
(2013) 03 DEL CK 0234
In the Delhi High Court
Case No : CS (OS) No. 1990 of 2011

Avnija Ahluwalia and Another

APPELLANT

Vs

Vikaas Ahluwalia

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 18, 20, 23(2)(c)
Hindu Marriage Act, 1955 — Section 24

Citation : (2013) 6 AD 86 : (2013) 199 DLT 189

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Prasoon Kumar and Mr. Deepak Chander, for the Appellant; Y.P. Narula, with Mr. Aniruddha Chaudhary, Advocate., for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sahai Endlaw, J.—The two plaintiffs who are the wife and minor daughter (now aged about 11 years) pf the defendant, in this suit for recovery of maintenance under Sections 18 & 20 of the Hindu Adoptions and Maintenance Act, 1956, seek interim maintenance @ Rs. 5,00,000/- per month with effect from March, 2008 with escalation of 15% per annum and a residence for the plaintiffs or in lieu thereof a sum of Rs. 2,50,000/- per month towards rent. The Counsel for the plaintiffs has argued that the defendant is the only legal heir of M/s. Ahluwalia Contractors, which business was started by the grandfather of the defendant and is now run by the father of the defendant; that M/s. Ahluwalia Contracts (India) Limited is a listed company and the defendant has a lavish lifestyle and thus interim maintenance be fixed at Rs. 5,00,000/- per month as claimed.

2. Per contra, the Senior Counsel for the defendant has stated that the marriage between the plaintiff No. 2 and the defendant was arranged not by the parents of the plaintiff No. 2 and the defendant but was against the wishes of the parents of the plaintiff No. 2 and the defendant; after the marriage, they were living

separately from the parents of the defendant, in the colony of Jalvayu Vihar, Noida, U.P.; that it was only when the plaintiff No. 2 became pregnant with plaintiff No. 1 that the father of the defendant brought them to his own house; that the defendant is a whole time Director in M/s. Ahluwalia Contracts (India) Limited and at the time of marriage in the year 2001 had earnings of approximately Rs. 6,00,000/- per annum from the said company and which now stand increased to Rs. 13,00,000/- per annum. The Senior Counsel for the defendant has offered to pay interim maintenance @ Rs. 50,000/- per month, besides bearing the expenses of school fees, books, uniform, etc. of the plaintiff No. 1. On persuasion, he has also consented to bear the medical expenses of the I.A. No. 11046/2009 in plaintiffs by taking out an insurance policy therefor in the sum of Rs. 5,00,000/- annually.

3. The Counsel for the plaintiffs on the contrary has argued that no reliance can be placed on income tax returns where income is always concealed. He has contended that the defendant is holding shares of M/s. Ahluwalia Contracts (India) Limited and other family companies of the value of Rs. 50 crores; his house is adorned with expensive art and valuable cars are parked therein (of which photographs are shown) and also owns several properties.

4. Needless to add that the Senior Counsel for the defendant controverts and adds that the plaintiff No. 2 herself in a partition suit also filed by her has admitted that the properties do not stand in the name of the defendant. He has further drawn attention to Section 23(2)(c) of the Act to demonstrate the scope of maintenance thereunder.

5. Though the Counsel for the plaintiffs has cited as many as ten judgments which are placed on record, but need is not felt to burden this order therewith, inasmuch as the interim maintenance in each case depends upon the facts thereof and no general or thumb rule can be adopted.

6. It is necessary to set out some of the relevant facts which have emerged in the hearing.

(i) The plaintiff No. 2 has also filed an application u/s 24 of the Hindu Marriage Act, 1955 for maintenance in a divorce petition filed by the defendant and on which application arguments have been heard and order stands reserved.

(ii) The defendant, in this suit, as far back as on 20th December, 2010, without prejudice to his rights and contentions offered to pay an amount of Rs. 50,000/- per month by way of interim maintenance but which was not accepted by the Counsel for the plaintiffs stating that a minimum amount of Rs. 75,000/- would have been good enough to meet her day to day expenses.

(iii) The defendant has deposited a sum of Rs. 2,35,000/- in the Guardianship Court in the guardianship proceedings filed by him, for the benefit of the plaintiff No. 1 but which amount has also not been withdrawn by the plaintiff No. 2 till date, vide order dated 20th December, 2010 in these proceedings also liberty

was granted to the plaintiff No. 2 to withdraw the said amount from the Guardianship Court but the plaintiff No. 2 has not withdrawn the same till now.

(iv) The defendant filed I.A. No. 12336/2009 in this suit for permission to pay Rs. 15,000/- per month as maintenance to the plaintiff No. 1, in without prejudice to the rights and contentions of the plaintiffs to claim a higher amount as maintenance, and vide order dated 25th April, 2011, the defendant was permitted to deposit Rs. 15,000/-with effect from the filing of the petition in this Court, but since the plaintiffs were not willing to accept the said amount, the said amount was ordered to be kept in an interest bearing Fixed Deposit Receipt (FDR), (v) The plaintiffs are residing along with the parents of the plaintiff No. 2 in the colony of Gujrat Vihar, Delhi in a house constructed over approximately 150 sq. yards. and the plaintiff No. 1 is studying in Delhi Public School, Noida, U.P. The only sibling of the plaintiff No. 2, being a brother, is settled in the United States of America (USA).

7. Though the Counsel for the plaintiffs, to demonstrate the status which the plaintiffs were enjoying in the house of the defendant, has relied on a document to show that cash amount of approximately Rs. 9 lakh was handed to the plaintiff No. 2 in a period of little over two months, but the Senior Counsel for the defendant has argued that when disputes and differences were brewing between the plaintiff No. 2 and the defendant, the father of the defendant had I.A. No. 11046/2009 in acquired a flat at ATS Greens, Expressway, Noida, U.P. for their separate living as desired by the plaintiff No. 2 and the said amounts were released to the plaintiff No. 2 for furnishing of the said flat and not by way of disposable expenses. It is further argued that the plaintiff No. 2 however did not even agree to move in to a separate house with the defendant.

8. I am of the opinion that at this stage the pleadings and the counter arguments are not to be discussed in detail. The application has already remained pending for more than three years. I am further a little intrigued as to the resistance of the plaintiff No. 2 to even without prejudice to her rights and contentions, withdraw the monies offered by the defendant from time to time. It has been enquired from the Counsel for the plaintiffs whether the plaintiff No. 2 was present in the Court and as to why such conduct of the plaintiff No. 2 should not be deemed as indicative of the plaintiff No. 2 being not in a need of any maintenance and as to why the relief of interim maintenance should not be denied on this ground alone. The Counsel for the plaintiffs informed that the plaintiff No. 2 was not present and states that though the plaintiffs are subsisting on loan including from the brother of the plaintiff No. 2 residing in USA, but have not accepted the monies offered by the defendant from time to time, for I.A. No. 11046/2009 in the reason of the same coming in the way of the plaintiffs pressing this application for interim relief.

9. This explanation is not satisfactory. The plaintiff No. 2 could have always accepted the said monies, as aforesaid, without prejudice to her rights and contentions to press for a higher amount. But for giving the benefit of doubt to

the plaintiffs, of a possible wrong legal advice for refusing interim maintenance, I am inclined to deny interim maintenance on such conduct alone of the plaintiff No. 2. When the plaintiff No. 2 can afford to wait for several years to press her application for interim relief, ordinarily she would be presumed to be capable of waiting till the final adjudication of the suit also.

10. Though it is argued by the Senior Counsel for the defendant that the plaintiffs have nowhere pleaded concealment of true income by the defendant, but the practice of several of the expenses of Directors, and their family members in such family run companies being met by the Companies, can be taken judicial notice of. I am of the view that considering the status of the defendant, the defendant is liable to make available for the use of the plaintiffs, a new mid segment air-conditioned car of any make, with a driver. There is no reason to deprive the plaintiff No. 1 of the benefit of the said car with driver which would have been available to her had she been residing in the house of I.A. No. 11046/2009 in the defendant. The defendant is accordingly directed to, within one week make available for the use of the plaintiffs, such a car with driver along with its running and maintenance expenses, subject to the maximum usage of 250 litres of petrol/diesel every month. The said car shall remain packed where so ever the plaintiffs are residing.

11. The defendant is also directed, as offered by him, to pay directly to the School of the plaintiff No. 1 all dues whatsoever relatable to the plaintiff No. 1, including towards any excursion and/or other activities which the plaintiff No. 1 may undertake. The defendant is directed to make the said payments within the time stipulated therefor and immediately upon receiving intimation thereof from the plaintiff No. 2 or the School Authorities.

12. The defendant is further directed to bear all medical expenses of both the plaintiffs, of whichever clinics/hospitals the plaintiffs may choose, by making payment directly to the said clinics/hospitals. The defendant shall be entitled to do so by taking an insurance policy as already offered by him. It is however clarified that if the actual expenses exceed the cover under the policy, the same shall also be borne by the defendant.

13. The defendant shall also bear the expenses of the plaintiff No. 1 on school books, school dress etc. as per actuals. If the same are purchased from the I.A. No. 11046/2009 in School itself, the defendant may make the payment directly to the School, else on production of bills by the plaintiff No. 2.

14. That leaves the issue of day to day expenses. Considering the entirety of the circumstances, I am of the opinion that at this stage, a direction for monthly maintenance of Rs. 75,000/- payable in advance by the 5th day of every succeeding English Calendar month, would subserve the purpose. Though, the plaintiffs have claimed a sum of Rs. 5 lakhs per month, but there is nothing before me to show the need of the plaintiffs being for the said amount or the lifestyle being led by the plaintiffs to be in consonance with the said demand.

Interim maintenance is not intended to enrich the claimant.

15. The last question is of the date from which the interim maintenance is to be paid, with the Senior Counsel for the defendant contending that it should be from the date of the order and the Counsel for the plaintiffs contending that it should be from the date of the application. Though I have given benefit of doubt to the plaintiff No. 2 with respect to her conduct aforesaid, but I am of the view that the same will have relevance on this aspect. A direction for payment of arrears of maintenance is again not intended to be asset building. The same is intended to offset the delays in the disposal of the application. Here, as aforesaid, even prior to the plaintiff No. 2 being permitted to sue as an indigent I.A No. 11046/2009 in person, the defendant had offered monthly maintenance of Rs. 50,000/- per month, but the plaintiff No. 2 refused to accept. During the hearing, it has emerged and it is on record that there are credits of Rs. 30,000/- in the account of plaintiff No. 2 and which the Counsel for the plaintiffs contends is the loan taken each month by the plaintiff No. 2 for her maintenance. However the Senior Counsel for the defendant contends that it is manipulated to build a case. Keeping the said fact in mind, I am of the opinion that besides, again granting liberty to the plaintiff No. 2 to withdraw the amounts aforesaid deposited by the defendant till now, the plaintiffs should be awarded a further sum of Rs. 5 lakh towards arrears of interim maintenance till date. The defendant is directed to pay the said amount within two weeks from today.

16. Accordingly, the direction for payment of interim maintenance @ Rs. 75,000/- as aforesaid shall be applicable with effect from 1st January, 2013, being the month when arguments were heard, with the maintenance for the month of January to March, 2013 being payable within two weeks. With the aforesaid directions, the application is disposed of.