

(1985) 09 BOM CK 0063

In the Bombay High Court

Case No : Civil Revision Application No's. 469 and 512 of 1984

Ramesh H. Jadhvani

APPELLANT

Vs

Savita Ramesh Jadhvani
 Savita Ramesh Jadhvani Vs
Ramesh H. Jadhvani

RESPONDENT

Date of Decision : 17-09-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 24
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 24

Citation : (1986) 1 BomCR 329 : (1985) 87 BOMLR 480

Hon'ble Judges : K. Madhava Reddy, C.J

Bench : Single Bench

Advocate : V.P. Tipnis, for the Appellant; D.G. Pamnani and S.J. Khare, for the Respondent

Final Decision : Allowed

Judgement

K. Madhava Reddy, C.J.

1. Efforts at reconciliation having failed, mainly due to the un-understandable attitude of the husband, these two revision applications have to be disposed of on their own merits.

2. These two revisions petitions—one filed by the wife and the other by the husband—arise out of the order (Exh. 18-A) in Misc. Application No. 12 of 1983. That was a petition u/s 24 of the Hindu Marriage Act for grant of interim maintenance pending Hindu Marriage Petition No. 62 of 1982 for divorce filed by the husband against the wife. That marriage petition filed on 28-4-1982, was decreed ex parte on 13-12-1982. Misc. Application No. 12 of 1983 for setting aside the ex parte decree was filed on 12-1-1983. While it was pending, an application u/s 24 of the Hindu Marriage Act was filed claiming Rs. 3000/- per month by way of interim maintenance and Rs. 10,000/- towards the expenses of the proceedings. That petition was allowed in part by the III Extra Assistant

Judge, Thane, by his order under revision, awarding to the wife Rs. 670/- per month as interim alimony pendente lite from the date of the filing of the original proceedings for setting aside ex parte decree i.e. 12th January, 1983 and till the conclusion of the original proceedings in marriage petition and Rs. 1000/- towards the expenses of the proceedings.

3. In this revision petition too filed by the wife, she claims Rs. 3000/- per month. She also prays for awarding Rs. 10,000/- towards expenses. According to her, husband earns an income of Rs. 12,000/- per month. She states that she has no place to live at Bombay and that she is forced to live at Ajmer from which place she has to come to Bombay to attend these proceedings.

4. The husband pleads that he is a junior lawyer with hardly 5 to 6 years of standing and that his income is not more than Rs. 10,000/- per year and as such he cannot afford to pay Rs. 670/- per month to his wife especially in view of the fact that he has to maintain his aged mother, his unmarried sisters and an unemployed and unmarried brother who are depended on him. He too has filed a revision application challenging the amount of interim maintenance awarded to his wife.

5. One of the point raised in the revision petition by the husband is that inasmuch as the marriage petition is disposed of albeit by an ex parte decree, petition u/s 24 is not maintainable. I may deal with the objection at the outset, for, that objection goes to the root of the matter. In a petition u/s 24 for awarding maintenance pendente lite and expenses of proceedings, the Court may, if it appears to the Court that either the wife or the husband, as the case may be, has to independent income sufficient for her or his support and the necessary expenses of the proceedings, award such sum as it may seem reasonable, in any proceeding under the Act. Section 24 reads as under :

"Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

The petition for divorce was filed by the husband under this Act. The matter was, no doubt, disposed of by the trial Court, by an ex parte decree. But the matter did not rest there. Section 21 of the Hindu Marriage Act itself makes provision for the application of C.P.C. to all proceedings under the Act. Section 21 is in the following words :---

"S. 21. Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908."

The power to pass ex parte decree in a marriage petition vests in the Court under the Act read with C.P.C. Thus the Hindu Marriage Act which authorises the Court to set aside an ex parte decree, empowers that very Court to set aside that decree upon an application filed in accordance with the CPC i.e. Order IX, Rule 13, C.P.C. A petition for setting aside ex parte decree does not stand on its own. It is in respect of a decree passed under the Hindu Marriage Act and so long as such a petition is pending, the proceedings under the Hindu Marriage Act cannot be said to have come to an end. Just as an appeal is a continuation of the original proceedings, so long as the ex parte decree has not become final and a petition for setting aside the ex parte decree is pending, it cannot be said that the marriage petition does not subsist. Any petition for setting aside ex parte decree in a marriage petition is, therefore, in my opinion, still a petition under the Hindu Marriage Act read with Order IX, Rule 13. Section 24 of the Act in fact requires the Court, upon an application filed by either the wife or the husband who has no independent income sufficient for her or his support, to allow such a petition. It is significant to note that section 24 does not speak of any particular type of petition. All that it postulates is the pendency of a proceeding under the Act. Having regard to the object that is sought to be achieved by making provision for awarding maintenance pendente lite and for making provision for payment for expenses of proceedings, the expression "proceeding under this Act" cannot be given restrictive meaning. In my view, that expression takes within its ambit all proceedings such as petition to set aside ex parte decree made under the Hindu Marriage Act. Until that petition is finally disposed of and the marriage petition under the Act is finally concluded, the proceeding referred to in section 24 must be deemed to be pending and the Court would have the power to award interim maintenance and expenses. The proceeding does not end with an ex parte decree or even by a decree passed after contest by the trial Court, nor even an appeal to the High Court. If the matter is pending to the Supreme Court also, it would be a proceeding under the Marriage Act and section 24 would continue to apply to such proceeding. That being the position, upon passing of an ex parte decree, the Court is not deprived of its jurisdiction to make an order u/s 24. A similar view was taken in *Surendra Kr. v. Kamlesh*, AIR 1973 All. 110. The question that arose there was, whether pending a revision petition u/s 115 arising out of a proceeding under Hindu Marriage Act, interim maintenance could be awarded. The Court held that was a proceeding under the Act and, therefore, the petition was maintainable. The Delhi High Court in *Chitra Lekha Vs. Ranjit Rai*, took a contrary view and held that after the petition under the Act is dismissed for default, interim maintenance could not be allowed, even if such a petition filed and was pending on the date when the main marriage petition was dismissed for default. I am unable to agree with the observation that once the marriage petition is dismissed for default, a petition for interim maintenance filed under-section 24 while the original marriage petition was pending, cannot be considered on its own merits merely because the original marriage petition has since been dismissed for default. Whether a petition u/s 24 filed after the dismissal of original marriage petition could be taken and considered on merits or

not, a petition claiming interim maintenance u/s 24 made while the original marriage petition was pending cannot be frustrated by the opposing party getting his own marriage petition dismissed for default. There is no express provision in the Hindu Marriage Act for dismissing a petition u/s 24 upon dismissal of original marriage petition. In the absence of such a provision, a petition u/s 24 has to be dealt with on its own merits notwithstanding the dismissal of the original marriage petition. In such a petition maintenance can be awarded from the date of the original marriage petition until the conclusion or final disposal of the said petition and costs also could be awarded for defending these original as well as interim petition for maintenance. In the case now before me, the petitioner-wife was not served with the original petition for divorce and as such she did not appear and incur expenses. She filed petition for setting aside ex parte decree on 12-1-1983 and also for payment of interim maintenance and expenses. She is, therefore, certainly entitled to the grant of interim maintenance from 12-1-1983 until the conclusion of the original proceedings as ordered by the trial Court. u/s 21 while the Court has power to grant interim maintenance and aware necessary expenses for proceedings, it is not obligatory to direct the payment of interim maintenance to the wife from the date of the filing of the petition. That depends upon the facts and circumstances of the case. In the circumstances of the case, I see no reason why the petitioner-wife who became aware of the ex parte decree and filed proceedings to set aside the ex parte decree, should not be awarded interim maintenance and also the expenses for the litigation.

6. Now as regards the quantum of maintenance a few facts that emerge from the record are talell. The husband is an Advocate having two offices-one at Thane and another at Sutar Chawl, Bombay-2 and has two telephones. While the wife says that his monthly income is about Rs. 12,000/- except for her statement, there is no other evidence. The assertion of the wife that he maintains 7 staff members consisting of 2 typists, 2 peons, 2 Junior Advocates and one delivery clerk, was specifically denied by the husband. He denied that he had two telephones and states that he has only address facility of the office at 7, Sutar Chawl, Room No. 13, Bombay No. 2. The telephone installed in the said office belongs to M/s Aristo Sales Agencies whose proprietor is one Shrikant Naik, but he admits having Telephone No. 505478 installed at this residence. He denied having clerk, typists or peons at his office or any junior in his office. He asserts that his monthly income from all sources is only Rs. 1000/- and has filed Income Tax returns right from the year 1976-77 up to 1982-83 and he was assessed on the income ranging from Rs. 9090/- to Rs. 14020//. He further asserts that his wife is earning as a teacher; but there is evidence in this regard.

7. The trial Court has misdirected itself in assuming that he has not specifically denied the assertion of the wife that he was maintaining two offices and that he was maintaining staff of 7 persons and on that basis proceeded to assess his income. However, even according to the husband his income has been Rs. 14,020/- which obviously means income after deducting all the expenses incurred to earn that income. Though not on a lavish scale stated by the wife, his

admission disclosed that he has a regular office at Thane and a room with telephone facility at Bombay, which must be deemed to be an office. If an Advocate does not have much work, it is common knowledge, he would not have an independent office of his own; much less offices at two places. Certainly a person who has offices both at Thane and Sutar Chawl, Bombay, and who maintains a telephone of his own at his residence which is obviously for the professional requirement, must be employing a clerk or having an assistant or junior. The husband has obviously not given an accurate statement of his income from all sources. May be he has no taxable income, certainly he must be having some other income. The estimate of the husband's income made by the trial Court, at Rs. 23,000/- in my opinion, in the circumstances, does not call for interference in Revision. His estimated income Rs. 23,000/- per annum works out to roughly Rs. 2000/- per month. No doubt he has an aged mother and unmarried sisters and an unmarried brother. His unmarried brother is earning Rs. 100/- per month. But then he is under no legal obligation to maintain his brother who is himself an earning member. Having regard to the status of the family, even after taking into account the fact that the husband has to maintain his own mother and two unmarried sister living with him, the provision made by the trial Court for the maintenance of wife, in this case at Rs. 670/- per month cannot be regarded as high or unbearable for the husband. I do not see any reason to interfere with the finding of the courts below in this behalf.

8. As regards the expenses required to be incurred by the wife, however, I find that the sum of Rs. 1000/- granted is wholly inadequate. As is well known even with the best of efforts, regrettably disposal of even a marriage petition is taking a very longer time. Admittedly the wife has no place to reside at Bombay. She is compelled to reside with her parents at Ajmer. She has to come all the way to Bombay to instruct her Counsel which necessarily involves heavy expenses. In the circumstances of the case and having regard to the income of the husband, in my opinion, it would be reasonable to award Rs. 2500/- towards the expenses of the proceedings.

9. In the result, Civil Revision Application No. 512 of 1984, filed by the wife, is allowed to the limited extent indicated above, i.e. she is awarded Rs. 2500/- as against Rs. 1000/- awarded by the trial Court towards the expenses of the proceeding and the rule is made absolute to that limited extent. In other respect, the rule in these two revision petitions stands discharged. Cost of these two revision petitions to be paid by the husband.

Order accordingly.