

(1998) 12 GUJ CK 0080

In the Gujarat High Court

Case No : Civil Revision Application No. 1623 of 1998

Natvarbhai Muljibhai Chauhan

APPELLANT

Vs

Hansaba Natvarbhai Chauhan

RESPONDENT

Date of Decision : 14-12-1998

Acts Referred:

Hindu Marriage Act, 1955 — Section 24

Citation : (1999) 2 DMC 283

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : B.K. Dave, for the Appellant; M.B. Gandhi, for the Respondent

Judgement

S.K. Keshote, J.—Rule. Mr. M.B. Gandhi waives service of Rule on behalf of respondent. As the matter pertains to grant of temporary maintenance u/s 24 of the Hindu Marriage Act, 1955 to the wife, the civil revision application is taken up for final hearing with consent of the learned Counsel for the parties.

2. This civil revision application u/s 115 of the Code of Civil Procedure, 1908, is directed by husband-petitioner against the order of the Civil Judge (S.D.), Vadodara, dated 27th July, 1998, under which the application filed by wife-respondent for grant of interim maintenance u/s 24 of the Hindu Marriage Act, 1955, came to be allowed. Under the impugned order, the husband-petitioner was directed to pay Rs. 1,200/- p.m. as interim maintenance to the wife-respondent over and above Rs. 300/- p.m. which the wife-respondent is getting as maintenance under the order of the Criminal Court passed u/s 125 of the Code of Criminal Procedure in Maintenance Application No. 332/96.

3. Though at first stage, the learned Counsel for the petitioner made manifold contentions challenging the impugned order of the Trial Court but thereafter, the learned Counsel for the parties have agreed upon that this revision application may be disposed of in the terms that the husband-petitioner shall pay Rs. 1,200/- p.m. to the wife-respondent regularly as interim maintenance in

pursuance of the order impugned in this Civil revision application and Rs. 300/- p.m. ordered to be paid by him by Criminal Court u/s 125 of the Code of Criminal Procedure, he shall deposit that amount in the name of his daughter Parul in recurring deposit at any convenient Post Office. In view of this agreement between the learned Counsel for the parties, the order of the learned Trial Court is modified in the terms :

(1) The husband-petitioner shall pay regularly to the wife-respondent Rs. 1,200/- p.m. as temporary maintenance till the final disposal of Hindu Marriage Petition No. 196/97.

(2) He shall open a recurring deposit account at the Post Office convenient to him in the name of his daughter Parul, initially for a period of 37 months and therein he shall deposit Rs. 300/- per month. This amount of Rs. 300/- per month is the amount which he has to pay to the respondent-wife under the order of Criminal Court u/s 125 of the Code of Criminal Procedure and now in view of this agreement that the amount of Rs. 300/- p.m. shall be deemed to have been paid to the respondent-wife till further orders.

(3) In case the proceedings u/s 125 of the Code of Criminal Procedure are decided before expiry of 37 months from the date of opening of recurring deposit account or Hindu Marriage Petition No. 196/1997 is decided before 37 months from the said date, the petitioner shall not be entitled to prematurely close this account.

4. It is made clear that before maturity of recurring deposit account, proceedings u/s 125 of the Code of Criminal Procedure, and matrimonial case are not decided, the petitioner shall deposit the amount which is accumulated on maturity of recurring deposit, in long term fixed deposit in the name of the daughter and further shall reopen a fresh account of recurring deposit in her name. However, it shall be open to him to use this amount for marriage expenses of Parul or to give this amount to her at the time of her marriage. It is further made clear that the petitioner shall not be entitled to take any loan or any advance amount against the recurring deposit account or F.D.R., if it is necessary to be taken. This order has to be strictly complied with.

5. The learned Counsel for wife-respondent contended that the learned Trial Court, while passing the impugned order, has not specifically mentioned that from which date, of maintenance of Rs. 1,200/- is to be paid by husband to the wife. It is, in his submission, a serious and material irregularity committed by Trial Court. It has next been contended that it is a well settled law that the amount of temporary maintenance has to be paid from the date of application. Lastly, it is contended that this Court may necessarily modify the order of the learned Trial Court in its suo-motu revisional powers as the matter is before it.

6. On the other hand, the learned Counsel for the husband-petitioner conceded that the order of the learned Trial Court is silent regarding the date from which the amount of temporary maintenance has to be paid by the husband to the

wife. In his submission, the learned Trial Court has to specify from which date, this amount to temporary maintenance has to be paid to the wife by husband. However, he urged that it is only a clerical error in the order or an accidental slip for which it is open to the respondent-wife to approach the learned Trial Court for necessary correction thereof in the impugned order. In the alternate, the learned Counsel for the petitioner submitted that looking to the meagre income of the petitioner-husband and his liability to be discharged of the family of four members out of which two are school going grown-up children, temporary maintenance may be ordered to be paid by him from the date of order of the learned Trial Court.

7. I have given my thoughtful consideration to the submission made by learned Counsel for the parties.

8. In the facts of this case, though I could have relegated the respondent-wife to approach the Court below for necessary correction in the order impugned of the error or mistake or accidental slip, but looking to the fact that though the dispute has started between the parties by filing of matrimonial case, the off suits are now about 22 cases and the lady to whom I talked personally in the Chamber, with tear in her eyes, informed to the Court that by now about Rs. 70,000/- to Rs. 80,000/- have been spent by her in these litigations. I consider it to be appropriate to decide this matter here in this civil revision application itself. Further, none of the grounds as submitted by learned Counsel for the petitioner in support of his contention that the amount of temporary maintenance should be awarded to the wife-respondent from the date of order of the learned Trial Court has any relevance or merits. It is not gainsaid that while deciding the applications filed by either spouse in the matrimonial dispute for grant of temporary maintenance, the Court has to make it clear in the order from which date maintenance amount is payable by one spouse to the other. It is no more res-integra that normal rule is to award temporary maintenance to the applicant by the Court from the date of filing of application. There may be certain exceptions to this normal rule, but I do not find any exceptional facts and circumstances in this case which warrant deviation from this settled proposition of law. The hardship of husband in this case as well as his position to unable to make payment of arrears of maintenance is hardly of any relevance and weight. It is not the consideration what to say a relevant consideration that in case the temporary maintenance is awarded from the date of filing of the application by wife, the husband would not have been in a position to bear out this burden of payment of arrears thereof. If we go by this consideration, then for an unscrupulous husband as well as for the reasons that the Court for its own is unable to decide the application for a long period the wife shall be sufferer or sustain injury though either way nothing is attributable to her in the matter. It is not unknown to the Courts and particularly this Court that whatever may be the nature of application, in deciding thereof, the Court needs a reasonable time. Merely on filing the application on the same day and without following the principles of natural justice, the Court cannot pass the order. So the reasonable

time is to be taken by the Court in following due process of procedure to decide the application. Sometimes, it also happens that the husband makes attempts to delay the disposal of such application. However, neither of the Counsel for the petitioner nor respondents have come up with any complaint of this nature against any of the spouse. In view of this fact, it is a case where temporary maintenance is to be granted to the wife-respondent u/s 24 of the Hindu Marriage Act, 1955, from the date of filing of the application by her, i.e. 10th July, 1997. Accordingly, the order of the Court below dated 27th July, 1998 is amended to the extent that the respondent-wife shall be entitled for amount of temporary maintenance from the date of application, i.e. from 10th July, 1998. To the extent aforestated, the order of the learned Trial Court stands modified.

9. The civil revision application and Rule stand disposed of accordingly with no order as to costs.