

RAJASTHAN HIGH COURT

Gopal Singh

Vs.

District Judge, Bhilwara

S.B. Civil Writ Petition No. 1395 of 2006

(Dinesh Maheshwari, J.)

20.04.2006

JUDGMENT

Dinesh Maheshwari, J

1. The petitioner, by way of this writ petition, seeks to question legality of the order dated 8.2.2006 (Annex. 9) passed by the District Judge, Bhilwara under Section 24 of the Hindu Marriage Act, 1955 ('the Act').

2. From the material placed on record, it appears that the petitioner and the respondent No. 2 were married in the year 1981 and there were disputes between the parties leading to a petition for dissolution of marriage filed by the petitioner that was dismissed, by the Family Court, Ajmer on 22.7.1989. However, during pendency of D.B. Civil Misc. Appeal No. 351/1989 before *Jaipur* Bench of this Court the parties reconciled withdrawing allegations against each other and agreed to live together and it was given out before the Division Bench of this Court that no dispute survived and the appeal was, therefore disposed of in terms of the compromise on 26.2.1991 (Annex. 1). According to the petitioner, after compromise both the parties lived together for about five years but thereafter the respondent No. 2 wife left his company without any reason in the month of December, 1995 and filed a petition under Section 125 of the Criminal Procedure Code (Criminal Procedure Code) on 29.8.1996. The said petition under Section 125 Criminal Procedure Code was decided by the Addl Chief Judicial Magistrate, Shahpura (Bhilwara) on 7.4.1999 (Annex. 2) directing the petitioner to make payment of Rs. 500/- per month as maintenance to the wife.

3. According to the petitioner, he has continuously paid maintenance in compliance of the order aforesaid; but after separation of almost ten years he filed another petition under Section 13 of the Act seeking dissolution of marriage on the grounds of cruelty of conduct and desertion. This petition for dissolution of marriage was filed on 20.12.2004 (Annex. 3). It appears that the respondent-wife after putting in appearance, moved an application under Section 24 of the Act on 2.3.2005 (Annex. 4) claiming

interim maintenance at the rate of Rs. 8000/- per month, litigation expenses of Rs. 10,000/- and further allowance of Rs. 200/- per date of hearing. In the said application, the respondent-wife alleged the salary income of the petitioner at Rs. 14,309/- per month being employed as Office Assistant in District Telecom, Ajmer; and his further rental income at Rs. 2,000/- per month and his being possessed of sufficient property apart from his mother getting Rs. 6,000/- per month pension. The respondent-wife also pointed out that she was receiving an amount of Rs. 500/- per month in terms of the order passed by the Addl. Chief Judicial Magistrate, Shahpura but the same was inadequate for her maintenance. This application dated 2.3.2005 was replied by the petitioner on 2.5.2005 with the submissions that he was earning only Rs. 5,500/- per month as salary income and having no other source of income, that the wife was regularly receiving the amount (of maintenance awarded earlier under Section 125 Criminal Procedure Code) from him and was adequately maintaining herself from her own income; and that the amount claimed by her was highly disproportionate to the requirement.

4. It appears that while the matter remained pending for disposal of the said application under Section 24 of the Act, the petitioner came out with an application dated 21.1.2006 (Annex. 6) stating that the non-applicant-wife has failed to submit reply and she was regularly being granted time to submit reply and the petitioner has got frustrated after attending fruitless dates hearing and that he was now not interested in proceeding with the matter further and would like to excuse himself from unnecessary litigation and would seek settlement of the matter in community for getting the marriage dissolved by mutual agreement. It was, therefore, prayed that the matter might be consigned to record without further proceedings. This application was replied by the respondent-wife, *inter alia*, with the submissions that she could be called upon to file reply only after payment of the amount of maintenance and the matter has remained pending for the improper conduct of the petitioner himself. It was also pointed out that arguments on the application for maintenance and litigation expenses have already been concluded and the matter was posted for decision thereupon, and the present application for not proceeding further was filed by the petitioner only with an oblique intention of avoiding the liability to pay maintenance and litigation expenses.

5. The order-sheets placed on record by the petitioner show that the petitioner, after filing of the aforesaid application on 21.1.2006, chose not to attend the proceedings as is apparent from the absence of the petitioner and his counsel on 4.2.2006 and so also on 8.2.2006 in the main proceedings in case No. 16/2005 (Annex. 8) Although the learned District Judge, Bhilwara proceeded to dismiss the petition for dissolution of marriage filed by the petitioner in default of appearance on 8.2.2006, yet on the same date, the learned District Judge proceeded to dispose of the application under Section 24 of the Act awarding maintenance' to the respondent-wife at Rs. 1,000/- per month

from the date of filing of the application till the date of disposal of the original proceedings and also awarded Rs. 1,000/- litigation expenses and Rs. 150/- towards conveyance and other charges per date of hearing attended by the wife.

6. Assailing the order dated 8.2.2006 (Annex. 9) learned counsel Mr. Jog Singh has strenuously contended that the learned District Judge was entirely in error in passing the order impugned against the petitioner, that the learned District Judge was not right in awarding maintenance when the petition under Section 13 of the Act was dismissed in default; and that the learned District Judge has erred in not taking into consideration the amount of maintenance being regularly paid by the petitioner under Section 125 Criminal Procedure Code Learned counsel also suggested that marital *status having not been disrupted, the claim for maintenance was not a valid claim. Learned counsel referred to the decisions in Smt. Chitra Lekha v. Ranjit Rai*, ¹ *Sanjay Chopra v. Shayama Chopra*, ² and *Smt. Chand Dhawan v. Jawaharlal Dhawan* ³.

7. Having given a thoughtful consideration to the submissions of learned counsel for the petitioner and having examined the material placed on record, this Court is clearly of opinion that this writ petition is bereft of substance and deserves to be dismissed.

8. A bare look at the chronology of events makes it apparent that the petitioner has chosen to submit the application seeking dissolution of marriage and when faced with an application under Section 24 of the Act and when the decision on the said application was imminent, came out with the application seeking not to prosecute the matter further. The petitioner thereafter has chosen to simply avoid appearance before the court; and the learned District Judge had no option except to dismiss the original petition in default. However, by that time the application of the respondent-wife of maintenance and expenses was already ripe for decision and the learned District Judge was perfectly justified in passing appropriate order on the said application awarding maintenance to the respondent till the date of disposal of the petition.

9. Reference to Chitra Lekha's case (supra) is of no assistance to the petitioner. In the said case of Chitra Lekha, a petition for judicial separation was filed under Section 100 of the Act and during the pendency of the petition, the wife made an application under Section 24 of the Act. However, before the application under Section 24 was granted, the respondent husband absented himself and the petition was dismissed file appellant-wife moved an application for granting of her application under Section 24 of the Act that was refused by the trial court on the ground that case itself had come to an end. The Hon'ble Delhi High Court observed that orders on Section 24 application could be passed if the appellant has to prosecute or defend some proceedings and its object is not to provide maintenance or damages to the party outside the scope of proceedings and for such purpose separate remedy is to be pursued. In the same case, the High Court observed that the application for interim alimony should not be allowed to lapse and in fact orders on such application should be passed as

expeditiously as possible, but before the proceedings are concluded. The fact situation of the present case is that it had been pointed out by the respondent-wife in her reply to the application filed by the petitioner seeking non-prosecution of the main petition that the application under Section 24 of the Act had already been argued and was pending for orders. The stage at which the petitioner chose to move the application makes it apparent that it was only intended to frustrate the application filed by the respondent under Section 24 of the Act. The learned District Judge has proceeded perfectly in conformity with law and on the same day, while the original petition was dismissed in default, orders for maintenance and litigation expenses till that date, i.e., 8.2.2006 were passed. It would have been travesty of justice if the learned District Judge had not done so.

10. So far adjustment of the amount of maintenance under Section 125 Criminal Procedure Code is concerned, it remains undeniable that therein only an amount of Rs. 5,00/- per month has been awarded to the respondent-wife. Moreover, the respondent-wife has specifically mentioned the fact of such amount of maintenance being received by her in Para 7 of the application. It is true that the order impugned does not spell out consideration of such amount of Rs. 500/- per month, however, noteworthy it is that the learned District Judge has accepted the salary income of the petitioner at Rs. 5,702/- per month and then has awarded only Rs. 1,000/- per month as interim alimony with reference to all the facts and circumstances of the case. The amount awarded by the learned District Judge remains on much lower side and obviously, the maintenance being received by the wife under Section 125 Criminal Procedure Code has gone into consideration leading to reduction of the maintenance amount at not even 1/5th of the accepted salary income of the petitioner. Reference to Sanjay Chopra's case (supra) for the submission that the amount being received under Section 125 Criminal Procedure Code ought to be deducted is, therefore, not apposite to the facts of the present case. So far the submission of learned counsel about non-disruption of marital status and, therefore, disentitlement for alimony with reference to Smt. Chand Dhawan's case (supra) is concerned, suffice is to say that the submission is entirely misplaced. The said decision essentially relates to the interpretation of the provisions of Section 25 of the Act providing for grant of permanent alimony at the time of passing of any decree or at any time subsequent thereto and would have no application to the facts of the present case.

11. In the overall facts and circumstances of the case, the submissions sought to be made on behalf of the petitioner remain devoid of substance apart from the fact that the conduct of the petitioner has not been fair in the course of this litigation. The petition remains devoid of substance; the impugned order calls for no interference; and the petitioner is not entitled for any relief in writ jurisdiction of this Court.

12. The petition fails and is, therefore, dismissed summarily.

Petition dismissed.

Cases Referred.

1. AIR 1977 Del176
2. 2001(4) SC 331
3. 1993(3) R.C.R.(Criminal) 545 :1994(1) R.R.R. 574 : 1993 Cr.L.J. 2930