
(2004) 03 DEL CK 0029
In the Delhi High Court
Case No : FAO 117 of 2003

Kishan Dutt Verma

APPELLANT

Vs

Baby Parul through Smt. Rajni Bala @ Sudha

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Citation : AIR 2004 Delhi 366 : (2004) 110 DLT 703 : (2004) 1 DMC 675 : (2004) 74 DRJ 8

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : K.A. Dewan, for the Appellant; Roshni Singh, for the Respondent

Judgement

Madan B. Lokur, J.—These two appeals arise out of a common judgment and order dated 1st October, 2002 passed by the learned Additional District Judge in Suit Nos. 183/2001 and 184/2001.

2. The Appellant, a practicing advocate in the District Courts, got married to Rajni Bala on 17th February 1991. They are the parents of both the Respondents. Parul (the Respondent in FAO No.117 of 2003) was born on 27th June, 1993 while Geetanshu (the Respondent in FAO No.89 of 2003) was born on 7th March, 1997. Quite clearly, they are minors and both are studying in school.

3. According to their mother who filed the suit on their behalf, the Appellant has totally neglected the family with the result that she has to live with her parents (her father is an ex-serviceman from the Air Force), who also help in looking after the children. In these circumstances, the mother was compelled to file a petition in May 1995 u/s 125 of the Code of Criminal Procedure (Cr.P.C.) for her maintenance as well as for the maintenance of Parul. The Appellant chose not to appear in these proceedings. Thereafter, by an order dated 1st August 1997, the learned Magistrate awarded her and Parul maintenance of Rs.500/- per month each, but the Appellant has not paid that amount even on a single occasion.

4. Under these circumstances, the mother filed a petition u/s 20 of the Hindu

Adoptions and Maintenance Act, 1956 sometime in 2001 claiming maintenance for their child Parul. A separate petition was filed claiming maintenance for their child Geetanshu. By an interim order dated 1st April 2002, the learned Additional District Judge directed the Appellant to pay Rs.1,500/- per month each as interim maintenance from the date of presentation of the petition. The Appellant has not complied with this order and has paid only Rs.1,000/- in July 2002. In view of the conduct of the Appellant, his defense was ordered to be struck off.

5. In fact, the conduct of the Appellant during the proceedings before the learned Additional District Judge has been such that the learned Judge was constrained to comment adversely on his conduct during the proceedings. On a perusal of the case file, including the orders passed in the present appeals, I am also of the view that the conduct of the Appellant has been far from satisfactory. The impression one gets on reading the orders passed in the appeals is that the Appellant is least concerned about the orders passed by any Court and thinks that he can get away by flouting them with impunity. This is a little unfortunate, particularly since the Appellant is an advocate.

6. Be that as it may, the learned Additional District Judge passed a final order (impugned) whereby he awarded a sum of Rs.3,500/- per month per child as maintenance. Aggrieved by the said award, the Appellant has preferred these appeals.

7. According to the Appellant, he does not have much of a practice as an advocate. He was appointed as an Oath Commissioner to supplement his income. He says that he is a chronic patient of asthma and is, Therefore, not able to stand up to the rigours of private practice.

8. The learned Additional District Judge noted that the Appellant had filed proceedings u/s 25 of the Guardians and Wards Act, 1890, being Petition No.182/1997, claiming custody of the two children. Although that petition was dismissed, the Appellant described his status and income in paragraph 14 of the petition in the following words:

"That the petitioner is an practicing advocate as well as having good practice and belongs to good and reputed family. He has no liability except then to maintain himself, and the father of the petitioner is Police Officer in UP Police not only that the younger brother of the petitioner is also practicing advocate at Tis Hazari court and my another brother is getting the education in the class of M.B.A. at Meerut University and he is scholar student and the last younger brother of the petitioner is studying in LL.B. at M.M.H. College, Ghaziabad. It is not out of place to mention here that since the family of the petitioner having a good status and the good reputation in the society, hence the petitioner and their parents only can look after the betterment of the said children and can provide good atmosphere for their healthy growth as well as they can provide the higher education in the reputed colleges and universities for the betterment of the children."

9. Keeping in view the fact that the Appellant is under a legal obligation to maintain his wife and children, neither of whom have any independent source of income, and also keeping in view the fact that according to the Appellant himself he has a substantial practice and comes from a good social status and has absolutely no liabilities, the learned Additional District Judge came to the conclusion that the Respondents were entitled to maintenance of Rs.3,500/- per month each.

10. It has been brought to my notice that in the guardianship proceedings, the Appellant filed an application, duly supported by an affidavit dated 21st April 1998 in which in paragraph 3 he says as follows:

"That admittedly, the petitioner is a practicing Advocate and is having good practice and belongs to a very reputed family and have no other liability except then to maintain himself, but he is warred about the bright future of the children, who presently is living along with her mother (who admittedly is a poor lady, as admitted in the application u/s 125) and as mentioned above, the lot of litigation and mudsalling is still continued between the petitioner and the respondent and this type of environment would have spoil the future of the minor children and the possibility is that lot of wrong thoughts would be develop in the mind of the minor children, it is Therefore, the petitioner considers in the interest of the minor child that it would be proper to send him in Boarding school either Nainital or Dehradun, away from the environment as mentioned above obviously at the cost of the petitioner itself."

11. Quite clearly, the case of the Appellant before the Guardianship Court was that he could afford to look after his children, and look after them well. The question that is now required to be answered is whether the Appellant is obliged to maintain his children and if so, to what extent.

12. In Kirtikant D. Vadodaria Vs. State of Gujarat and Another, it was held in paragraph 8 of the Report:

"According to the Law of the Land with regard to maintenance, there is an obligation of the husband to maintain his wife which does not arise by reason of any contract - express or implied - but out of jural relationship of husband and wife consequent to the performance of marriage. Such an obligation of the husband to maintain his wife arises irrespective of the fact whether he has or has no property, as it is considered an imperative duty and a solemn obligation of the husband to maintain his wife. The husband cannot be heard saying that he is unable to maintain due to financial constraints so long as he is capable of earning. ? ? ? Further, according to Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is under a legal obligation to maintain his wife, minor sons, unmarried daughters and aged or infirm parents. The obligation to maintain them is personal, legal and absolute in character and arises from the very existence of the relationship between the parties."

13. Similarly, in State of Haryana vs. Santra (2002) 5 SCC 182 it was observed

in paragraph 38 of the Report that parents are under an obligation to maintain their minor children. In paragraph 39 of the Report, it was held,

"Maintenance would obviously include provision for food, clothing, residence, education of the children and medical attendance or treatment. The obligation to maintain besides being statutory in nature is also personal in the sense that it arises from the very existence of the relationship between parent and the child. The obligation is absolute in terms and does not depend on the means of the father or the mother."

14. In view of the decisions of the Supreme Court, it must be held that the Respondents are entitled to receive maintenances from the Appellant.

15. With regard to the quantum of maintenance, Section 23 of the Hindu Adoptions and Maintenance Act, 1956 gives the factors required to be considered. This section reads as follows:

"23. Amount of maintenance. -- (1) It shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the Court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to -

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

(3) xxx xxx xxx"

16. It is true that maintenance cannot be subjected to mathematical niceties. There are various factors that are required to be taken into consideration including the provision of a decent living both for the person providing maintenance as well as for the person getting maintenance. In the case of a self-employed person as, for example, in this case an advocate, it is extremely difficult to find out what is the exact income. The Appellant has not disclosed his income truthfully. On the one hand, he says that he cannot afford to maintain his wife and children and on the other, he claims to have a good practice and would like to see his children in boarding school in Nainital or Dehra Dun.

17. The learned Additional District Judge has, I think, correctly appreciated the

dilemma and has correctly held that the expenses claimed by the children towards school expenses, food, clothing, medicines and other miscellaneous expenses have not been assailed; they are unrebutted and unchallenged. The learned Judge has assessed the income of the Appellant as Rs.30,000/- per month and on that basis awarded Rs.3,500/- per month per child as maintenance. There is nothing shown by the Appellant to disturb this conclusion, except to say that he cannot afford to pay this amount.

18. I think it is necessary to keep in mind the fact that to supplement his income the Appellant has been working as an Oath Commissioner. It is unlikely that a practicing advocate earning Rs.30,000/- per month, as found by the learned Additional District Judge, would take up a job of working as an Oath Commissioner to supplement his income. It is quite likely that the income of the Appellant is much less. While it is difficult to say what his income could be, in the absence of any information produced by him, I think it would be reasonable to assume that it would be in the region of about Rs.10,000/- per month, which is the only way the Appellant could have afforded to send his children to boarding school as claimed by him in his guardianship petition. Consequently, I take the income of the Appellant as Rs.10,000/- per month.

19. Assuming, on this basis, that the Appellant requires 50% of the amount for himself, it would be appropriate if he pays the balance 50% of the amount to his wife and children towards their maintenance. A sum of Rs.1,000/- has already been awarded in favor of the Appellant's wife and their daughter Parul by the learned Magistrate in proceedings u/s 125 of the Cr.P.C. Therefore, in so far as these proceedings are concerned, I think both the Respondents should be granted maintenance @ Rs.2,000/- per month each. This should take care of their expenses towards education, food, etc.

20. In view of the above, the appeals are partly allowed. It is directed that instead of the Appellant paying Rs.3,000/- per month to each of the Respondents towards maintenance, he will pay a sum of Rs.2,000/- per month to each of them.

21. The Appellant will deposit all arrears of maintenance arising out of these proceedings in the Trial Court within three months from today. The arrears will be due from the date of filing of the petitions until today. Any delay in deposit of the maintenance will attract simple interest at 9% per annum. Future maintenance should be paid by the Appellant month by month, on or before the 10th of each succeeding month. The appeals are accordingly disposed of. No costs.