

(2014) 04 BOM CK 0266
In the Bombay High Court
Case No : Civil Writ Petition No. 2117 of 2012

Jayvardhan Sinh Chapotkat	Vs	APPELLANT
Ajayveer Chapotkat		RESPONDENT

Date of Decision : 08-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 14, Order 7 Rule 11(d)
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Adoptions and Maintenance Act, 1956 — Section 20, 21(iv)
Hindu Marriage Act, 1955 — Section 13(1)(ia)

Citation : (2014) 04 BOM CK 0266

Hon'ble Judges : Sadhana S. Jadhav, J

Bench : Single Bench

Advocate : Manjari Shah instructed by Chitra S. Phadke, Advocates for the Appellant; Ramesh Ramamurthy, Advocates for the Respondent

Judgement

Sadhana S. Jadhav, J.—Heard the learned Counsel for the Petitioner and the learned Counsel for the respondent.

2. Rule. Rule made returnable forthwith with the consent of the parties.

3. The petitioner herein is the son of the respondent No. 1. The Petition herein takes exception to the order dated 30th August, 2011 passed by the Family Court. The Petitioner has instituted the Petition to direct respondent father to pay maintenance even after he has attained age of majority. During the pendency of the main Petition, the Constituted Attorney of the respondent father had made an application for framing preliminary issue regarding maintainability of Petition, thereby seeking rejection of the Petition under Order 7 Rule 11(d) of Civil Procedure Code. The named Petition is filed under Section 20 of the Hindu Adoption and Maintenance Act. The Petitioner herein had attained majority on 26th October, 2008 and the Petition was filed on 19th November 2008. The Petitioner had challenged the application seeking framing of preliminary issue. The Petitioner had contended that it is the obligation of the father to maintain his

son as he is studying and fully dependent upon his mother. Learned Family Court had observed that the Petitioner has attained majority and is not entitled to claim maintenance under Section 20 of the Hindu Adoption and Maintenance Act. It was observed by the learned Family Court that the advocate representing the Petitioner as well as respondent had admitted that the Petition has been filed by the Petitioner after attaining age of majority and as per sub-clause 2 of the Section 20 of the Act, the Child is not entitled to claim maintenance from either of the parents.

4. The Petitioner submits that in fact, his mother had filed an application before the Family Court bearing Petition No. A-438/1993 praying therein that the marriage between the applicant and the present respondent be dissolved by a decree of divorce under Section 13(1)(ia) and (b) of the Hindu Marriage Act, 1955 and that the applicant therein shall be awarded the custody and guardianship of the minor child Jayvardhan Sinh and that the custody of the minor son shall vest in her permanently. The prayer was granted by the Family Court and the decree was drawn on 24th March, 2000. At that stage, the respondent herein was directed to pay Rs. 10,000/-p.m. to the mother of the Petitioner towards her maintenance and the respondent was further directed to pay Rs. 5,000/-p.m. to the present Petitioner towards maintenance. Thereafter, the mother of the Petitioner had sought modification of the order by filing Miscellanea Application No. 118 of 2003. She had demonstrated before the Court the contingent expenditures towards maintenance of her son and had prayed that the respondent herein be ordered and directed to pay a sum of Rs. 15,000/- p. m. towards maintenance of the minor son and further that the respondent be ordered and directed to pay a sum of Rs. 7 Lakhs for the membership of C.C.I. It appears from record that the respondent herein was looking after the needs of the son.

5. On 14th November, 2008 the respondent herein filed Interim Application No. 346 of 2008 in M.A. No. 118 of 2003 seeking modification of the order of maintenance. The applicant i.e. the present respondent had specifically stated that the respondent has paid Rs. 17,91,000/- and was in arrears of Rs. 1,66,000/- as on 16/10/2008. The applicant had filed an undertaking that he would pay the arrears amount. It was specifically contended that on 26/10/2008 the child Jay i.e. present Petitioner has completed 18 years of age and has become a major and hence, would not be entitled for any maintenance. He had prayed for modification of the order dated 24th June, 2004 and had further prayed that the order of maintenance at the rate of Rs. 5,000/-to the child Jay be set aside. The mother of the Petitioner had filed a reply to the said application contending therein that although the child has attained majority, he is studying in first year junior college at Jai Hind College, Mumbai. He had attained majority on 26th October, 2008. That he is still a student and is not independent and capable of looking after himself and therefore, the order should not be modified. The Marriage Counselor had called upon to file a report. She had reported that the total amount paid by the present respondent was Rs. 16,71,000/-. Amount of

Rs. 14,87,000/-was withdrawn from the court. That the respondent had paid Rs. 1,84,000/-and Rs. 40,000/-by cheque and total amount paid was Rs. 17,11,000/-. The present Petitioner filed Petition No. 176/2008 before the Family Court which is an application under Section 20 of the Hindu Adoptions and Maintenance Act, 1955 praying therein that the Petitioner be awarded maintenance even after his attaining of majority on 26/10/2008.

6. The respondent had raised a preliminary objection in respect of maintainability of the Petition under Order 7 Rule 11(d) of the Civil Procedure, Code and therefore had requested the Court to frame the issue of maintainability of the Petition, as per the provisions of order 14 of the Code of Civil Procedure. The preliminary objection was filed by the Constituted Attorney of the respondent on behalf of the respondent. In the mean while, Civil Appeal No. 8689 of 2011 has been filed by the mother of the present Petitioner. The Hon''ble Apex Court has stayed the operation of the impugned order passed by the High Court and had directed that the respondent shall pay to the Petitioner Rs. 10,000/-p.m. by way of permanent alimony with effect from the date of the Family Court order and this would be in addition to the amount awarded for the child. It is pertinent to note that before filing the application seeking leave to appeal the present Petitioner had attained majority. However, the same was not demonstrated before the Hon''ble Apex Court and in all probabilities therefore, the Hon''ble Apex Court had extended the relief in favour of the child i.e. the present Petitioner. The respondent herein had filed affidavit in reply before the Hon''ble Apex Court stating therein that in fact, there has been suppression of facts on behalf of the appellant. It was specifically contended in paragraph-26 of the affidavit that the present Petitioner had attained majority on 26th October, 2008 and that he has filed an application under Section 20 of the Hindu Adoptions and Maintenance Act before Family Court. It was further demonstrated that the issue of maintenance payable to the son was not an issue either in the High Court or in the Apex Court and the Hon''ble Apex Court has granted interim relief for granting maintenance to the son. It was further contended that it has foreclosed defence available to the respondent in the application filed by the son before the Family Court under Section 20 of the Hindu Adoptions and Maintenance Act. On 12th August, 2013 Civil Appeal No. 8689 of 2011 was called out for hearing before the Hon''ble Apex Court and the Apex Court had granted four weeks'' time to both the parties to file their respective statement of the case.

7. In the case of Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, , the Hon''ble Apex Court has observed that under the Hindu Adoption and Maintenance Act, 1956 it is the obligation of a person to maintain his unmarried daughter, if she is unable to maintain herself.

8. It is submitted by the respondent that the Hon''ble Apex Court was considering the case of an unmarried daughter and the same cannot be applied to the case of a son. In fact, in the present case, the respondent has demonstrated before the Apex Court that the mother of the present Petitioner

happens to be a practicing advocate and she has suppressed the facts before the Court.

9. Section 20 of the said Act contemplates that a legitimate and illegitimate child may claim maintenance from his father or mother so long as the child is minor. Section 21(iv) of the said Act defines "dependents" -"as his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor : provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great-grandson, from the estate of his father or mother or father's father or father's mother."

10. In view of this provision, it can be clearly said that the Statute does not contemplate grant of maintenance to son who has attained majority.

11. The learned Counsel for the Petitioner has placed reliance upon the Judgment of the Hon''ble Apex Court in the case of Rita Dutta and Another Vs. Subhendu Dutta, . In the said case, the Hon''ble Apex Court had directed the father to pay maintenance to the elder son to the tune of Rs. 3,000/-and Rs. 2,500/- to the younger son. The Counsel placing reliance upon the Judgment of the Hon''ble Apex Court cited(supra) submits that although the Statute does not entitle a major son for maintenance, in fact and circumstances, a son who has attained majority can claim maintenance. That the Hon''ble Apex Court has also not disturbed grant of maintenance awarded to the present petitioner.

12. The learned Counsel further submits that it is the obligation of the father to maintain his son who is still prosecuting his studies and is fully dependent and cannot maintain himself. It is true that the ward of an educated, well placed parent is entitled to prosecute his studies in order to have better prospects in life. Divorce between the parents should not disentitle the child from prosecuting his further studies and making himself capable to earn a decent living for himself. In these circumstances, the son would be entitled to maintenance so long as he is prosecuting his education or till he attains the age of 25 years.

13. The Hon''ble Apex Court had carved an exception to the provisions of Statute in the case of Rita Dutta(supra). In the present case also it can be said that the Petitioner has made out an exceptional case. It is demonstrated in the Petition that he has bright career. He is prosecuting his education and sports to the best of his capacity and he is studying at Jai Hind college.

14. The learned Counsel for the respondent submits that in fact, the mother is an advocate and she is also earning and therefore, she should maintain her son. It is further submitted that the Statute does not contemplate maintenance to a son who has attained majority. It is the joint responsibility of the parents to maintain their son as long as he is studying and just because the parents are divorced and the son continues to live with his mother, the whole responsibility cannot be thrown on the frail shoulders of mother.

15. The learned Counsel for the respondent further submits that the mother of the present petitioner earns about 10,000/-p.m. as an advocate and she has suppressed the said fact and therefore, the son would not be entitled to any maintenance from the father. In the present day circumstances, Rs. 10,000/-is a meager amount and the tuition fees are exorbitant and therefore, it would not be possible for the mother to pay the tuition fees of her son. On the other hand, the respondent herein is in fact, an American Citizen and a waste water analyst working for gain at RCSD-1, 4, Route 340, Orangeburg, New York 10962 U.S.A.

16. A major son may not be entitled for maintenance under the Hindu Marriage Act. In the present case, the Petitioner has made out a specific claim for educational expenses which can be availed by him after attaining the age of 18 years. The son/claimant would attain majority as far as age is concerned, however, it would not be the proper age for becoming economically independent so as to earn his living. In the given facts of the case, a major son of the well-educated and economically sound parents can claim educational expenses from his father or mother irrespective of the fact that he has attained majority. It is not maintenance in strict sense as contemplated under Section 125 of the Code of Criminal Procedure or maintenance as contemplated under Section under Hindu Marriage Act.

17. Respective Counsel submit that the respondent herein had preferred an appeal (Family Court Appeal No. 147 of 2013) challenging the judgment and order dated 1.8.2012 passed by the Judge, Court Room No. 3, Family Court, Mumbai, in Petition No. Civil M.A. 118 of 2003, wherein the maintenance awarded to the present petitioner was enhanced to Rs. 15,000/- from Rs. 5,000/-. The appeal was heard by a Division Bench of this Court (Coram : Smt. V.K.Tahilramani and A.R.Joshi, JJ.). The said appeal was disposed of by an order dated 11.10.2013. The Hon"ble Division Bench of this Court had observed in para 6 as follows :-

"6. In his affidavit-in-reply, the appellant father has stated about the educational facilities available in U.S. And particularly in New York where he is residing. He has stated that the mother should send the child to America to be with him and he will look after the child and attend to the needs of the child in America. He has stated in detail in his reply as to how the child will be benefited if he lives in Manuet in New York with the appellant. The appellant has not disputed that there is inflation in India. He has not disputed that the amounts were spent on medical / orthodontal treatment nor that the amounts were spent to pay college fees, purchase of books etc. It is pertinent to note that the appellant father ha averred in his reply that he will maintain the child in America, to give an exposure to various cultures in U.S. From this, it is seen that he has sufficient funds and sufficient financial capacity to provide all those facilities in India which he has promised to give the child in US."

The Hon"ble Division Bench has further observed that the father of the present petitioner had been called upon to produce his income-tax assessment. He has

not produced the income-tax assessment as according to him, this is "highly official and personal information which can be construed and used for illegal and inappropriate purpose". The respondent herein had filed salary certificate which showed that his salary was 47,557.74 USD. The Court had observed that the net salary of the appellant (present respondent) was 47,557.74 USD after following mandatory taxes and contributions. The Hon''ble Division Bench has specifically passed an order that the child is entitled to enhanced maintenance of Rs.15,000/- instead of Rs. 5,000/-per month till the date he attains majority. The said order was challenged before the Apex Court and the Judgment of the Hon''ble Division Bench of this Court dated 11.10.2013 has been upheld.

18. The learned Counsel for the petitioner has filed written submissions and submits that the petitioner is not earning and, therefore, cannot pay for his educational expenses also. It is submitted that at present, the petitioner is pursuing a one-year course a Masters Degree in Sports Management offered by the University of Loughborough, U.K. The annual fees to be incurred on the said course is GBP 13,250/-. The petitioner has obtained loan from his maternal grandfather for payment of the said fees as he is born in USA and would not be able to obtain loan from a Nationalized Bank in India. He desires to return the loan obtained from his grandfather. Hence, this Court is of the opinion that the present petitioner would be entitled to a educational expenses of Rs. 15,000/- after having attained majority, but only till he completes his education in Sports Training. The learned Counsel for the petitioner submits that he has taken admission for the masters degree in Sports Management in September, 2013. The duration of the Course is of one year i.e. till September, 2014. The petitioner shall not claim any maintenance beyond the period of completion of education. The educational expenses shall be paid to the petitioner at the rate of Rs. 15,000/-per moth till he completes the education. The amounts paid pursuant to the order passed in Family Court Appeal No. 147 of 2013 shall be inclusive of the amount being granted in this petition and the petitioner shall be entitled to educational expenses of Rs. 15,000/-from the date of his application under Section 20 of the Hindu Adoption and Maintenance Act for a period of one year from the date of this order.

19. The learned Counsel for the petitioner has placed reliance on the Judgment of the Apex Court in the case of Kirti Malhotra(Smt) vs. M.K.Malhotra 1995 Supp (3) SCC 522 to demonstrate that the petitioner would be entitled to maintenance during the period he is seeking education.

20. In view of this, this Court is of the opinion that since the father i.e. the respondent is well placed financially, it would be incumbent upon him to bear educational expenses of his son till he is able to earn his own living or till he completes his education. This is in fact, a concession to a major son and therefore, the Petition filed by the Petitioner deserves to be allowed.

21. Taking overall view of the facts of the case, the Petitioner cannot claim an amount of Rs. 7 Lakhs for the membership of club.

22. In the opinion of this Court, taking into consideration the status of the parties, the Petitioner herein would be entitled to educational expenses at the rate of Rs. 15,000/-from the date of his application under Section 20 of the Hindu Adoption and Maintenance Act for a limited period from the date of this order i.e. till October, 2014. The amount paid so far at the rate of Rs. 15,000/-pursuant to the judgment and order passed by the Division Bench shall be included in the present case and the amount of Rs. 15,000/-granted by this Court in the present Writ Petition is not in addition to the amount granted by the Hon"ble Division Bench of this Court vide judgment and order dated 11.10.2013 which has been upheld by the Hon"ble Apex Court.

23. The Writ Petition is allowed in the above terms. The order passed by the Family Court Mumbai at Bandra dated 30/8/2011 is quashed and set aside. The Rule is made absolute in the above terms.

24. At this stage, learned Counsel for the respondent seeks stay of the implementation and execution of the order passed in the present Writ Petition.

25. In order to give an opportunity to the respondent, order is stayed for a limited period of four weeks only.

26. For the reasons stated in the Judgment separately, the following order is passed :-

The Petitioner herein would be entitled to educational expenses at the rate of Rs. 15,000/-from the date of his application under Section 20 of the Hindu Adoption and Maintenance Act for a limited period from the date of this order i.e. till October, 2014. The amount paid so far at the rate of Rs. 15,000/-pursuant to the judgment and order passed by the Division Bench shall be included in the present case and the amount of Rs. 15,000/-granted by this Court in the present Writ Petition is not in addition to the amount granted by the Hon"ble Division Bench of this Court vide judgment and order dated 11.10.2013 which has been upheld by the Hon"ble Apex Court.

27. The Writ Petition is allowed in the above terms. The order passed by the Family Court Mumbai at Bandra dated 30/8/2011 is quashed and set aside. The Rule is made absolute in the above terms.

28. At this stage, learned Counsel for the respondent seeks stay of the implementation and execution of the order passed in the present Writ Petition.

29. In order to give an opportunity to the respondent, order is stayed for a limited period of four weeks only.