(2015) 04 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 4216/2008

Asha Manwani and Others — APPELLANT

Vs

Kanhaiya Lal Manwani — RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2015) 04 RAJ CK 0037

Hon'ble Judges : Prakash Gupta, J.;Mohammad Rafiq, J.

Bench : Division Bench

Advocate : Anju Shukla, Counsel and Party-in-Person, for the Appellant; Rajesh Kapoor, Counsel, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Prakash Gupta, J.—The instant Civil Misc. Appeal is preferred against the Order dated 23/01/2008 passed by Family Court, Ajmer. Whereby the learned Family Court partly decreed the suit as follows:--

2. Brief facts of the case are that the appellants filed a suit against the respondent-defendant wherein it was stated that appellant No. 1-plaintiff No. 1 was married to the respondent on 12/04/1976 at Ajmer according to Hindu rites and rituals. Out of their wedlock, four children were born, out of which plaintiff No. 2 and plaintiff No. 3 are alive who are residing with appellant No. 1. Appellant No. 1 and respondents are living separately since long time. Appellant No. 1 filed an application under Section 125 Cr.P.C. in which a compromise was arrived at between the parties wherein the respondent agreed to pay Rs. 500/- per month to the appellant No. 1 and Rs. 250/- to plaintiff No. 2 and 3 respectively as maintenance. It is further stated that plaintiff No. 1 has no source of income whereas respondent No. 1 is doing business in the name of Manwani Traders. He also has ancestral property and has four godowns, he is an Income Tax payer also and his monthly income is Rs. 1,00,000/-. Therefore, plaintiff No. 1 is entitled to 5,000/- per month and plaintiff No. 2 and 3 are entitled to

maintenance amount to the tune of Rs. 3,000/- per month respectively. Rs. 5,00,000/- were demanded for the marriage of plaintiff No. 2.

3. The respondent-defendant filed a reply wherein the factum of the marriage was admitted and also admitted that out of the wedlock plaintiff No. 2 and 3 were born. It is submitted that appellant No. 1 works as a tailor wherefrom she is earning Rs. 250 per day. So far as ancestral property is concerned, the respondent-defendant and his other brothers and sisters have equal shares in the same. It is also submitted that from the business of Manwani Traders, the defendant is earning only Rs. 3,000/- per month and he is not in a position to pay more than Rs. 1,000/- as maintenance. He has no godowns in his possession and also has no other property as stated in the plaint.

4. On the basis of the pleadings, the learned Family Court framed the following issues:--

"1. Whether plaintiffs are entitled to Rs. 11,000/- per month as maintenance.

2. Whether plaintiff No. 2, Kanta, defendant''s daughter, is entitled to Rs. 5,00,000/- for her marriage expenditure.

3. Whether the suit of the plaintiff is liable to be decreed, if yes, in what manner.

4. Relief."

5. To prove the following issues, appellant No. 1-plaintiff No. 1 got herself examined as AW-1 and also got examined Kanta as AW-2, Vinod as AW-3 and Bhanwari Devi as AW-4. In rebuttal the defendant got himself examined as NAW-1 and also examined C.B. Tiwari as NAW-2.

6. The Learned Family Court partly decreed the suit as indicated above. Aggrieved thereby this appeal is preferred by the appellants.

7. It is submitted by the learned counsel for the appellants that it is proved by evidence that the defendant is earning Rs. 1,00,000/- per month, has many properties, is doing business in the name of Manwani Traders and is an Income Tax payer also. The learned Family Court has not considered these facts in right perspective and awarded a meager amount as maintenance. The learned Family Court erred in holding that defendant''s income is Rs. 5,000/- - Rs. 6,000/- per month. Therefore, the maintenance amount should be enhanced as prayed in the plaint.

8. Per contra the learned counsel for the respondent has supported the judgment and decree of the learned Family Court.

9. We have heard learned counsel for both the parties and perused the material on record and considered the rival submission made by both the counsels.

10. The factum of marriage is not disputed between the parties and it is also not disputed that plaintiff No. 2 is the daughter and plaintiff No. 3 is the son of the defendant and plaintiff No. 1. It is an admitted fact that the respondent-husband

is doing business in the name of Manwani Traders and he is the sole proprietor of the business. Further, it is also proved from the evidence that the respondent-husband is an Income Tax payer. The learned Family Court, after scrutinizing the evidence, gave a finding that the defendant''s monthly income is Rs. 5,000/- - Rs. 6,000/- which we found to be based upon the evidence on record and after due appreciation of evidence. It is also pertinent to mention here that this finding has not been challenged by the respondent-husband. The Judgment was passed in January, 2008. This date becomes relevant and the Court can take judicial notice of the fact that since the year 2008 the cost of living index has considerably risen and the income of the respondent also may have risen considerably.

11. The other relevant factors which the Courts should consider while dealing with the plea of enhancing the amount of maintenance, inter alia, are; firstly, the means and capacity of the non-applicant. In the case at hand, there is no dispute as to the means and capacity of the respondent-husband. Secondly, the income of the non-applicant; which this Court considers is not less than 15,000/- at present upon the perusal of the evidence on record. Thirdly, the assessing income and relevant point of time. This is a significant aspect while deciding the maintenance claim as the Court must have regard to the fact that during the period between filing of the petition and the date of the Order, the income of the respondent-husband may have risen and hence, the claim must be adjudged accordingly. Fourthly, the income of the applicant must be given weight but only for fixing the quantum of the maintenance amount or enhancing the amount thereof, as the case may be. A small income earned by the appellant wife would not adversely affect her right to claim maintenance of enhancement. Lastly, the needs of the appellant are a paramount consideration. The wife and children must be entitled to the same status and standard of living as they had enjoyed before the separation. In light of the above mentioned guidelines and evidence on record, we considers it proper to enhance the maintenance amount.

12. From the above discussion the maintenance amount is hereby increased from Rs. 1000/- to Rs. 3500/- per month to the appellant No. 1 and from Rs. 500/- to Rs. 1500/- to the plaintiff-appellant No. 2.

13. This Court vide Order dated 29/02/2012 and 12/03/2012 directed the respondent to pay Rs. 50,000/- and Rs. 1,00,000/- respectively for the marriage of appellant No. 2, this amount is not to be adjusted towards maintenance enhanced by this Order. The enhanced amount should be paid from the date of this Order by the husband to the wife. If any amount towards maintenance is due prior to this Order, the appellants are at liberty to file an application in accordance with law before learned Family Court for the same.

The Order of learned Family Court dated 23/01/2008 is modified accordingly and this appeal is partly allowed as indicated above.

