

(2008) 03 DEL CK 0109
In the Delhi High Court
Case No : CM (M) No. 1535 of 2007

Shri N.P. Kaushik

APPELLANT

Vs

Smt. Suman Kaushik

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Citation : (2009) 1 CivCC 76 : (2008) 148 DLT 569 : (2008) 1 DMC 605 :
(2008) 102 DRJ 159 : (2009) 2 RCR(Civil) 19

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Raman Duggal, for the Appellant; D.K. Sharma and Party-in-Person,
for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Present petition under Article 227 of the Constitution of India lays a challenge to the order dated 28.7.2007 passed by the learned Additional District Judge, Delhi whereby w.e.f. 08.03.2007 interim monthly maintenance granted to Ms. Ms. Geetika was enhanced from Rs. 3500/- to Rs. 11,000/-.

2. Back drop facts leading to the filing of the present petition are that on 06.03.1987 the marriage between the petitioner Shri N.P. Kaushik and the respondent Smt. Suman Kaushik was solemnized as per Hindu rites and ceremonies. On 15.1.1988 a daughter Ms. Geetika was born out of the said wedlock.

3. Unfortunately, the marriage turned sour and the parties started living separately. Their daughter Ms. Geetika started residing with her mother i.e. the respondent.

4. In the year 1995 Ms. Geetika filed a civil suit u/s 33 CPC and Section 20 of the Hindu Adoption and Maintenance Act, 1956 against her father i.e. the petitioner claiming a maintenance of Rs. 2,000/- per month from him. Since Ms. Geetika

was a minor the respondent being her mother was prosecuting the said suit on her behalf.

5. In the afore-noted suit, an application dated 4.10.1995 was filed by the respondent seeking interim maintenance at Rs. 2,000/- per month from the petitioner. Thereafter, an application for amendment of the plaint was moved by the respondent which was allowed by the learned Trial Court vide order dated 13.9.2004 As per the amended plaint, maintenance in sum of Rs. 3,500/- per month was claimed from the petitioner.

6. Consequent to the filing of the afore-noted suit, in the year 1997, the petitioner filed a divorce petition u/s 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 against the respondent.

7. During the pendency of the said divorce petition, the respondent filed an application under Sections 24 and 26 of the Hindu Marriage Act, 1955 claiming interim maintenance for Ms. Geetika from the petitioner.

8. Vide order dated 28.10.1999 the learned Trial Court before whom the divorce petition was pending awarded interim maintenance in sum of Rs. 3,000/- per month in favor of Ms. Geetika. The amount of interim maintenance was directed to be shared equally by the petitioner and the respondent.

9. Against the order dated 28.10.1999 passed by the learned Trial Court, a revision petition was filed before this Court.

10. Vide order dated 27.11.2001 this Court enhanced the amount of interim maintenance from Rs. 3,000/- per to Rs. 3,500/- per month. Further in order to secure the future of Ms. Geetika, this Court directed the parties to invest a sum of Rs. 5 lacs in an insurance policy.

11. Pursuant to order dated 27.11.2001 passed by this Court the petitioner and the respondent purchased insurance policies in the name of Ms. Geetika in sum of Rs. 3 lacs and Rs. 2 lacs respectively.

12. Thereafter, the respondent filed various applications seeking enhancement of interim maintenance granted by order dated 27.11.2001. The applications are pending adjudication.

13. On 19.9.2005, two applications were filed by the respondent in the suit by her u/s 33 CPC and Section 20 of Hindu Adoption and Maintenance Act, 1956.

14. First application was under Order VII Rule 14 CPC seeking to file additional documents namely fee slips of Ms. Geetika for the Class-VI, Class-XII and B.Tech Course.

15. Second application was u/s 151 CPC seeking enhancement of interim maintenance from Rs. 2,000/- per month to Rs. 3,500/- per month. In the said application it was pleaded that Ms. Geetika had turned 17 years of age and that her expenses have increased to more than Rs. 15,000/- per month.

16. Vide order dated 02.05.2006 both the applications were allowed. Relevant portion of the order of learned Trial Court reads under:

So for copies of fee receipts of classes are concerned the same pertains to the year 1999 and 1998 and other receipts of class XII and B-Tech pertains to the period for the year 2004 and 2005 respectively and apparently the same are beyond the original petition. It is a fact that this case has been pending since the year 1995 either because in between the judicial proceedings there were chances of compromise or during the proceedings pending before the Hon"ble High Court of Delhi, the proceedings in other court were under stay as compromise was in progress and in between the period the applicant progressed her academic career year after year from one class to other class. There is a situation that if the documents are permitted to be allowed it would be beyond the original plaint/application, however, considering the continuity of proceedings and in the larger interest of justice, the application is allowed to file record of fee receipts of class VI, class XII, B-Tech course subject to formal proof in evidence as well as with liberty to the respondent to raise appropriate objections, tenable under the law.

x x x x

Therefore, considering totality of circumstances that the applicant's mother Smt. Suman Kaushik and applicant's father Sh. N.P. Kaushik are employed gainfully and they both are required to maintain the child/applicant Ms. Geetika during the pendency of main petition u/s 20 of the Act. Hence an interim maintenance of Rs. 3,500/- is allowed to the applicant to be contributed equally by applicant's parents i.e. the mother and the father till the disposal of the main application. The applicant request for such maintenance from the date of application i.e. 19.09.1995, however, considering the facts that the applicant is getting interim maintenance w.e.f. May, 1997 @ Rs. 3,500/- PM from her parents in the proceedings u/s 26 r/w 24 of Hindu Marriage Act in other courts, Therefore, without prejudice to her legal rights, the maintenance would be payable w.e.f. the date of order i.e. 02.05.2006.

It is a settled preposition of law that an interim maintenance can be received once and there is no provision of law to claim separate interim maintenance in different proceedings, Therefore, the interim maintenance @ Rs. 3,500/- PM will be received by the applicant from either of the court i.e. either from the present court or from the other court where proceedings u/s 26 r/w 24 are pending, since rate of interim maintenance is Rs. 3,500/-. Any observation made in the present order would not tantamount to be final opinion on the merits of the case and same is without prejudice to the rights of both parties.

The applicant requests that there are expenses more than Rs. 15,000/- p.m., however the interim maintenance amount cannot exceed the amount prayed in the main application....

17. Meanwhile Ms. Geetika attained majority and appointed the respondent as her attorney for the purposes of prosecuting the suit filed on her behalf u/s 33

CPC and Section 20 of the Hindu Adoption and Maintenance Act.

18. Pursuant to the order dated 02.05.2006, the respondent moved an application under Order VI Rule 17 CPC seeking amendment of the plaint which was allowed by the learned Trial Court vide order dated 15.5.2007. As per the amended plaint, maintenance in sum of Rs. 15,000/- per month was claimed by the petitioner.

19. On 08.03.2007 another application u/s 151 CPC was filed by the respondent seeking enhancement of interim maintenance from Rs. 3,500/- per month to Rs. 15,000/- per month. Enhanced maintenance was claimed on the ground that the salary of the petitioner has increased, educational expenses of Ms. Geetika have increased and price index of essential commodities has gone up due to inflation.

20. Vide impugned order dated 28.07.2007 the application filed by the respondent was allowed and interim maintenance was enhanced from Rs. 3,500/- per month to Rs. 11,000/- per month. Relevant portion of the order reads as under:

12. In my humble opinion, the dispute between mother and the father should not effect the study of the children. Since the plaintiff is an only daughter, she has every right to be brought up as a daughter of affluent parents. At the same time, Rs. 24,000/- per annum as tuition charges (computer) and Rs. 24,000/- per annum as the tuition charges (Math) can be easily avoided. As if the student is attentive in classes and do her/his homework regularly and sincerely at home, no tuition is required, Hence, I am of the considered opinion that Rs. 24,000/- per annum as tuition charges (Math) can be saved by the plaintiff. After excluding Rs. 24,000/- per month as tuition charges (computer) and Rs. 24,000/- per annum per annum as tuition charges (Math), the average monthly expenditure comes to Rs. 11,000/- approximately.... Needless to say in such like situation, the welfare and future of the child was to be considered as paramount consideration.

13. Consequently, the application of the plaintiff u/s 151 CPC for enhancement/modification of the order dated 02.05.2006 granting interim maintenance to the plaintiff is liable to be allowed and the same is allowed. The interim monthly maintenance of the plaintiff is enhanced from, Rs. 3500/- to Rs. 11,000/- (eleven thousand only) per month to be shared equally by the mother of the plaintiff and the father of the plaintiff from the date of filing of the application i.e. 08.03.2007 onwards. Ordered accordingly.

21. Learned Counsel for the petitioner has challenged the impugned order dated 28.07.07 on following four counts:

i) The petitioner is under no obligation to maintain his daughter Ms. Geetika for the reason she has attained majority.

ii) Order dated 27.11.01 passed by this Court granting interim maintenance in sum of Rs. 3,500/- per month to Ms. Geetika has attained finality and Therefore

the trial court was not justified in awarding a maintenance higher than what is awarded by this Court.

iii) Learned Trial Court has based its decision on the premise that Ms. Geetika is pursuing B.Tech course and her educational expenses have increased. This fact was well pleaded by the respondent in the application dated 19.09.95 wherein interim maintenance in sum of Rs. 3,500/- per month was claimed from the petitioner. This fact was duly considered in the order dated 02.05.06. Thus, the learned Trial Court has committed an error in holding this fact as a changed circumstance and enhancing the interim maintenance from Rs. 3,500/- per month to Rs. 11,000/- per month.

iv) Order awarding Rs. 3,500/- per month as interim maintenance to Ms. Geetika is dated 02.05.06. The application seeking enhancement of maintenance awarded under order dated 02.05.06 is 08.03.07. It is highly improbable that the circumstances would change so much between the interregnum period of ten months to justify enhancement of maintenance from Rs. 3,500/- per month to Rs. 11,000/- per month.

22. As regards first contention, suffice would it be to note the judgment of the Supreme Court in the decision reported as Jagdish Jugtawat v. Manjulata and Ors. : (2002)5SCC422 wherein it was held that the right of a major girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, the petitioner cannot escape from his obligation to maintain his daughter on the ground that she has attained majority.

23. Order dated 27.11.2001 passed by this Court related to the proceedings under Sections 24 and 26 of the Hindu Marriage Act, 1955 whereas the impugned order dated 28.07.07 relate to the proceedings u/s 20 of the Hindu Adoption and Maintenance Act, 1956. Proceedings u/s 20 of the Hindu Adoption and Maintenance Act, 1956 are independent and have no correlation with the proceedings u/s 24 and 26 of the Hindu Marriage Act, 1955.

24. Even otherwise, much water has flown the Yamuna since the order dated 27.11.01 of this Court awarding a sum of Rs. 3,500/- per month as interim maintenance in favor of Ms. Geetika.

25. A perusal of the order dated 02.05.06, as noted in para 16 above, shows that the fact of Ms. Geetika pursuing B.Tech course was only noted and not considered by the learned Trial Court while awarding interim maintenance in sum of Rs. 3,500/- per month for the reason the amount of maintenance claimed in the plaint from the petitioner was limited to Rs. 3,500/- per month.

26. As already noted, this defect in the plaint was removed by the respondent by effecting amendment in the plaint and claiming a sum of Rs. 15,000/- per month as maintenance from the petitioner. Therefore, learned Counsel for the petitioner was not justified in arguing that the fact of Ms. Geetika pursuing B.Tech course

was considered in the order dated 02.05.06

27. I find no substance in the last contention advanced by the learned Counsel for the petitioner that period of ten months is too less for the circumstances to be changed. Circumstances can change overnight. A person who is unemployed on a given day might get a job next morning and starts earning good amount.

28. Changed circumstances which justify enhancement of interim maintenance are clearly spelt out in the impugned order dated 28.07.07. I find no reasons to differ with the decision of the learned Trial Court.

29. The petition is dismissed.

30. No costs.