

(1980) 01 BOM CK 0031

In the Bombay High Court

Case No : Civn Revision Application No. 64 of 1980

Kartarchand Dalliram Jain

APPELLANT

Vs

Taravati Kartarchand Jain

RESPONDENT

Date of Decision : 30-01-1980

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 20
Hindu Marriage Act, 1955 — Section 22, 24, 26

Citation : AIR 1982 Bom 15

Hon'ble Judges : Mehta, J

Bench : Single Bench

Advocate : A.N. Samani, for the Appellant; P.L. Nain, for the Respondent

Judgement

1. This petition raises an interesting point of law with regard to the grant of maintenance pendente his under S. 24 of the Hindu Marriage Act. 1955.

2. The petitioner husband filed a petition for divorce in the Bombay City Civil Court at Bombay, being M-J. Petition No. 647 of 1977, against the respondent-wife on the ground that the respondent wife after the solemnization of the marriage had treated the petitioner with cruelty. After the filing of the petition the marriage had treated the petitioner the respondent wife took out a Notice of Motion dated 31-10-1977 against the petitioner husband for maintenance pendente lite u/s 24 of the said Act, claiming a sum of Rs. 1000/- per month. The Notice of Motion was argued on the footing was claimed by the respondent wife not only for maintaining herself but also three daughters of the said marriage, who had attained majority. The learned Judge of the City Civil Court in a detailed judgment dated 9-3-1978 passed an order for maintenance pendente lite of a sum of Rs. 225/- per month for the respondent-wife and a sum of Rs. 175/- per month for each of the three daughters. It may be pointed out that the eldest daughter sunita was married on 7th Sep., 1978. I.e. after the passing of the impugned order, The eldest daughter sunita was

born in 1955, the second daughter Anita was born in 1957 and the youngest daughter Samita was born in 1969. It is not in dispute between the parties that all three had attained majority at the time when the respondent-wife had taken out her Notice of Motion to the City Civil Court at Bombay on 31-10-1977.

3. Mr. Samani, the learned Advocate appearing on behalf of the petitioner-husband, has challenged the judgement and order of learned Judge of the City Civil Court only in so far as the learned Judge has ordered the petitioner to pay sum of Rs. 175/- per month to each of the three daughters. Mr. Samant has not impugned the order in respect of the payment of Rs. 225/- per month to the respondent-wife. Under S. 24 the Court could provide for the maintenance either of the wife or the husband. As the case may be, in the event or either party not having any independent income sufficient for his or her support and necessary expenses of the proceedings. Mr. Samani contended that Section 24 did not provide for an order of maintenance of children either minor or adult, Provision for the maintenance of minor children was made u/s 26 of the said Act both pendants lite as also after the passing of the decree. According to Mr. Samant the learned Judge of the City Civil Court by granting maintenance for the three adult daughters had traversed beyond the scope of Sections 25 and 26 of the said Act. Sections 25, 26 of the said Act. Provide;-

"25. (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, pay to the applicant for her or his maintenance and support such gross sum of such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property of the applicant, the conduct of the parties and to other circumstances of the case, It may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this section has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the Court may deem just."

"26. In any proceeding under this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just

and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending and the Court may also from time to time revoke, suspend or vary any such orders and provisions previously made."

4. Mr. Samant relied upon the judgment of the Gujarat High Court in the case of Patel Dharamshi Premji Vs. Bai Sakar Kanji, wherein the Division Bench was pleased to observe (at p.155);-

"The lower appellate Court, however, seems to have committed an error in taking into account the needs and requirements of the son in determining the amount of permanent alimony to be awarded to the respondent, We do not think that in fixing the amount of permanent alimony the lower appellate Court was entitled to take into consideration the amount of maintenance which would be necessary for the purpose of meeting the needs and requirements of the son and in doing so the lower appellate Court clearly took into account an extraneous or irrelevant factor. This is not to say that the respondent would not be say that the respondent would not be entitled to claim maintenance for the minor son from the appellant but the needs and requirements of the son could not be taken into account in determining what should be the amount of permanent alimony to the lower appellate Court increasing the amount of permanent alimony from Rs. 20 to Rs. 28 per month was, therefore, vitiated by an error of law."

5. Mr. Samant also relied upon a judgement of the Patna High Court in the case of Bankim Chandra Roy V.Smt. Anjali Roy reported in AIR 1972 Per so, wherein the learned single Judge of that Court was pleased to observe (at p. 81): -

"It would thus be seen that an order can be made if the petitioner has no independent income sufficient for her or his support. No monthly allowance can be granted under Sec. 24 for the support of the children. That being so, the grant of monthly allowance of Rs. 325/- not only for the support of the respondent but also for the support of the three children is contrary to law and has been made by committing an illegality in exercise of the jurisdiction of the Court under S. 24 of the Act."

6. Mr. Nain, the learned Advocate appearing on behalf of the respondent wife, has raised an initial objection with regard to the maintainability of this Revision Petition. Mr. Nain contended that the powers of the Court sitting in Revision were restricted to the issue of jurisdiction wrongly exercised by the lower court of the exercising of a jurisdiction which was not vested in the lower Court. Mr. Nain submitted that the present Revision Petition in effect was filed against the quantum of maintenance awarded by the lower Court to the wife, taking into consideration the requirements of the three daughters. Mr. Nain urged that this

Court, sitting in Revision, should not interfere with the order of the learned judge of the City Civil Court since no issue affecting the jurisdiction of that Court under the Act had been raised by the petitioner. Mr. Nain has drawn my attention to a decision of the Supreme Court in the case of Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, . Wherein their Lordships were pleased to observe (at p. 1338) : -

" It is not open to the High Court to question the findings of fact recorded by a subordinate Court in the exercise of its revisional jurisdiction under S. 115 of the Code, which, it is well settled, applies to cases involving questions of jurisdiction, i.e. questions regarding the irregular exercise or non-exercise of jurisdiction by a Court and is not directed against conclusion of law of fact in which questions of jurisdiction are not involved."

7. Mr. Nain relied upon another relied of the Supreme Court in the Case of Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai in the same volume, i.e. AIR 1964 SC 1241. Wherein their Lordships were pleased to observe (at p. 1347)

"The High Court had, in exercise of its powers under S. 115, Civil P.C. no authority to set aside the order merely because it was of the opinion that the judgment of the District Court was assailable on the ground of error of fact or even of law * * * The power of the High Court under S. 115, Civil P.C. was not thereby excluded, but the exercise of that power is by the terms of the statute investing it severely restricted. The High Court may exercise its powers in revision only it appears that in a case decided by a Subordinate Court in which no appeal lies thereto the subordinate Court has exercised a jurisdiction not vested in it by law of has failed to exercise a jurisdiction as vested or has acted in the exercise of its jurisdiction illegally or with material irregularity.

8. Mr. Nain, therefore, contended that in the instant case the petitioner husband had not succeeded in pointing out that the learned Judge of the City Civil Court has exercised his jurisdiction irregularly or had failed to exercise jurisdiction which had been vested in him not was any material if legality pointed out.

9. Now, It may be pointed out that on a reading of S. 24, it becomes evident that section makes provision for granting maintenance pendants lite to a party who has no independent income sufficient for his or her support. This section does not provide for granting maintenance for the children. Section 26 of the said Act provided for interim orders from time to time as also for making provision in the decree with regard to custody, maintenance and education of minor children consistently with their wishes, Section 26, therefore, empowered the Court to provide for the maintenance or minor children, It therefore, empowered the Court to provide for the maintenance or minor children. It provided for maintenance both pendants life as also after the passing of the decree. The learned Judge in granting separate maintenance to each of the three adult daughters had clearly traversed beyond the scope of Section 24 and S. 26 of the said Act, The learned Judge having transgressed beyond the scope of the

provision of the sections in exercising his jurisdiction, his order was in valid and contrary to law, That being the case, the petitioner was entitled to approach this Court in revision, I, therefore, negative this submission of Mr. Nain.

10. Mr. Nain then contended that the learned judge was justified in taking into 1982 Bom./2 1 g - 18 consideration the requirements of the maintenance of the three adult daughters for the reason that to deciding the question of maintenance to a wife he had to take into consideration the overall financial position of the wife and the husband and their necessities having regard not merely to their income but their property, debt, liabilities and obligations, Mr. Nain argued that it would be unreasonable to state that the mother was no longer called upon to maintain her three daughters just because they had attained majority, I am unable to agree with the submission made by Mr. Nain. The adult daughters were entitled to have recourse for seeking maintenance from their father under S. 25 of the Hindu Adoptions and Maintenance Act, 1956, The learned Judge in awarding maintenance pendents lite to the three adult daughters in an application under S. 24 of the said Act. Had clearly transgressed beyond the scope of the section and the resultant order is to my mind, vitiated by an error of law, It is, therefore, necessary that the order to the extent that it awarded maintenance to the three adult daughters at the rate of Rs. 175/- per month to each of them must be set aside.

11. In the result Rule is made partially absolute. The order of the learned Judge dated 9-3-1978 to the extent of granting maintenance pendents lite to the three adult daughters at the rate of Rs. 175/- per month to each of them is set aside. The rest of the order is confirmed. There will be no order as to the costs of this petition.

12. Order accordingly