

(2008) 07 GUJ CK 0033

In the Gujarat High Court

Case No : Special Civil Application No. 7785 of 2008

Dr. Kirit Amrutlal Agravat

APPELLANT

Vs

Dr. Minakumari Kirit Agravat

RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Hindu Marriage Act, 1955 — Section 24, 9

Citation : (2008) 07 GUJ CK 0033

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : M.B. Parikh, for the Appellant; Roma I Fidelis, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice M.R. Shah

1. RULE. Ms Roma Fidelis, learned advocate appears on caveat for the respondent and waives service of rule.
2. With the consent of learned advocate appearing on behalf of both the parties, the petition is taken up for final hearing.
3. By way of this petition, under Article 227 of the Constitution of India, the petitioner has prayed for appropriate writ, direction or order and to quash and set aside the impugned order dated 21/04/2008 passed by the learned Family Court No. 2, Ahmedabad below Exh. 7 in Family Suit No. 150/2007 in partly allowing the said application directing the petitioner-husband to pay Rs. 7500/- per month regularly to the respondent-wife as interim maintenance u/s 24 of the Hindu Marriage Act, 1955 from the date of the said application i.e. 28/03/2007 till final disposal of the suit.
4. The respondent-wife had filed Family Suit No. 150/2007 u/s 9 of the Hindu Marriage Act before the learned Family Court, Ahmedabad for restoration of

conjugal rights. In the said Family Suit, the respondent-wife submitted an application u/s 24 of the Act for interim alimony during the pendency of the aforesaid proceedings claiming Rs. 30,000/-per month. It was the contention on behalf of the respondent-wife that the petitioner-husband is a Doctor at Amreli and is having two residential bungalows and is earning Rs. 20-25 lakhs per annum.

5. The application was opposed by the petitioner-husband by filing a reply. It was the contention on behalf of the petitioner-husband that he had divorced the respondent-wife on 10/07/2006. It was specifically denied that his income is Rs. 20-25 lakhs per annum. It was submitted that he is not a MBBS Doctor but he is a BAMS Doctor. It was specifically denied that the respondent-wife is not in a position to maintain herself and/or she has no independent income. It was submitted by the petitioner-husband that she was a government servant and has taken voluntary retirement. Therefore, she is not entitled for interim alimony. The learned Family Court No. 2, Ahmedabad by its order dated 21/04/2008 partly allowed the said application granting interim alimony at the rate of Rs. 7500/-per month from the date of filing of the application till final disposal of the suit by holding that the income of the petitioner-husband can be considered at Rs. 20,000/-per month.

6. Being aggrieved and dissatisfied with the order passed by the learned Family Court, Ahmedabad dated 21/04/2008 below Exh. 7 in Family Suit No. 150/2007 granting interim alimony to the respondent to pay Rs. 7500/-per month, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

7. Shri M.B. Parikh, learned advocate appearing on behalf of the petitioner-husband has vehemently submitted that it is not disputed that the respondent-wife is a retired government servant who had taken voluntary retirement and, therefore, it cannot be said that she has no independent income and/or she is not in a position to maintain herself. It is submitted that the aforesaid aspect has not been considered by the learned Family Court at all. It is submitted that while considering the interim alimony, what is required to be considered is whether the wife is in a position to maintain herself and/or she has any independent income or not and to what extent she can maintain herself. It is submitted that even otherwise, the finding of the learned Family Court, Ahmedabad that the income of the petitioner would be Rs. 20,000/-per month is without any basis and/or contrary to the evidence on record. Therefore, it is requested to allow the present Special Civil Application.

8. The petition is opposed by Shri P.K. Jani appearing with Ms. Roma Fidelis, learned advocate appearing for the respondent-wife. It is submitted that in fact the amount of interim alimony awarded by the learned Family Court, Ahmedabad is on a lower side and the respondent-wife had also preferred Special Civil Application No. 9080/2008 challenging the very order of learned Family Court No. 2, Ahmedabad, which is impugned in the present Special Civil Application for

enhancement of the interim alimony. It is submitted that even the learned Family Court has considered the minimum income of the petitioner-husband at Rs. 20,000/-per month. It is submitted that as the petitioner-husband is a Doctor at Amreli and the learned Family Court has committed an error in considering his income at Rs. 20000/-per month and ordered to give Rs. 7500/-per month only. It is submitted that in any case, the order passed by the learned Family Court awarding interim alimony at Rs. 7500/-per month can never be said to be excessive and, therefore, it is requested to dismiss the present Special Civil Application.

9. The petition was fully heard by this Court on 07/07/2008. However, being a matrimonial matter and at the request of the learned advocate appearing on behalf of the respective parties and with a view to resolve the dispute, this Court had adjourned the matter to 9th July, 2008 and, thereafter to 11th July, 2008. Both the husband and wife remained present before this Court and this Court had tried its best to resolve the dispute in presence of the respective advocates and even independently but it appears that at present there is no possibility to resolve the dispute as the petitioner-husband has submitted that it is not possible for the petitioner to take back the respondent-wife and on the other hand the respondent-wife is insisting to live with the petitioner. It is submitted by the petitioner that he had lost his wife at an old age of 58 years and, therefore, the petitioner wanted company and a wife who can take care of the petitioner at an old age and, therefore, he got married. However, it is not possible to live with the respondent. Be that as it may, it appears that the settlement is not possible at this stage and, therefore, this Court is required to consider the submissions on merits with respect to the impugned order.

10. It is not in dispute that the respondent-wife was a government servant and has taken voluntary retirement. It is also not in dispute that she was a class I Officer and, therefore, she must have got the voluntary retirement benefit, Provident Fund amount and pension. Therefore, prima facie it cannot be said that the respondent-wife has no independent income at all and/or she is not in a position to maintain herself. Though the said aspect was pointed out before the learned Family Court, Ahmedbad, but looking to the impugned order, it appears that the learned Family Court, Ahmedabad has not considered and dealt with the aforesaid aspect at all. It cannot be disputed that while considering the application for interim alimony u/s 24 of the Hindu Marriage Act whether the wife has any independent income or not and/or whether she can maintain herself independently is a relevant consideration. As stated hereinabove, the said aspect has not been considered at all and straight away mechanically considering the income of the husband at Rs. 20,000/-per month, the learned Family Court has awarded the interim alimony to the Rs. 7500/-per month. Under the circumstances, the impugned order passed by the learned Family Court requires to be quashed and set aside and the matter is to be remanded to the learned Family Court for deciding the same afresh in accordance with law and on its own merits.

11. For the reasons stated hereinabove, the petition succeeds. The impugned order passed by the learned Family Court No. 2, Ahmedabad dated 21/04/2008 below Exh. 7 in Family Suit No. 150/2007 is hereby quashed and set aside and the matter is remanded to the learned Family Court, Ahmedabad for deciding the same afresh in accordance with law and on its own merits after giving an opportunity of hearing to both the parties. The said exercise is to be completed within a period of three months from the date of receipt of this order or production of a certified copy of this order. Rule is made absolute in the facts and circumstances of the case with no order as to costs.