
(1991) 10 MP CK 0009
In the Madhya Pradesh High Court
Case No : C.R. No. 22 of 1990

Rajendra Kumar Jain

APPELLANT

Vs

Sudha Jain

RESPONDENT

Date of Decision : 26-10-1991

Acts Referred:

Hindu Marriage Act, 1955 — Section 24

Citation : (1992) 1 DMC 240

Hon'ble Judges : A.G. Qureshi, J

Bench : Single Bench

Advocate : P. and R. Sugandhi and V. Sugandhi, for the Appellant; T.R. Gupta, for the Respondent

Judgement

A.C. Qureshi, J.—This order shall govern the disposal of C.R. No. 22 of 1990 and C R. No. 28 of 90 (Smt. Sudha Jain v. Rajenderakumar Jain) filed by the applicant and non-applicant in CS No. 38 of 88 (HMA) passed by the Court of Additional Judge to the Court of District Judge, Indore. On an application filed by the wife Smt. Sudha Jain u/s 24 of the Hindu Marriage Act directing the payment of maintenance allowance to the wife at the rate of Rs. 500/- per month from the date of passing of the order and Rs. 1000/- as expenses of the suit. The applicant in C.R. No. 22 of 90 is aggrieved by the rate at which the alimony pendente lite is granted, whereas the applicant in C.R. No 28 of 1990 is aggrieved by the order directing the payment of the alimony from the date of the order and not from the date of the application.

2. The learned Counsel for the applicant Shri Sugandhi argues that the order impugned is contrary to the record of the case. From the evidence on Record it is manifest that the applicant has no independent source of income and he is dependent on the other members of his family for his own maintenance. Therefore, the Court has erred in allowing the maintenance on the basis of he amount which according to the lower Court, is spent on the members of the joint family per month. According to Shri Sugandhi even this fact is also not borne out

from the record that this amount is being spent by the members of the joining Hindu family.

3. On the other hand Shri T.R. Gupta learned Counsel for the non-applicant argues that the order impugned is proper and this being a finding of fact it cannot be questioned in a revision petition. Shri Gupta in support of C.R No. 28 of 90 further argues that in the circumstances of the case the order of alimony pendente lite should have been passed from the date of the application and not from the date of order.

4. On perusing the impugned order and the record of the case, I find that the lower Court has not taken into consideration the income of the husband applicant for determining the amount of compensation to be awarded to the non-applicant-wife. Actually according to Section 24 of the Hindu Marriage Acts Court has first to determine the income of the spouses and then in view of the income of the husband and wife coupled with the other facts and circumstances the alimony has to be passed. What the learned lower Court has done in the instant case is that the income of the joint family has been taken into consideration and from that income inferences have been drawn and thereafter on the basis of the expenditure which according to the Court was incurred by members of the family, the order has been passed. The Court has not taken into consideration the material portions of the evidence and the documents on record showing the ownership of the watch-shop and the packaging Unit of incense sticks. Although it is not necessary for the Court to critically examine the evidence on record while passing an order of maintenance pendente lite, however X mandate of Section 24 of the Hindu Marriage Act should not be lost sight of and the Court is bound to arrive at a conclusion that the husband has a particular amount of income from which he can meet the expenses to a particular extent of his wife. In view of the aforesaid, in my opinion, the order impugned has been passed without taking into consideration the relevant circumstances as enumerated in Section 24 of the Hindu Marriage Act, the order is, therefore, against the provisions of law. It is accordingly quashed. The case is remanded to the lower Court for deciding the application afresh after determining the income of the applicant-husband and thereafter to determine the extent of maintenance amount which the non-applicant is entitled to get.

5. As the case is being remanded to the lower Court, the lower Court is also directed to consider and decide as to from what date the wife is entitled to get the maintenance.

6. As regards the expenses for the litigation, Shri Sugandhi states that he has already deposited the amount of expenses and he has not seriously challenged that portion of the order. Therefore, the order awarding litigation expenses to the wife is maintained.

7. In view of the aforesaid C.R. No. 22 of 90 is partly allowed. The order of the lower Court awarding Rs. 1000/- as expenses for the suit is maintained. However

the order of the lower Court allowing Rs. 500/- per month as interim maintenance allowance to the wife is quashed. However, till the decision by the lower Court afresh in respect of the entitlement of the maintenance amount to the wife, the non-applicant wife shall be entitled to get the maintenance allowance at the rate of Rs. 100/- per month atleast, as directed by this Court on 26.7.90.

8. As a result of quashing of the order of maintenance the Revision petition No. 28 of 90 also stands allowed and the grievance made in that revision petition pertaining to the date of the award of maintenance allowance shall also be considered by the lower Court while passing the order afresh,

9. In the circumstances of the case there shall be no order as to costs.