated on *ad valorem* basis.
3. The facts giving rise to the instant appeal are that the wife of respondent Hari Kishan viz; Smt. Mamta, daughters. Ms. Saroj, Ms. Pooja and Ms. Arti filed an application under sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 in the Family Court, Jodhpur claiming maintenance in the sum of Rs. 25,000/- per month. It is averred that the marriage between the first appellant Smt. Mamta and respondent Hari Kishan took place in the year 1976. Out of the said wedlock, she gave birth to other three applicants viz; Ms. Saroj aged 25 years, Ms. Pooja aged 18 years and Ms. Arti aged 15 years. The respondent Hari Kishan deserted them in September, 1998 and refused to maintain them. It is also averred that the respondent is serving in the Accounts Section of the Municipal Corporation drawing a salary of Rs. 17,000/- per month. He is also a goldsmith, as such, he is having an additional income of Rs. 20,000/- per month. Thus, his total monthly income is Rs. 37,000/-. The respondent prayed for rejection of the application under Order 7 Rule 11 Civil Procedure Code for

non-payment of court-fees of Rs. 15,065/- payable on valuation of the petition i.e. Rs. 3 lacs. On the material controversy, a preliminary issue was framed to the effect as to whether the application filed by the wife is liable to be dismissed for non-payment of the court-fees. The Judge, Family Court, decided the issue against the appellant. By the impugned order, a direction has been given to first appellant Smt. Mamta to pay the court-fee of Rs. 15,045/- by 8.8.2003 failing which the application for maintenance shall stand rejected.

4. It is contended by the learned counsel that the proceedings under Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 in the family Court are of summary nature and, as such, it can not be termed as "Suit". Consequently, the provision of Section 22 of the Rajasthan Court Fees and Suit Valuation Act is not attracted and on such application, *ad valorem* court-fees is not payable on the amount claimed, payable for one year. Learned counsel has also given the outline of the object and purpose of a Family Court.

5. Section 18 of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to live separately from her husband without forfeiting her claim to maintenance in the circumstances enumerated under sub-clauses (a) to (g). Similar is the provision under section 20 for maintenance of children and aged parents.

6. It would be convenient to read sections 18 and 20 as follows:

"18. *Maintenance of wife.* - (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance -

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

20. *Maintenance of children and aged parents.* - (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or tier father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property."

7. In the State of Rajasthan, the Family Courts have been established under the provisions of the Family Courts Act, 1984. Chapter III of the Act is under the heading "Jurisdiction". Family Court is a Court which decides the disputes in exercise of the State's judicial power conferred on it by a Statute in a judicial manner and declares the rights of the parties.

8. Section 7 of the Act declares jurisdiction of a family Court exercisable by any district Court or subordinate civil Court to which provisions of C.P.C. and Criminal Procedure Code have been applied by Section 10 of the Act. The Explanation appended to Section 7 provides the nature of the suits and proceedings referred to in the sub-section.

9. Section 7 of the Family Courts Act, 1984 reads as follows:

"7. *Jurisdiction.* - (1) Subject to the other provisions of this Act, a Family Court shall -

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of

suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation. - The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely :-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise -

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Criminal Procedure Code, 1973; and

(b) such other jurisdiction as may be conferred on it by any other enactment."

10. Thus, Section 7 of the Act of 1984 confers jurisdiction on a Family Court specifying nature of the disputes which are triable by the Family Courts. As per Clause (f) of Explanation appended to sub-section (1) of Section 7, the subject matter

of the litigation pertains to a suit or proceeding for maintenance. The provisions of the C.P.C. and the Criminal Procedure Code have been applied to the Family Courts by Section 10 of the Act. Sub-section (3) of Section 10 permits a Family Court to lay down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other. Section 11 provides that in every suit or proceedings to which the Act applies, the proceedings may be held in camera if the Family Court so desires. Section 13 prohibits appearance of a party through lawyer, except in a case where the Family Court considers it necessary in the interest of justice. Section 15 permits the Court to record the substance of the statement of a witness. In view of Section 16, the evidence of a formal witness can be taken even on affidavit.

11. Section 23 provides for making the rules by the State Government after consultation with the High Court. The State Government has framed the rules in the name of the Rajasthan High Court Family Courts Rules, 1994. Rule 7 provides that all actions instituted before the Family Court by way of plaint or petition or application or otherwise, as the Court thinks fit. Thus, the proceedings in the Family Court can be instituted by way of petition or application.

12. The Family Courts Act was enacted with an object to set up a forum for settlement of family disputes with due emphasis on conciliation and achieving socially desirable results and further to eliminate the rigid rules of procedure and evidence. The Law Commission in its 59th report (1974) had also stressed that in dealing with the disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and it should make reasonable efforts at settlement before the commencement of the trial. It covers the exclusive jurisdiction of the matters relating to :

- "(i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage, or as to the matrimonial status of any person;
- (ii) the property of the spouses or of either of them;
- (iii) declaration as to the legitimacy of any person;
- (iv) guardianship of a person or the custody of any minor;
- (v) maintenance, including proceedings under Chapter XI of the Criminal Procedure Code."

13. It makes an attempt to simplify the rules of evidence and procedure as to enable a Family Court to deal effectively. One of the objectives is to bring succor to women and children, who have been abandoned by her husband and others. Rule 7 speaks of initiation of proceedings before the Family Court by way of plaint or petition or application or otherwise, as the Court thinks fit. The Framers of the rules have casually incorporated all sorts of alternatives i.e. plaint or petition or application. In case, the action instituted before the Family Court is taken as a plaint and tried as a suit, we are of the view that the entire purpose of setting up Family Courts will be frustrated. With a view to deal with the action in a matrimonial dispute more quickly different from the procedure adopted in ordinary civil proceedings, the action will have to be taken as instituted on application. Any other interpretation asking to pay *ad valorem* court-fees will operate harshly and tend to price justice out of reach of many distress litigants and destroying the very object of setting up of the Family Courts. Thus, when a woman and the children ask for the maintenance, the proceedings are to be initiated by way of an application. Section 7 of the Family Courts Act directs that the Family Court shall deal for the purpose of exercising the jurisdiction under the Act to be the district Court or other subordinate civil Court for the area to which the jurisdiction of the family Court exists. Thus, Section 7(1)(f) of the Act takes within its purview a suit or proceeding between the parties to a marriage with respect to the property of the parties or any of them. Since the proceeding before the Family Court commences by way of a petition or an application, it is obvious that such an application would be governed by Schedule II of the Rajasthan Court Fees and Suit Valuation Act, 1961. Sub- clause (k) of Clause 11 of Schedule II of the Act of 1961 reads as follows :

"SCHEDULE II

Fixed Fees

Article	Particulars	Proper fee
1	2	3
11	Original petitions not otherwise provided for when filed in -	
	(i) a Court subordinate to the High Court;	(Two rupees)

	(ii) the High Court	(Ten rupees)"
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14. Thus, the Court fee shall be payable under the above extracted residuary clause. As we have held that a proceeding before a Family Court is not a suit, Section 22 of the Rajasthan Court Fees and Suit Valuation Act, 1961 is not attracted. Section 22 is extracted as follows :

"22. *Suits for maintenance and annuities* - In the suits hereinafter mentioned, fee shall be computed as follows :

(a) in a suit for maintenance, on the amount claimed to be payable for one year,

15. A bare look at Section 22 of the aforesaid Act shows that the said provision is applicable to suits and not applications or proceedings. The action instituted by the appellant wife and the children under sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 is a proceeding in view of Section 7(f) and not a suit. Thus, the provisions of Section 22 of the Rajasthan Court Fees and Suit Valuation Act has no application. Our view is fortified by a Division Bench judgment of the Kerala High Court in *Saleesh Babu v. Deepa*,. ¹ It is well established law that in case of fiscal Statute, the provision must be strictly interpreted giving every benefit of doubt to the subject and lightening, as far as possible, the burden of court-fees on litigant. Where an adjudication falls within two provisions of Court-fees Act one of which is onerous for the litigant and other more liberal, the Court would apply that provision which is beneficial to the litigant. Reference be made to AIR 1957 Supreme Court 657, AIR 1965 Supreme Court 457 and 1976(3) SCC 800. Accordingly, we hold that all the petitions in the Family Courts are in the nature of petitions or applications and the court- fees is payable under the Clause 11(k) of the Schedule II of the Rajasthan Court Fees and Suit Valuation Act.

16. In view of the aforesaid discussion, we allow the appeal and set aside the order of the Judge, Family Court, dated 10.7.2003. The application filed by the appellant Smt. Mamta before the Family Court, Jodhpur under sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1955 is maintainable on payment of court-fee of Rs. two.

Appeal allowed.

Cases Referred.

1. 1996(3)RCR (Civil) 588 (Kerala): 1996(2) HLR 441