(1970) 09 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 38 M. of 1970

Dr. Yoginder Pal soni APPELLANT

Vs

Smt. Padma Soni RESPONDENT

Date of Decision : 03-09-1970

Acts Referred:
Hindu Marriage Act, 1955 — Section 10

Citation : (1972) 2 ILR (P&H) 687

Hon'ble Judges : Man Mohan Singh Gujral, J

Bench : Single Bench

Advocate : R.L. Batta, for the Appellant; Bal Raj Bahl, for the Respondent

Final Decision : Allowed

Judgement

Gujral, J.—This is an appeal against the order of the District Judge, Patiala, dated 8th December 1969, whereby the Respondent, Shrimati Padma Soni, was granted maintenance allowance of Rs. 250/- per mensem and expenses of the litigation amounting to Rs 700 in a petition filed by the Petitioner u/s 10 of the Hindu Marriage Act. During the pendency of the proceedings u/s 10 the Respondent made an application u/s 24 of the Act on the basis on which the impugned order was passed. Being aggrieved the husband, Dr. Yoginder Pal Soni, has come up in appeal to this Court.

2. It is not disputed that the Petitioner has an income of Rs. 916 per mensem. This includes his basic pay of Rs. 560 plus allowances including the non-practicing allowance. Besides this income the husband has also got a rental income of Rs. 75 per mensem. Though in the affidavit filed by Dr. Yoginder Pal Singh he has denied that he has any other income, but the learned Counsel for the resp. has placed on record a certified copy of the statement of the Appellant made in the Court of the Senior Subordinate Judge, Ferozepore, that he alongwith his two brothers are in receipt of a rent of Rs. 2600 per annum. The share of the Petitioners out of this would be Rs. 800 per annum and his total monthly income would come to Rs. 1000. Out of this income Dr. Soni would have

to pay about Rs. 50 as income tax.

3. The learned Counsel for the Petitioner has convassed before me that the Respondent should be allowed one fifth of the total income after having regard to the deductions on account of provident fund and insurance premium. It is further urged that the expenses pendente lite should be granted from the date of application u/s 24 and not from the date of the petition u/s 10. The third contention of the learned Counsel for the Petitioner is that the amount granted for the expenses of the litigation was excessive.

4. In support of the argument that the Petitioner was entitled to the deduction of provident fund and insurance premium out of the total income reliance is placed on the following observations made in Mukan Kunwar Vs. Ajeetchand, ..

If the Court comes to the couclusion that the applicant is entitled to maintenance and expenses then it has to consider their quantum. As for maintenance pendente lite Courts generally allow it at one-fifth the income of the Respondent after deductions on account of income tax and provident fund.

These observations no doubt support the argument of the learned Counsel for the Petitioner but these observations are more in the nature of obiter. The husband was only having an income of Rs. 107 and it is not clear from the judgment whether any part of this income was being deducted for deposit in provident fund or for the payment of the insurance premiums. It could be that the provident fund deposit in this case my have been a compulsory deposit according to the terms of the employment. In my opinion what emerges from the above observations is that only deductions of compulsory deposits are to be made from the income of the husband before calculating what is due to the wife as maintenance pendente lite and not voluntary deposits. Normally provident fund and insurance premium are voluntary deposits and are savings of the person which it is open to him to reduce or increase. If these voluntary deductions of provident fund and insurance permiums are allowed to be deducted by the husband before calculating the amount due to the wife it would work great hardship as by making larger deductions from his pay on account of provident fund and insurance premiums the husband can deprive the wife of her due share in his income. I am, therefore, clearly of the view that for the purpose of determining the amount of maintenance allowance to which the wife is entitled, no allowance can be made for the deductions from the pay which are not to be made compulsorily under the law and the wife is entitled to her share out of the pay after allowing for compulsory deductions like income tax or other taxes. Taking this view of the matter, I find that Rs. 950 would be available in order to determine what amount the Respondent would be entitled to as maintenance allowance.

5. In Mukan Kunwar''s case cited above it was observed that no limit has been prescribed in the Hindu Marriage Act as to the amount of maintenance allowance which can be granted to a wife but in the absence of special circumstances

maintenance should normally be allowed at the rate of the one-fifth of income of the husband. This was also the view expressed in Prasana Kumar Patra Vs. Smt. Sureswari Patrani, Keeping in view these observations, I hold that leaving exceptional circumstances apart one-fifth of the income of the husband would be a reasonable amount of maintenance allowance to which the wife would be entitled. Calculating on this basis, I assess the maintenance allowance to which the wife is entitled in this case at Rs. 200 per mensem as no circumstances of exceptional nature have been brought to my notice.

6. As to the date from which the allowance is to be granted though Section 24 of the Hindu Marriage Act is silent about it but in Dr. Tarlochan Singh v. Shrimati Mohinder Kaur (1963) 65 P.L.R. 19. it was observed that it could be granted from the date of the application u/s 24 of the Hindu Marriage Act. For the contention that the allowance could also be granted from the date of the petition u/s 10 the learned Counsel for the Respondent placed reliance on Samir Banerjee v. Sujata Banerjee 70 C.W.N. 633., wherein the following observations appear:-

The next submission of the Appellant is, that the learned Judge is wrong in allowing the maintenance for the period from September 1962, as the application for maintenance is filed only in February 1963. There cannot be any grant of maintenance, Mr. Mitter submits, of an earlier period, Mr. Dos however points out the said Bench decision of this Court in Subhana Sen (supra.) and a decision of the Madras High Court in the case of (13) Mahalingam Pillai Vs. Amsavalli, where their Lordship relied on the general rule, namely, that the maintenance is granted after the summons have been served on the Defendant in such cases. In the instant case, as the summons has been served on the husband, on August 4, Mr. Dos submits that it is possibly for this reason that the maintenance has been granted from the month of September, 1962. Though the guiding principle of the general rule has been taken from the Matrimonial Causes Acts in England, what is the source of the "General Rule" is not known to any one of the learned Counsel appearing before us and they are frank to admit the same.

On the provisions of the act however I am of the opinion that there is no warrant holding that the Court cannot pass a valid order for arrear maintenance from the date of the original application for judicial separation, though the application for maintenance might be made later. Section 24 of the Act does not lay down that the Court''s discretion to pass an order for maintenance must be either from the date of the said application u/s 24 or any period subsequent thereto. It depends in our view upon the facts and circumstances of each case, having regard to which, the discretiton under the said Section is to be exercised. Moreover, as the wife is not specific in her application in the present case as to from which date she is claiming the maintenance and as there is no appeal or cross-objection by the wife, the order of the learned Judge that the wife would get the maintenance from the month of September 1962 is affirmed.

The above observations also do not imply that the maintenance allowance is to be granted from the date of the petition u/s 10 of the Hindu Marriage Act. On the other hand, it was observed that it would depend on the facts and circumstances of each case as to which date was to be fixed for this purpose. Having regard to the entire circumstances of the case I am of the view that it would be proper to grant maintenance allowance from the date of the application u/s 24 and not from the date of the petition u/s 10 of the Hindu Marriage Act. Even in the Smt. Sobhana Sen Vs. Amar Kanta Sen, to which reference was made by the learned Counsel for the Appellant, allowance was not granted from the date of the petition but from the date the wife was served. More over in Samir Banerjee''s case, this view was not followed and it was observed that it would depend on the facts and circumstances of each case. The object underlying Section 24 appears to be that neither party may suffer by his or her inability to conduct the proceedings for want of money or expenses. Normally it is after the party appears in Court in reply to the service of summons that the question of defending the proceedings would arise. It would therefore, be more appropriate to allow alimony from the date application u/s 24 is made. Consequently, considering the circumstances in the present case, the Respondent is allowed maintenance from the date of her application u/s 24 of the Hindu Marriage Act.

7. The quantum of litigation expenses has been fixed at Rs 750/- and the learned Counsel for the Petitioner has not been able to show that the amount is excessive or that the reasons given by the trial Court for assessing this amount are not correct.

8. For the foregoing reasons the appeal is allowed to the extent indicated above, but the parties are left to bear their own costs.

