

(2006) 05 DEL CK 0218

In the Delhi High Court

Case No : Regular First Appeal No. 475 of 2005

Sh. Rajiv Kapoor

APPELLANT

Vs

Smt. Seema Kapoor and Another

RESPONDENT

Date of Decision : 25-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Adoptions and Maintenance Act, 1956 — Section 14(1), 18, 20, 3
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2006) 132 DLT 300 : (2006) 4 RCR(Civil) 580

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Sanjeev K. Tiwari, for the Appellant; N. Pandey, for the Respondent

Final Decision : Partly Allowed

Judgement

Swatanter Kumar, J.—Vide judgment and decree dated 20.5.05, the learned Additional District Judge, Delhi partially allowed the petition filed by Smt. Seema Kapoor and the minor child against her husband Sh. Rajeev Kapoor u/s 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the "Act") granting Rs. 3,500/- per month each to both the petitioners as monthly maintenance. The legality and correctness of this judgment is questioned by Sh. Rajeev Kapoor in this Regular First Appeal u/s 96 of the CPC on the following grounds ;

(a) The Court has awarded the above amounts to the respondents in this appeal without assessing income of the appellant, on the basis of no cogent and proper evidence.

(b) The Court has fallen in error of law in awarding a sum of Rs. 7,000/- per month to the respondents. Awarding this maintenance is unreasonably excessive and is not in consonance with the principles enunciated in various pronouncements of this Court.

2. Respondent No. 1 was married to the appellant on 26.11.92 according to Hindu rites and customs. Master Vaibhav was born from this wedlock on 20.11.93. It appears that the matrimonial relations between the husband and the wife got strained and according to the respondent No. 1, she was thrown out of the matrimonial home and is presently residing with her parents. The appellant is stated to have neglected to maintain the respondents and since 7.6.94, nothing was paid to them towards maintenance. In regard to means of the appellant, it was the case of the respondent that he was carrying on the business under the name and style of M/s Kapoor Agencies from his residence and his employees or servants were maintaining scooters and he has a income of Rs. 40,000/- per month. It was stated that the appellant was maintaining a car. Master Vaibhav is stated to be studying in a school and the respondents needs at least Rs. 5,000/- per month for taking an accommodation on rent so that they can reside comfortably. On these scores, a sum of Rs. 25,000/- per month was claimed as maintenance by the wife and son of the appellant.

3. The factum of marriage was not disputed nor paternity of the child, however, it was stated that the wife was guilty of desertion and neglect and had no reason to claim any maintenance. A petition u/s 125 of the Criminal Procedure Code was filed and in that petition, vide order dated 24.2.97 the husband was directed to pay a sum of Rs. 1,000/- per month to the petitioners. In fact, the grievance of the appellant was also that he was being deprived of the company and affection of his son. Another stand taken by the appellant was that a false complaint was lodged and case was registered u/s 498-A and 406 of the Indian Penal Code against the appellant and his parents by the respondent No. 1. It was specifically denied that the appellant was carrying on business under the above named firm from his residence, in fact, it is stated that he was employed with M/s Kapoor Agencies and was getting a salary of Rs. 6,000/- per month and in these circumstances, he pray for the dismissal of the petition filed before the Trial Court on the ground that sufficient maintenance had already been awarded in terms of the provisions of Section 125 Cr.P.C. The Court had framed the following issues:

1. Whether the petitioners are entitled to interest, if so, at what rate and for which date

2. Relief.

4. From the evidence produced by the parties, which in any case was very limited, the learned Trial Court recorded the following findings:

It may be pointed out that in opposition to the claim of the petitioner that the monthly income of the respondent was Rs. 40,000/-, the respondent had taken up a specific plea in the written statement that he was merely serving with M/s Kapoor Agencies, a firm exclusively owned by his father at a monthly salary Rs. 6000/- per month. Asked to produce documentary evidence in support of his above stand, the respondent had failed to produce one. Perhaps led by the

thought that it may be taken as a circumstance against him, the respondent had tried his hands at creating evidence of his employment with another firm or else might have taken up an appointment to a lower position to wriggle out of the situation in which he finds himself in. In his testimony on oath, he sprang a surprise and came up with the plea that he had left his job with M/s Kapoor Agencies and had taken up a job with M/s Adips Laboratories Ltd. At a much lower salary. The reason; he had developed differences with his father who had rather disowned him. This reason/explanation has been found to be false. The respondent has, himself admitted that his father is supporting him and is appearing as a witness in his favor in the divorce petition filed by him against petitioner No. 1 in the Matrimonial Court. It is, Therefore, clear that the respondent has tried to conceal things and to suppress the truth. Conspicuously enough, the respondent did not amend the written statement to incorporate the fact that he had left the services with M/s Kapoor Agencies and had taken up a job at a lower salary. There is no evidence worth the salt except for the bare statement of the defendant about the said employment. Since he has not averred in the written statement that he has taken up the job with M/s Adips Laboratories Ltd., he cannot be allowed to lead evidence in the said regard. But assuming for the sake of arguments that the respondent has actually taken up the job with M/s Adips Laboratories, there is every possibility that the said job has been taken up only with an intention to defeat payment of adequate maintenance to the petitioners. I am, Therefore, in agreement with the Ld. Counsel for the petitioners, that the respondent has concealed his real income. Keeping in view the observations of the Hon"ble Supreme Court in the case of Jasbir Kaur Sehgal (Supra) and also keeping in view the facts and circumstances of the case, the status of the parties, I assess the income of the respondent at Rs. 15,000/- per month.

5. To prove that the appellant was earning a sum of Rs. 40,000/- per month primarily lay on the respondents in the appeal. In fact, no documentary evidence was placed on record by the appellant on the other hand, the appellant had examined himself as well as Mr.Ravi Kumar Arora and had placed on record salary slips Ex RW1/3 and letter of appointment Ex RW1/2 to state that the appellant was employed with M/s Adips Laboratories as a Depot Manager w.e.f 1.8.2003 at a salary of Rs. 4640/-. On the basis of the above findings, the learned Trial Court declined to believe the version of the appellant and pointed out apparent suspicious circumstances which justified the finding that the appellant had withheld the best evidence in his power and possession. Though the primary onus was upon the respondent and may be that she could not fully discharge her onus but the onus was also placed upon the appellant to produce reasonable evidence and, particularly, the evidence in his power and possession to bring before the Court true and correct income which he was earning. In the written statement, the plea taken was that he was working with his father at a salary of Rs. 6,000/- per month and suddenly after the institution of the petition had got himself employed with M/s Adips Laboratories at a lower salary. This

contention of the appellant was unnatural and to say the least was even unfair. The attempt was to withhold the best evidence from the Court. Effort on the part of the appellant to produce income tax returns of the deptt. where he was working and particularly the business of his father would lead to draw an adverse inference against this appellant. At this stage reference can be made to the judgment of the Punjab and Haryana High Court in the case of Dr.R.K.Sood v. Usha Rani Sood 1996 114 486

Hindu Marriage is not yet looked at or recognised in our society and law, as a pure and simple contract like other contracts. This bond is considered more as a religious, moral and social bond of mutual duties and obligations giving marriage a religious and meaningful basis keeping in view the rituals performed at the marriage and consequent solemnization of marriage between the parties. Under the Hindu Law father not only has a moral but even a statutory obligation to maintain his infant children. The scope of his duty is to be regulated directly in relation to the money, status, that the father enjoys. The right of maintenance of a child from his father cannot be restricted to two meals a day but must be determined on the basis of the benefit, status and money that the child would have enjoyed as if he was living with the family, including his mother and father. Irrespective of the differences and grievances which each spouse may have against the other, the endeavor of the Court has to be to provide the best to the child in the facts and circumstances of each case and more so keeping the welfare of the child in mind for all such determinations. Liability to maintain one's children is clear from the text of this statute as well as the various decided cases in this regard. The statutory obligation is paramount to the wish to the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds.

6. Further it is the duty of the appellant to look after the minor child besides his wife. The learned Trial Court while relying upon the judgment of the Supreme Court in the case of Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, rightly pointed out that there was no straight jacket formula for determining the amount of maintenance payable to the claimants. Each case would have to be decided on its own facts keeping in view the status and capacity of the parties. The Court was really not concerned with the allegations made against the wife that the wife had deserted the husband and as such she was not entitled to maintenance in any case would be of no consequence as far as the claim of the child was concerned. The obligation of the husband to maintain his wife and children arises not only in law even on social and moral grounds. Exceptions apart, it is expected by the parties to the proceedings to place before the Court evidence in their power and possession and, in fact, to put in all possible endeavor in accordance with law to ensure that the controversies raised between the parties are decided fully and finally. The obligation of the husband was well explained in the judgment of this Court in the case of Radhika Narang and Ors. v. Karun Raj Narang and Anr. in CS(OS) No. 1225/2003 decided on 16.2.06 as under:

Thus, it would be unnecessary for this Court to go into the details of this legal aspect of the case. However, in order to put the matter beyond controversy, usefully reference may be made to the judgment of the Supreme Court in the case of Kirtikant D. Vadodaria Vs. State of Gujarat and Another, , wherein the ambit and scope of maintenance payable to the wife under the provisions of this Act was discussed. The relevant portion of the judgment reads as under:

8. We have given serious thought and consideration to the submissions made above by the learned Counsel for the appellant and notice that Dhayalal Hirachand, the husband of Respondent 2 Smt. Manjulaben, has been found to be a person of sufficient means and income. It is also true that there are 5 natural born sons of Respondent 2 besides 2 daughters, who are all major. It is also a fact that Dalip one of the sons had contested the Municipal Election and two other sons are carrying on various businesses. 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.

In the case of Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others, , the Supreme Court held as under :

19. Maintenance, as we see it, necessarily, must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, Therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1).

20 xx xx xx xx xx xx xx

21. The Hindu Adoption and Maintenance Act, 1959, was enacted to amend and codify the law relating to adoptions and maintenance among Hindus, and it defines maintenance in Section 3(d) to include (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment.

(emphasis supplied)

In the case of Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, , while accepting the proposition that it may not be possible to lay down a straight jacket formula to determine the quantum of maintenance, which the Court would award to the wife and the children claiming maintenance, it was specifically noticed that wherever there is an attempt on the part of the husband to withhold his correct income and information in regard to his property from the Court, the Court would draw adverse inference and fix appropriate maintenance. The Supreme Court in that case held as under :

No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.

In this case attempt has been made by Respondent 3 husband to conceal his true income which leads the Court to draw an adverse inference against him about his income that it is much more than what is being disclosed to the Court. Having regard to all the facts of the case it can be held that the annual income of the respondent-husband is even on a modest estimate to be Rs. 2,40,000 which would come to Rs. 20,000 per month. Considering the diverse claims made by the parties, one inflating the income and the other suppressing, an element of conjecture and guesswork does enter for arriving at the income of the husband. It cannot be done by any mathematical precision.

The time has changed. The law has developed and to contend today that the relief for grant of maintenance has to be based on bare need or to meet the ends of food, would be a contention without substance and contrary to legislative intent. Quantum of maintenance must essentially have a bearing and relation to the income of the husband/father, facilities available to him, facilities or perks available to him, standard of living and the social and financial status that he is enjoying. The expression "matrimonial home", by very nature of things, would include the facilities, benefits and status involved to such a home. This concept cannot be dissected under two different heads of matrimonial home and the standard of living in the matrimonial home. They would always have to be determined and construed together. The conduct of the husband has not been quite fair in these proceedings. Firstly, he has failed to disclose the true and correct income and there is no whisper in the pleadings of the fact that he has interest in different companies. These facts were admitted by him only during his examination before the Court under Order 10 CPC.

plaintiff No. 1 and defendant No. 1 are obliged to provide good standard of living to the children and at least at parity with the status they are enjoying and their differences cannot be permitted to be the reason for disadvantageous living of the children. It is not a commercial transaction but the obligation of the father to maintain his children and for a husband to maintain his wife springs from law and moral both. Non-applicant ought to have disclosed all correct facts without reservations so as to make it convenient for the Court to determine the extent of maintenance, which should be granted by the Court to the applicants. Truthfulness of a party is not only a pre-requisite for claiming a relief in equity but is the very essence of any legal proceedings. The conduct of the party in such proceedings is another relevant factor which has to be taken into consideration by the court. The defendant has withhold his true income and has not correctly stated the facts which were within his personal knowledge. A clear attempt has been made not to disclose varied interests of the husband in various companies. The immovable property owned by the family where the husband and wife were living together and their standard of living in that place are sufficient indication of the standard of living and status which the parties enjoyed before departure of the wife from the matrimonial home. In the circumstances appearing from the record, the court would have to apply some guess work in even prima facie judging the income of the husband.

7. Once the version put forward by the husband suffers from patent infirmity and the appellant is responsible for withholding the best evidence, the findings of the Court below can hardly be faulted with. No doubt, there is no direct and cogent evidence on the basis of which the Court could conclude that the appellant was earning more than Rs. 15,000/- per month. Reliance by the learned Counsel appearing for the appellant was placed upon the order dated 13.1.04 passed by the Court in Civil Revision Petition No. 7710/03 wherein the Court had granted Rs. 5,000/- per month maintenance pendente lite in accordance with the orders passed u/s 125 of the Criminal Procedure Code. DW-1 the wife made vague statements in her affidavit which was tendered by way of evidence. No details of the properties or source of income of the husband was stated. There is no dispute to the fact that the parties were married on 26.11.92 and they lived together as husband and wife till the year 1994. She would certainly know in that period the exact source of income of her husband. of course, the version of the appellant that he was earning Rs. 4060/- is also equally unbelievable where it cannot be said with some certainty that the income of the husband was Rs. 40,000/- as alleged by the wife. Some kind of guess work has to be applied by the Court in such cases where one party has failed to discharge the onus placed upon it in proving the income while the other party has withheld the best evidence which was in his power and possession.. Thus, in the facts and circumstances of the case, the appellant himself has admitted in his affidavit that he was working with his father earlier at a salary of Rs. 6,000/- per month which itself may not be true reflection of the money that he is receiving from the concern of his father and it can reasonably be expected that he was earning

more than Rs. 12,000 to 13,000/- per month and he must pay at least 60% of his income for the welfare and upbringing of his minor child as maintenance. Thus, we modify the decree of the Trial Court to the extent that he shall be liable to pay maintenance to both @ Rs. 3,000/- each totaling to Rs. 6,000/- per month. The appeal is partially allowed in the above terms. The parties are left to bear their own costs.