
(2013) 04 MP CK 0087

In the Madhya Pradesh High Court

Case No : First Appeal Nos. 251 and 267 of 2010

Mohan Swaroop Chauhan

APPELLANT

Vs

Smt. Mohini Chauhan
 Smt. Mohini Chauhan Vs Mohan Swaroop Chauhan

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 2 JLJ 386

Hon'ble Judges : S.K. Gangele, J;D.K. Paliwal, J

Bench : Division Bench

Judgement

D.K. Paliwal, J.—First Appeal No. 251/10 u/s 19(1) of the Family Courts Act, 1984 (in short "The Act 1984") preferred by Mohan Swaroop Chauhan and First Appeal No. 267/10 u/s 19(1) of the Family Courts Act, 1984 (in short "The Act 1984") preferred by Smt. Mohini Chauhan are being disposed of by this common judgment as both the appeals have arisen out of judgment dated 10th September, 2010 passed by Additional Principal Judge, Family Court, Gwalior, in H.M.A. No. 25-A/2010. Smt. Mohini Chauhan in her appeal (F.A. No. 267/10) has challenged the decree of divorce passed u/s 13 of the Hindu Marriage Act, while Mohan Swaroop Chauhan has preferred the appeal (F.A. No. 251/10) against the direction of payment of Rs. 10,000/- per month as permanent alimony to his wife-Smt. Mohini Chauhan. Shri Vivek Khedkar, learned counsel for appellant-Mohini Chauhan in F.A. No. 267/10 after arguing the matter to some extent, submitted that he doesn't wish to challenge the decree of divorce passed against appellant Smt. Mohini Chauhan. Therefore, F.A. No. 267/2010 preferred by appellant Smt. Mohini Chauhan is dismissed as not pressed.

2. The learned counsel for the appellant-Mohan Swaroop Chauhan has contended that learned Family Court has committed a legal error in granting permanent alimony to the tune of Rs. 10,000/- per month to the respondent-wife without any inquiry. Learned counsel further submitted that the learned Family Court has not considered the conduct of the parties while fixing the amount of permanent

alimony. It has been further submitted that the respondent-wife has filed an application u/s 24 of the Hindu Marriage Act. The learned Family Court while holding that respondent-wife is an income tax payee and having PAN card and bank accounts, dismissed the application vide order dated 3.2.2009. Against this order, F.A. No. 73/09 was preferred but the same was held as not maintainable, therefore, Writ Petition No. 3273/09 was filed before this Court and this Court on the consensus has directed the appellant-husband to pay Rs. 10,000/- per month as interim maintenance. It is submitted that the learned Family Court has failed to consider the fact that appellant is unemployed and the respondent-wife being in consultancy work, is having sufficient source of income. She is also an income tax payee. It is further submitted that the Family Court, Jhansi, has passed an order on the application u/s 125 of Cr.P.C. preferred by the respondent-wife directing appellant-husband to pay Rs. 12,000/- per month as maintenance. The learned Family Court has not considered that the appellant is already paying Rs. 12,000/- per month as maintenance to the respondent, therefore the order directing the appellant to pay Rs. 10,000/- per month to the respondent-wife as permanent alimony till her life or remarriage is illegal and deserves to be set aside.

3. Learned counsel for the respondent-wife, on the other hand, has raised the question of maintainability of this appeal submitting that the appellant-husband has not complied the order of payment of permanent alimony, therefore, this appeal is not maintainable. The learned counsel for the respondent has placed reliance on the judgment rendered in Dinesh Kumar Vs. Smt. Santosh Devi, , in which the trial Court has directed the husband to deposit the litigation expenses and maintenance to the wife, but the order was not complied with. It was held that in case expenses are not paid to the wife, the Court cannot compel her to file the written statement or pronounce ex party judgment under Order 8 Rule 10 of CPC. The trial Court should have dismissed the divorce petition for non-compliance of its order.

4. Learned counsel for the respondent-wife has further submitted that separate inquiry for awarding permanent alimony is not required. The evidence is led by both the parties. Learned Family Court has not committed any error in granting the permanent alimony of Rs. 10,000/- per month to the respondent-wife. It is submitted that this Court has fixed interim maintenance of Rs. 10,000/- per month on the consensus of the parties, therefore, the respondent-wife is entitled to get the permanent alimony of Rs. 10,000/- per month.

5. It is further submitted by learned counsel for the respondent-wife that there is no bar for granting permanent alimony u/s 25 of the Hindu Marriage Act despite there being order u/s 125 of Cr.P.C. The permanent alimony will be in addition to the amount awarded u/s 125 of Cr.P.C. It is prayed that appeal be dismissed.

6. We have heard learned counsel for the parties and perused the record.

7. So far as the maintainability of this appeal is concerned, it transpires from the

record that the appellant has paid Rs. 2,28,000/- as maintenance u/s 125 of Cr.P.C. It is true that after passing of the decree of divorce, the appellant has not paid a single penny towards the permanent alimony. It appears that respondent-wife has filed an execution proceeding before the Family Court and warrant of attachment has been issued, however, later on, this order was stayed. In the meantime, the appellant has preferred this appeal along with I.A. No. 16441/10 for staying the judgment and decree passed by the Family Court. This Court vide order dated 28.6.2011 directed as under:-

After perusal of the record and hearing learned senior counsel, subject to payment of permanent alimony as ordered in the impugned judgment, other part of the decree shall remain stayed.

The appellant also filed an application praying for dismissal of the execution proceeding, another application u/s 151 of CPC for cancellation of warrant of attachment and further an application praying for adjustment of the amount of maintenance paid by him. The learned Family Court vide order dated 11.2.2013 dismissed all these applications and directed for payment of amount of permanent alimony. Thus, in view of above facts and circumstances of the present case, we are not impressed by the submission of learned counsel for the respondent-wife that unless the amount of permanent alimony is paid, this appeal is not maintainable.

8. Admittedly, the decree of divorce has been granted u/s 13 of the Hindu Marriage Act against the wife, therefore, the wife is legally entitled to get permanent alimony u/s 25 of the Hindu Marriage Act. The parties have led evidence to demonstrate their income, social status, conduct and such other ancillary aspects for grant of permanent alimony. Therefore the submission of the learned counsel for the appellant-husband that inquiry has not been conducted is devoid of any force.

9. Now the question requires consideration is whether the amount of Rs. 10,000/- granted by the learned Family Court as permanent alimony is just and proper and further whether the amount awarded in the proceeding u/s 125 of Cr.P.C. can be adjusted against the amount awarded by the learned Family Court?

10. It is admitted position that the learned Family Court has dismissed the application preferred u/s 24 of the Hindu Marriage Act by the respondent-wife, however, in writ petition No. 3273/2009 this Court by order dated 12.5.2010 has passed an order on the basis of consensus of the learned counsel for the parties that appellant-husband shall pay Rs. 10,000/- per month as interim maintenance. It is further not disputed that on application preferred u/s 125 of Cr.P.C. before Family Court, Jhansi, maintenance of Rs. 12,000/- per month to the respondent-wife and her two daughters had been awarded. This order was challenged by the appellant-husband before the Allahabad High Court by preferring Criminal Revision No. 4854/2009, however, criminal revision has been dismissed vide order dated 3.4.2012.

11. Learned counsel for the appellant-husband has submitted that the respondent-wife is engaged in consultancy. Attention of this Court drawn towards the bills regarding the consultancy charges of Smt. Mohini Chauhan and also the income tax returns submitted on behalf of Smt. Mohini Chauhan for the assessment year 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07. No documentary evidence is adduced by appellant that respondent wife is doing consultancy. Learned Family Court has categorically held in para 48 of the judgment that respondent-wife is not residing with the appellant-husband. It has been further held that in view of the statement of the respondent-wife and documents, it is clear that the appellant-husband, who is a trained accountant, was running the consultancy/other business himself in the name of his wife-respondent and opined that respondent-wife is not residing with the appellant and no evidence has been adduced by the appellant-husband, therefore, it cannot be held that respondent-wife is engaged in the business of consultancy. Smt. Mohini Chouhan in para 12 of her statement categorically stated that she is not doing any work and has no source of income. She and her daughters are wholly dependent on her brother. Appellant has not adduced any credible evidence showing that respondent-wife has some source of income.

12. As regards income of the appellant-husband, it is submitted that appellant had been sent to jail and he remained under custody for about one month, therefore, his services were terminated by the company and now he is unemployed. This fact has been challenged by the learned counsel for the respondent-wife submitting that the appellant is still serving in the same company and drawing a salary of Rs. 60,000/- per month, however, no salary certificate or any other documentary evidence has been adduced. It is submitted by the learned counsel for the respondent-wife that the company has refused to supply the documents regarding the salary of the appellant, therefore, an application was submitted before the learned Family Court, but the record has not been summoned.

13. As regards income of the appellant-husband, Smt. Mohini Chauhan in her statement has categorically stated that her husband is working as an executive officer/accountant in Flex Chemical Ltd., Malanpur, and from where he is receiving a salary of Rs. 35,000/- per month. She further stated that her husband also earns Rs. 20,000/- in addition to his salary by doing work of the private companies and thus earning a total sum of Rs. 55,000/- per month. In para 32, it has been denied by respondent-Smt. Mohini Chauhan that services of her husband have been terminated because he was in jail for about a month. The statement of Smt. Mohini Chauhan that her husband earns Rs. 35,000/- as salary and Rs. 20,000/- from doing private work of the other companies has not specifically been challenged by the appellant.

14. Appellant-Mohan Swaroop in his examination-in-chief has nowhere stated that his services have been terminated because he was sent to jail for one month. In para 14, he admits that he was working as accountant in Flex

Chemicals. According to him, his salary was Rs. 12,000/- per month. He further says that he has no pay slip, nor he is having any other proof regarding his salary. He admits that GPF and other deductions were made from his salary. Though he denied that he was earning Rs. 35,000/- per month, but his statement has no ring of truth. He has tried to suppress his salary. It is a common knowledge that every employee gets pay slip from employer. Had appellant-Mohan Swaroop been really receiving a salary of Rs. 12,000/- per month, then he should have filed his pay slip or salary certificate from his employer, but he has not filed any documentary evidence, therefore, an adverse inference can very well be drawn against him.

15. It is noteworthy that appellant-Mohan Singh has categorically admitted in para 31 that he was having a car and was maintaining the same. He also keeps pet (dog). Apart from this, he has stated that his wife took away a cash of Rs. 1,50,000/- when she left his house and further in para 20 of his cross-examination, he has stated that he has given money in advance to his mother-in-law as well as to brother of his wife prior to 2008. His mother-in-law and brother-in-law owe Rs. 2,00,000/- to him. In para 21, he says that his daughters were residing with him, one was doing MCA and the other was doing BCA.

16. Had the appellant been really terminated from the services, he should have filed the termination order, but the same has not been filed. No explanation is offered. Thus, in view of the evidence available in record, we conclude that appellant is still serving in the company and he is falsely stating that his services have been terminated.

17. As regards income of the appellant-husband, from the perusal of Ex. D-1, which is a certified copy of the judgment passed by Principal Judge, Family Court, Jhansi, in petition No. 223/2008 on 5.11.2009, it appears that the income of the appellant has been held to be about Rs. 50,000-60,000/- per month. This order has been challenged before the Allahabad High Court by preferring criminal revision which was dismissed vide order dated 3.4.2012.

18. Thus, from the material available on record, we hold that the appellant-husband is earning at least Rs. 35,000/- per month.

19. It is not disputed that maintenance of Rs. 12,000/- per month has been granted, but both the daughters, who are marriageable, are also residing with respondent-wife, therefore, it can very well be held that wife-respondent's share is Rs. 4,000/- per month. The learned counsel for the appellant by placing reliance on the decision rendered in Sudeep Chaudhary Vs. Radha Chaudhary, and Pankaj Mahajan Vs. Dimple alias Kajal, Laws (SC)-2011-9-22, submitted that the amount awarded u/s 125 of Cr.P.C. ought to have been adjusted but the learned Family Court has not considered this. The learned counsel for the respondent has submitted that the proceeding u/s 125 of Cr.P.C. and proceeding under the Hindu Marriage Act are independent remedies, therefore, the learned Family Court has not committed any error in awarding permanent alimony of Rs.

10,000/- per month. Learned counsel for the respondent relied on Leena Chavan Vs. Chandrakant @ Balasaheb Arjunrao Chavan and Ashok Singh Pal Vs. Smt. Manjulata, wherein it has been held that maintenance u/s 125 of Cr.P.C. and alimony pendente lite u/s 24 of the Hindu Marriage Act can be claimed by resorting to both these provisions and the Court is competent under these provisions to grant relief to the person concerned and the question of adjustment to be granted has to be decided after taking into consideration the totality of the circumstances, the amount granted and the capacity of the person directed for making the payment. There is nothing to suggest that as a thumb-rule adjustment to the amount is to be granted in each and every case. In view of the Hon"ble Apex Court judgment in U. Sree and Sudeep Chaudhary (supra), we hold that amount u/s 125 of Cr.P.C. can be adjusted against the amount awarded in matrimonial proceeding.

20. Permanent alimony is to be granted taking into consideration the social status, conduct of the parties, the way of living of the spouse and such other aspects. It has been held by the Apex Court in U. Sree Vs. U. Srinivas, that while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In Vinny Parmvir Parmar Vs. Parmvir Parmar, while dealing with the concept of permanent alimony, it has been observed by the Apex Court that while granting permanent alimony, the Court is required to take note of the fact that amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.

21. As noticed earlier, the appellant-husband is working as accountant in a private company, he owns a car as well as house, he advanced loan to his mother-in-law and brother-in-law, his daughters have passed MCA and BCA from a college, he himself agreed to pay Rs. 10,000 per month in the proceeding before Parivar Paramarsh Kendra Gwalior on 16-7-2008 vide Ex. D. 3, income of the appellant-husband, prevailing prices of the essential commodities as well as the amount awarded u/s 125 of Cr.P.C. to the wife, the amount of Rs. 10,000/- awarded by learned Family Court as permanent alimony appears to be just and proper and we see no reason to hold that it is excessive and unreasonable.

22. For the foregoing reasons, we do not find any substance in F.A. No. 251 of 2000. The appeal deserves to be dismissed and is accordingly dismissed. Appellant to bear the cost of the respondent. Advocate fee as per schedule. F.A. No. 267/2000 is dismissed as not pressed. Parties are directed to bear their cost. Advocate fee as per schedule.

Decree be drawn up accordingly.