(2013) 08 DEL CK 0280

In the Delhi High Court

Case No : IA No. 10545 of 2013 in CS (OS) 1990 of 2011

Avnija Ahluwalia and Another APPELLANT

Vs

Mr. Vikaas Ahluwalia RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 20, 23

Citation : (2013) 08 DEL CK 0280

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Kirti Uppal, Mr. Prasoon Kumar, Mr. Deepak Chanderpal and Mr. Kshitij Kumar, for the Appellant; Y.P. Narula and Mr. Aniruddha Choudhury, for the Respondent

Judgement

Jayant Nath, J.

IA No. 10545/2013 in CS (OS) 1990/2011

1. Arguments on this application were heard on 17.07.2013. However, by typographical error, the order dated 17.07.2013 notes that arguments have been heard on I.A. 9361/2013 and judgment has been reserved on the said application. The order dated 17.07.2013 is accordingly corrected. Arguments were heard and order was reserved on the present application. Present application is filed u/s 151 of the CPC on behalf of the plaintiff with the prayer to take on record the income tax documents of the defendant and enhance/modify/ quantify the quantum of maintenance payable by the defendant. Plaintiff No. 1 is the minor daughter of plaintiff No. 2 and the defendant. The plaintiff No. 2 and the defendant were married on 26.11.2001. From the said wedlock petitioner No. 1 was born on 4.9.2002. Thereafter on account of differences between the parties the plaintiff contends that she was thrown out of the matrimonial home in March, 2008 and was restrained from entering the matrimonial home. In view thereof, it is stated that the defendant wilfully neglected to provide any

maintenance and financial support to the plaintiff. Hence, the present suit has been filed u/s 18, 20 and 23 of the Hindu Adoption and Maintenance Act, 1956 seeking a decree to pay a minimum of Rs. 5 lacs per month as maintenance to the plaintiff from March, 2008 onwards with 15% escalation per year to offset the cost of living and increase in educational expenditure. Other reliefs have also been sought. Along with the suit the plaintiff filed an application IA No. 11046/2009 under Sections 18 and 20 of the Hindu Adoption and Maintenance Act seeking an order of interim maintenance during pendency of the present Suit. This Court on 5.3.2013 passed an Order directing the defendant to provide the plaintiffs interim maintenance of Rs. 75,000/- per month. In addition the defendant was also to provide to the plaintiffs a new mid segment air-conditioned car with a driver and to also incur the running and maintenance expenses subject to maximum usage of 250 litres of petrol/diesel every month. The defendant was also directed to pay the school fee expenses of plaintiff no. 1 including expenses towards any excursions/other activities which plaintiff no. 1 may undertake. The defendant was also to bear the expenses of school books and school dress etc. of plaintiff no. 1 as per actual. The defendant was also directed to bear all medical expenses of both the plaintiffs.

2. The above order of this Court was challenged by the plaintiffs before the Division Bench. On 15.3.2013 the Division Bench in FAO (OS) 147/2013 refused to interfere in the order holding that all the relevant factors were considered and taken into account by the Single Judge. This Court thereafter on 19.3.2013 made certain modifications in the order dated 5.3.2013 in IA No. 4706/2013. It was directed that the defendant would provide a Swift Desire (diesel) car with a driver engaged by the company in which the defendant is a Director. On a submission of the plaintiff regarding charges towards extra-curricular activities of the child, it was directed that the plaintiff would furnish the particulars to the counsel for the defendant and the defendant would directly pay the charges in the name of the concerned tutor/facilities.

3. Against the said order dated 19.3.2013 the plaintiff filed an appeal before the Division Bench. Certain liberty was granted by the Division Bench in FAO (OS)193/2013 vide order dated 12.4.2013. The Single Judge to analyse the stated aspects sympathetically of the two difficulties which have been stated by the plaintiff. The appeal was disposed of with the said observations.

4. The plaintiff has now filed the present application seeking modification of the earlier orders and seeking enhancement in the maintenance. It is stated in the application that the defendant is engaged in playing fraud with this Court by giving wrong affidavits and declarations to conceal his true income. It is stated that at the time of passing of the earlier interim maintenance order the defendant had submitted that at the time of marriage he was earning Rs. 6 lacs per annum which has now increased to Rs. 13 lacs per annum. It is stated that the plaintiff no. 2 by strenuous efforts has somehow searched the website of the Income Tax, Government of India and has come to know the current status of

income disclosures by the defendant. The plaintiff no. 2 on searching the site has come to know that the income of the defendant in his individual capacity for the Financial Year 2012-13 is Rs. 1,34,91,432/- upon which TDS in the sum of Rs. 13,93,353/- was deducted and declared to the Department. It is further stated that advance tax paid by defendant is to the tune of Rs. 9,30,000/- which gives a rough estimate of the annual income of the defendant to the tune of Rs. 30 lacs. On the basis of this document it is alleged that defendant has an income to the tune of Rs. 15 lacs per month. A copy of the internet document has been attached as Annexure to the application. Hence, it is stated that by the said conduct it is apparent that the defendant has not disclosed his entire income and assets to this court. It is further stated that defendant is a director of a company that is India''s top corporate business houses and is enjoying the best of luxuries and facilities that money can buy. Hence, the applicant prays that the quantum of interim maintenance be enhanced.

5. The defendant has filed his reply to the said application. The defendant has pointed out that his tax returns for the Assessment-Years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 were filed on 24th September, 2011 along with the computation of income before this Court. As regards Income Tax Returns for the Assessment Years 2011-12 and 2012-13 the same has been filed along with the reply to the present application. As regards 2013-14 it is stated that defendant is yet to file his Income Tax Returns for which the last date is 30th September, 2013. It is submitted that business incomes, other than salaries, are subject to various expenses, namely, raw material, salaries and other expenses related to the business. It is denied that in Financial Year 2012-13 the income was Rs. 1,34,91,432/- as alleged. It is submitted that there is no ground made out for change of the maintenance amount already fixed by this Court vide order dated 5.3.2013 which was also approved by the Division Bench.

6. Arguments have been heard and both the parties have filed their written submissions. The learned counsel for the plaintiff has also filed a compilation of judgments.

7. Learned senior counsel for the plaintiff has strenuously urged that the defendant has not revealed the business income received by him at any earlier stage and that the defendant has at the time of argument on the earlier application stated that he was getting only a salary from the company. It is urged that this stand is also taken in the written statement at para 17. The defendant, it is urged, has always claimed to be a salaried employee only. It is stated that from the present documents now filed by the plaintiff with this application it is obvious that defendant was engaged in business dealings and had income from the said business also and that this fact was concealed from this Court. Other issues regarding the status and affluence of the defendant and his family have also been reiterated. Learned senior counsel has relying upon documents filed by the plaintiff stressed that the income of the defendant for the Financial Year 2012-13 is more than Rs. 1.349 crores and not Rs. 13 lacs as claimed by the

defendant. In view of this, he submits that the interim maintenance amount as fixed by this Court has to be enhanced.

8. Learned senior counsel appearing for the defendant has denied the contentions of the plaintiff. It is reiterated that on 24th September, 2011 the defendant had filed in court copies of his tax returns for the Financial Years 2005-06 to 2009-10 and these documents are on the court record. It is further reiterated that during the Financial Years 2005-06 to 2007-08 the defendant had salary income only. For the Financial Year 2009-10 the business income of the defendant has been shown as Rs. 2,17,815/- in the computation of tax income besides salary income, interest and dividend income. It is stated that the Income Tax Returns for the said Financial Year 2009-10 shows that a TDS of Rs. 3,18,760/- was deducted by the customers of the defendant. It is stated that these documents were on court record when order dated 05.03.2013 was passed. Hence, it is stated that the defendant has not concealed his business income from this Court.

9. It is further stated that along with the reply to the present application the defendant has placed on record the Income Tax Returns relating to Assessment Year 2011-12 and 2012-13. The computation of Income for the said years would show that the gross income of the defendant for the Assessment Year 2011-12 is Rs. 12,56,305/- and for the Assessment Year 2012-13 the gross income of the defendant is Rs. 13,47,048/-. It is submitted that the said gross income includes income from business. Hence, it is submitted that the income of the defendant did not really increase during the years 2011-12 and 2012-13. As regards Financial Year 2012-13 (Assessment Year 2013-14) the learned senior counsel stresses that the Income Tax Return is still to be filed and the TDS deducted by customers cannot imply an increase of the actual net income of the defendant. In view of the above, it is submitted by the learned senior counsel for the defendant that there is no suppression of any facts or income by the defendant. It is urged that there are no grounds made out for enhancement of the interim maintenance which has been sanctioned by this Court as recently as on 5.3.2013.

10. I have heard learned counsel for the parties in detail. Interlocutory orders are capable of being altered or varied by subsequent applications for the same relief though normally only on proof of new facts or if new situations have subsequently emerged. Reference may be had to judgments of the Hon''ble Supreme Court in the case of Arjun Singh Vs. Mohindra Kumar and Others, and Ajay Mohan and Others Vs. H.N. Rai and Others,

11. The defendant had on 29.5.2011 filed the Income Tax Returns for the Assessment Years 2005-06 to 2009-10 before this Court. These returns shows that the defendant had business income for 2009-10 and a business income of Rs. 2,17,815/- has been shown. Hence the contention of the plaintiff that the defendant has suppressed income from Business from this Court cannot be accepted.

12. Reference may also be had to the returns filed by the defendant in his reply to the present application. For the Assessment Year 2011-12, the computation of Taxable Income shows business income of Rs. 91,908/- and a Taxable Income of Rs. 11,56,305/-. For the Assessment Year 2012-13, the computation of taxable income which has been filed shows that there is an income of Rs. 1,54,231/- from Business. The gross total income is shown as Rs. 13,47,048/-. Though these returns were not filed when order dated 05.03.2013 was passed, yet these returns do not show any drastic change in the income of the defendant as compared to the previous period. To recapitulate in order dated 05.03.2013, the submission of learned senior counsel for the defendant was noted that the defendant has an income of Rs. 13 lacs per annum from M/s. Ahluwalia Contracts (India) Limited.

13. A perusal may now be had to Form 26AS relating to the defendant, copy of which has now been filed by the plaintiff for the Assessment Year 2013-14. This shows that there are certain deductions of TDS which have been credited by 12 odd parties with whom presumably the defendant had some business transactions. It also shows that the defendant has also paid a sum of Rs. 9,30,000/- as tax. However, there is merit in the submission of learned senior counsel for the defendant that the Income Tax Return for the said year is yet to be filed. Position of the income of the defendant for the said year would become clear only once the Income Tax Return is filed. It is the balance sheet and the returns that will show the income net of expenses. In the written submissions of the defendant a statement has been made that as and when the balance sheet of the defendant is finalised, the defendant shall file the copy before this Court for the Financial Year 2012-13.

14. In view of the above, it is not possible to presently conclude that there has been any substantial increase on the income of the defendant. It also cannot be said that there has been a suppression of facts by the defendant as stated by the plaintiff.

15. One cannot help noticing the judgment filed by the plaintiff namely Neeta Rakesh Jain Vs. Rakesh Jeetmal Jain, In the said judgment the Hon''ble Supreme Court in para 10 said as follows:

10. In other words, in the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute.

Hence while passing an order of interim maintenance, the order of its very nature is temporary, a detailed and elaborate exercise by the Court is not necessary.

16. This Court while passing interim maintenance order dated 5.3.2013 has dwelled in detail on the financial status of the parties and the class of life being lived by the plaintiffs so as to ensure that plaintiffs lead a lifestyle they were accustomed to. The court in para 3 of the said order noted the submission of the senior counsel for the defendant that defendant had earnings at the time of the marriage of approximately Rs. 6 lacs per annum from the company M/s. Ahluwalia Contracts (India) Limited where he is a whole time Director and now the said amount is enhanced to Rs. 13 lacs per annum. In paragraph 4 the submission of the counsel for the plaintiff that no reliance can be placed on the Income Tax Returns as the defendant is holding shares in the company M/s. Aluwalia Contracts (India) Limited and other family companies of the value of Rs. 50 crores and that his house is adorned with expensive art and valuable cars are parked in the house was noted. In paragraph 11 this Court took judicial notice of the fact that a practice prevails where several expenses of Directors and the family members are taken care by family run companies. It was in this background taking into account the conduct of the plaintiff no. 2, the financial background of the defendant, the kind of lifestyle that the parties had been leading and other relevant factors that the order dated 5.3.2013 was passed granting interim maintenance in favour of the plaintiffs.

17. The documents placed on record by the plaintiff now with this IA do not demonstrate, as of now any substantial changes that would warrant this Court exercising powers to modify the order dated 5.3.2013. In view of the above, the present application is dismissed. Defendant shall remain bound by his submission that he would file a copy of the latest Income Tax Returns once it is ready and it has been filed before the appropriate authorities.