

(2018) 04 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writs No. 8483 of 2016

Dr. Mohan Wadhwani @APPELLANT@Hash Rekha Daughter

Date of Decision : 24-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 127

Citation : (2018) 04 RAJ CK 0030

Hon'ble Judges : SANJEEV PRAKASH SHARMA, J

Bench : Single Bench

Advocate : Dr. Mohan Wadhwani, Rekha

Final Decision : Allowed

Judgement

1. The petitioner and the respondent who are present in person heard at length.

2. The petitioner has submitted that he had challenged the order passed by the Family Court No.2, Jaipur dated 24.05.2016 whereby the Family Court as over above orders passed by the Supreme Court directed to pay further a sum of Rs.5500/- with effect from the month of January, 2016 and also directed for paying Rs.5500/- for every month in future. The petitioner submits that the Division Bench in D.B. Civil Misc. Appeal No.1705/2005 decided on 06.11.2012 upheld the judgment and decree of dissolution of the marriage of the parties and passed an order relating to maintenance. The said order was challenged before the Supreme Court and the Supreme Court vide its order dated 24th March, 2014 passed the following order:-

â??Having considered the matter in its totality, we are of the view that the order passed by the High Court deserves to be sustained except to the extent that the payment of Rs.3 lakhs awarded to meet the educational and other expenses of the son of the parties is hereby enhanced to Rs.7 lakhs.

Ordered accordingly.â??

3. In terms of the order passed, the petitioner was required to pay the amount to the respondent on 27.05.2015 in proceedings arising out of divorce

petition, the petitioner was directed to pay sum of Rs.2,13,000/- to the respondent in terms of judgment of the Honâ??ble Supreme Court and further

petitionerâ??s-employer has been directed that 2/3rd salary of the petitioner be deposited with Family Court till recovery of the amount. The said writ

petition No.12346/2015 was dismissed by the Coordinate Bench on 18.09.2015 and the same was challenged by filing SLP 31172/2015 wherein the

operation of the order was stayed. In the meanwhile, contempt petition No.7/2015 was filed by the respondent Rekha before the Apex Court, and the

Apex Court vide its order dt.17.11.2015 passed the following order:-

â??In order to determine the quantum of maintenance, if any, payable by the respondent to the petitioner, we had, by our motion bench order dated

2.7.2015, directed the parties to appear before the Registrar (Judicial) of this Court, so as to enable them to project their rival claims towards

maintenance. We had also required the Registrar (Judicial) to submit a report quantifying the computation of payment of maintenance, as directed

from time to time, and also, the amount actually paid by the respondent to the petitioner.

In furtherance of the aforesaid motion bench order, Mr. M.V. Ramesh, Registrar (J-II) has submitted a report dated 14.08.2015. Copies of the

aforesaid report were furnished to the petitioner as well as the respondent. They have filed objections thereto.

Since detailed objections have been filed, we are of the view, that the same will need to be examined. We accordingly direct the Registrar of this court

to forward the aforesaid report dated 14.8.2015 to the Family Court No.1, Jaipur forthwith. The rival parties shall appear before the Family Court

No.1, Jaipur on 02.12.2015 at 2:00 p.m. in order to substantiate their objections. After affording an opportunity of hearing to the rival parties, including

the liberty to furnish documents (if necessary), the Family Court No.1, Jaipur shall submit a further report to this Court within one month of the parties

appearing before the Family Court quantifying the computation of payment of maintenance, and the actual amount paid. A copy of the report of the

Family Court No.1, Jaipur shall be furnished to the rival parties, who shall appear before this Court on 20.01.2016.

List again on 20.01.2016??

4. It is submitted that on the basis of the aforesaid order a report was submitted by the Registrar on 01.02.2018 and the Registrar (J-II) of the

Supreme Court submitted the following report:-

??I have gone through every aspect of the file and have also perused the calculation made by the Family Court. Again at the sake of the repetition

even if the version of the petitioner is accepted with regard to her claim till 31.12.2015, she is not entitled for more than Rs.13,54,000/-i.e. claim

calculated by the Family Court plus Rs.8,000/- which she was entitled for the 11th month as per order dated 05.01.2012 of the High Court of

Rajasthan under Section 127 Cr.P.C. and a further sum of Rs.10,000/- as travelling expenses. Meaning thereby that she is claiming Rs.13,72,000/-

(Rs.13,54,000/-+Rs.8,000/-Rs.10,000/-).

1. With regard to her averments relating to claim at point 2, 3, 4 and 7 wherein she has prayed for a sum of Rs.30,000/-, Rs. 1,30,000/-, Rs. 1,22,430/-

and 2,13,000/- it is submitted that the said claim is totally misconceived. This conclusion is based upon the reasoning that Ms. Rekha cannot approbate

and reprobate in the same vein with regard to her claim of Rs. 7,00,000/-. Ms. Rekha is estopped from repeatedly caliming piece meal payment of

components of Rs. 7,00,000/-. If her claim in para 2,3,4 and 7 is critically analysed, what is apparent is that these payments derive their substratum

from Rs. 7,00,000/- only which was ordered to be paid by the Honâ??ble Supreme Court in the form of education allowance while altering the High

Court order. Ms. Rekha is repeatedly trying to raise her claim qua the amount of Rs. 7,00,000/- in one form or the other.

2. The petitioner is claiming an amount of Rs. 2500/- per month for 12 months (Rs.30,000/-) which was ordered to be paid to her by the Honâ??ble

Rajasthan High Court vide order dated 06.11.2012. The respondent was also directed to pay to the petitioner in the alternative and amount of Rs.

3,00,000/- within a period of two months w.e.f. the date of this order ie. 06.11.2012. However, the amount of Rs. 3,00,000/- was enhanced to Rs.

7,00,000/- by the Honâ??ble Supreme Court of India vide its order dated 24.03.2014. Since this enhanced amount of Rs. 7,00,000/- has already been

taken into consideration by the Family Court, Jaipur during the calculation of her claim, therefore, she cannot additionally claim this amount of Rs.

30,000/- (Rs. 2500X12).

3. The petitioner also made a claim of Rs. 1,60,000/- [(7500+2500)x16] less Rs. 30,000/-, which she has admitted to have received from the

respondent. Therefore, net amount, which she is claiming from the respondent is Rs. 1,30,000/- (Rs.1,60,000-30,000). It appears that her calculation is

based upon the aspect that she claims Rs.7500/- for 12 months plus Rs. 2500/- for 16 months. Out of this amount, the quantum of

Rs.2500x16=Rs.40,000/- is not payable to her as it is a part of Rs.7,00,000/- which stands already included in her calculation by the Family Court. As

per the submission of the petitioner, the Honâ??ble Supreme Court of India vide order dated 19.11.2013 had directed the respondent to pay an

amount of Rs.7500/-per month w.e.f. 19.11.2013. Four months Calculation i.e. Rs.7500/-x4=Rs.30,000/- has already been computed by the Jaipur

Family Court. Even if her version is believed in toto, in that situation also she has admittedly received Rs.5500/- for these months. Therefore, her

further entitlement for 12 months would be $12 \times (7500 - 5500) = 24000/-$. Even if the claim of the petitioner is taken from another angle whereby the

petitioner has claimed Rs.7500/- as payment for 16 months, still her entitlement for

12 months would be $12 \times (7500 - 550) = 24000/-$. Resultantly, her entitlement till 31.12.2015 would be Rs.13,54,000/-+8000+24000=Rs. 13,86,000/- which

is still less than the payment made by respondent to the petitioner. Accordingly, the contentions raised by the petitioner qua the claimed amount fails

and is, therefore, not sustainable from all the angles and she is not entitled for any payment from the respondent till 31.12.2015.

4. With regard to her claim for Rs.5830 on prorata basis for 21 months, the said claim is totally erroneous and cannot be sustained in the eyes of law.

In this regard, the respondent has submitted that the demand of petitioner for the amount of Rs.1,22,430/- i.e. proportionate increase in payment is not

sustainable. This is because as per the order dated 24.03.2014 of the Supreme Court what has been ordered is a lump sum amount of Rs.7,00,000/-

and there is no direction with regard to any proportionate payment to be made by the respondent to the respondent. He further submitted that

therefore, the amount of Rs.1,22,430/- as claimed by the petitioner is not acceptable. She has in a manner raised multiple claims of Rs.7,00,000/-which

is not acceptable. For the sake of repetition Rs. 7,00,000/- can only be paid to her once either in lump sum or in monthly installment in addition to

Rs.5500/- till her son attains the age of 21 years and qua that aspect the Family Court has duly included the same while calculating her entitlement in a

lump sum manner. The components of Rs.2500/- for 12 months; her assertion with regard to Rs. 1,30,000/- and her claim qua 21 months for payment

of Rs.5830 on prorata basis is totally misconceived.

5. With regard to the claim of the petitioner in point no.7 i.e. Rs.2,13,000/- this is also an ingredient of sum of Rs.7,00,000/- which remains after

payment of Rs.4,87,000/- by the respondent, which has already been accepted by the Family Court and therefore cannot be reclaimed. Accordingly,

the claim of the petitioner is misconceived and not sustainable.

6. With regard to the claim at point no. 5, the respondent has not been able to establish on record the payment of sum of Rs.8,000/-, therefore, the

claim of the said amount by the petitioner is justifiable and is added to sum of Rs. 13,54,000/-.

7. With regard to sum of Rs. 50,000/- at point no.6, the same has already been dealt with in my earlier report dated 03.10.2017 (reproduced supra).

8. The petitioner has acknowledged the factum of receiving of sum of Rs.10,000/- as traveling allowance, therefore, the claim of the said amount by

the petitioner is unjustified and is not sustainable.

Even though for the sake of arguments it is presumed that her entitlement till 31.12.2015 was either Rs.13,72,000/- (Rs. 13,54,000/- +Rs 8,000/-

+Rs.10,000/-) or Rs.13,62,000/- (Rs. 13,54,000/- Rs. 8000/-) or Rs.13,86,000/- (Rs. 13,54,000/-+Rs.8000/-+Rs.24000/-) as has been discussed in the

forgoing paragraphs, yet in my earlier report, I have duly submitted that she has already received a sum of Rs. 14,64,672/- which includes the

components of Rs.50,000/-. The respondent has already made the payment of sum of Rs.14,14,672/- towards the maintenance claim. It appears that

as on 31.12.2015, nothing was due to be paid by the respondent to the petitioner.â??

5. The said report was submitted before the Supreme Court and the Supreme Court heard both the parties at length and passed following order dated

22.02.2018 in the contempt petition:-

â?? Heard the parties in person at length. Ms. Rekha, petitioner in person has

submitted that certain amount of Rs.7,500/-, Rs.16,000/-, Rs.7,00,000/- and Rs.50,000/-and some other amount have not been adjusted.

We have perused the report of the Registrar (J-II) dated 01.02.2018 and also the report of the Family Court No. 2, Jaipur, we are satisfied that the

amount claimed by the petitioner had been paid as is apparent from the reports. However, as per the reports it is also clear that certain additional

amount has been paid, we direct that shall not be recovered from Ms. Rekha by the husband as she is living alone and has to support the child. We

reject the submissions raised by Ms. Rekha as to non payment of amount, however, at the same time we order that additional amount found to have been paid in the report shall not be recovered by the husband.

The two reports of the Registrar (J-II) and that of family court, Jaipur are made part of the order.

Contempt petition stands disposed of. Pending application, if any, also stand disposed of??

6. In view of the above, it is submitted that no further payment is required to be made to the respondent. The respondent who has put in appearance

submits that she has received part of the payments which have been made and noted by the Supreme Court. She also entitled to receive regular

maintenance amount from the petitioner @Rs.5500/- per month.

7. Having heard both the parties, I find that the question relating to the maintenance, amount to be paid to the respondent-Rekha, has been finalized

and crystallized finally in terms of the order passed by the Supreme Court in Contempt Petition No.7/2015 in Civil Misc. Appeal No.4014/2014. In the

said order dated 22.02.2018 the Apex Court has specifically noted as under:-

??We reject the submissions raised by the Ms. Rekha as to non-payment of amount, however at the same time, we order that additional amount

found to have been paid in the report shall not be recovered by the husband.??

8. In the circumstances, after the divorce has already been granted by the Court, the amount received by the respondent as noted above, cannot be

said to be an insufficient maintenance amount and the petitioner cannot be held liable to pay any further amount except payment of Rs.5500/- per

month to wife from March 2018 onwards.

9. In view of the aforesaid, the writ petition stands allowed to the above extent.

The order passed by the Family Court, No.2, Jaipur dated 24.05.2016 is quashed and set-aside. No costs.