
(2006) 05 DEL CK 0233

In the Delhi High Court

Case No : IA No. 6848A of 2000 in CS (OS) No. 1844 of 2002

Shrimati Sumedha Nagpal

APPELLANT

Vs

Shri Gaurav Nagpal

RESPONDENT

Date of Decision : 05-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Hindu Adoptions and Maintenance Act, 1956 — Section 18

Citation : (2006) 05 DEL CK 0233

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Rajat Aneja, for the Appellant; Sandeep Mittal, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.

IA No. 6848/2000 (Under Section 151 CPC for interim maintenance) in CS (OS) No. 1844/2000

1. The plaintiff has filed a suit u/s 18 of the Hindu Adoption and Maintenance Act and pending final adjudication of the suit, the present application has been filed for interim maintenance.

2. The parties were married on 14.10.1996 and have a child from the marriage. The differences arose between the parties which has resulted in multifarious legal proceedings including on account of allegation of demand of dowry and over the custody of the minor child. The plaintiff has, in fact, alleged that the defendants and his family did not even disclose that the defendant had gone through an earlier divorce about three to four months after the marriage. The custody of child has also produced acrimonious litigation between the parties and it is the allegation of the plaintiff that the defendant is deliberately keeping away the child and poisoning his mind against the plaintiff and despite the orders passed by the competent courts the defendant is even obstructing and violating the

orders related to visiting rights of the plaintiff.

3. The plaintiff has alleged that the defendant has treated her with cruelty and she was constantly taunted by the defendant and his relatives about the lack of dowry. The plaintiff alleges maltreatment and physical violence and that the plaintiff was asked to leave the house late at night when her father was admitted to the hospital for a by-pass surgery. Some attempts are stated to have been made by the plaintiff to again bring back the position to normal but once again after some time she was turned out of the matrimonial home.

4. The plaintiff claims that the defendant and his family to prevent police action in view of the complaints made attempted to reconcile the matter and that the defendant shifted his residence from Gujranwala Town to Haryana in a rented accommodation. This is despite the fact that the defendant is alleged to have two palatial houses in Delhi.

5. The plaintiff has alleged that the defendant in order to entrap the plaintiff opened a savings bank account in the name of the plaintiff with the Union Bank of India, Wazirpur Branch, Delhi and transactions worth crores of rupees were made in the name of the plaintiff. The plaintiff was also asked to sign certain blank cheques with the object of withdrawing money from the said account. A family trust was also found in which amounts were diverted. The defendant is alleged to have removed the child from the custody of the plaintiff on 1.8.1999 in a pre-planned conspiracy with his parents when the child was of a tender age of 20 months. The plaintiff is living with her parents and has claimed maintenance from the defendant.

6. The defendant is stated to be a man of means and status and is a member of a joint Hindu family. The defendant is also stated to have sold properties including No. B-17, Gujranwala Town, Part-I, Delhi, measuring 300 sq. yards for Rs. 1.40 crore, flat No. 102/5, DLF Gurgaon, Haryana, known as Silver Oak Apartments, sold for Rs. 22 lakh. These are stated to have been sold in June 1999 and May 1997 respectively. The defendant also sold plot No. 7209, DLF, Gurgaon, Haryana, measuring 250 sq. yards in 1997 for Rs. 33 lakh. Apart from these, the defendant is stated to be the owner of a plot at Tirath Nagar, Karala Village, Delhi, which he sold for Rs. 6 lakh in June 1997, another plot measuring 1.8 acre situated at Larsoli Village, Sonapat, Haryana was sold for Rs. 28 lakh, (plot opposite Furnish House in Village Sonapat).

7. The defendant is stated to have purchased factory premises measuring 1,000 sq. yards at Bahadurgarh, Haryana in March, 1997 where he installed machinery worth Rs. 50 lakh and is stated to have invested a sum of Rs. 25 lakh in connection with the working capital. The factory was running in the name and style of M/s. Padmaja Polymers Pvt. Ltd., M/s. Padmaja Irrigation Pvt. Ltd., etc. There are stated to be five companies managed by the defendant and the income of the defendant is alleged to be Rs. 3-5 lakh per month. The defendant is also stated to be owner of a farm house located in plot No. C-129, Ansal Housing

Finance Pvt. Ltd., Gurgaon, Haryana valued at Rs. 10 lakh. The defendant is also alleged to own land in Village Began, District Sonapat, Haryana, measuring 6 kanals and at Lal Dora, Najafgarh-Nangloi Road, Delhi.

8. Apart from the immovable properties the defendant is stated to be owning various lockers in which jewellery are kept including that of the plaintiff. The defendant is stated to have put about Rs. 70 lakh in the trust account. The defendant is stated to be running a number of cars and is stated to be living in an Air-conditioned house and the electricity bill alone is stated to be about Rs. 10,000/- per month. The plaintiff has also relied upon the raid carried out by the Income Tax Department in 1995 at the business premises as well as at the residence of the defendant and the Income Tax Department assessed the income of the defendant at Rs. 70 lakh plus annually. An appeal is stated to be pending before the Appellate Tribunal of the Income Tax. All these facts show that the defendant is a man of status and has assets worth crores of rupees. The defendant contributed Rs. 65,000/- towards P.M. Relief Fund at the time of Kargil War in a public function and did not even claim tax rebate.

9. The petition as well as interim application has been resisted by the defendant who claims to have suffered business losses on account of the fact that he was now full time involved with the task of looking after the child and contesting the litigations initiated by the plaintiff. The defendant sought to put the ownership of the properties in the hands of the family relations rather than in his hands and claimed to have very little means. The defendant does not dispute that he has two landlines and is running two cars. The defendant at present is residing at Sainik Farms and the property is measuring around 3,000 sq. yards, which incidentally is a very posh locality.

10. It may be noted that indisputably the plaintiff and the defendant are not staying together and it is stated that the plaintiff has an income of about Rs. 10,000/- per month as a teacher. The expenses of the child are being borne by the defendant.

11. The defendant also admits the ownership of a farm house of two acres in Gurgaon, agricultural land located in Sonapat and a 100 sq. yards plot in Hariom Colony in Delhi but claims that he has no income. The defendant also admits to be running the business through two proprietary companies but as stated above claims that he is not running any business on account of the task of contesting the litigation initiated by the plaintiff and looking after the child.

12. Among the important documents placed for consideration for grant of maintenance is the written statement filed by the defendant before the Guardianship Court where the defendant has sought to justify why the child should continue to remain with him. The child is studying, at present, in G.D. Goenka Public School in which the defendant admits to paying Rs. 4,500/- per month as only Tuition Fee. The child is stated to be engaged in various activities for which payment is being made by the defendant. The defendant, in fact,

claims that school trips even go abroad and the child is likely to be sent abroad at the cost of the defendant, shortly. The ceremonies like Mundan Ceremony and Birthdays of the child are stated to be celebrated with great pomp and show. The child is stated to be taking Lawn Tennis and Taekwondo lessons apart from Swimming and Photography. In fact, the case made by the defendant is that the plaintiff is residing in a MIG 80 sq. yards flat located in Gulabi Bagh, Delhi, while the defendant is extremely well off and is in a position to provide much better upbringing to the child. The object of setting out the aforesaid fact is to show that the defendant, on the one hand in the Guardianship proceedings claims to have vast means and resources for upbringing the child in an appropriate environment as against the scarce resources of the plaintiff; while on the other hand, in the present proceedings, the defendant is denying the responsibility of making payments towards maintenance. In the testimony recorded in the Guardianship proceedings the defendant has stated that his office is in the ground floor of Sainik Farm. The farm house at Gurgaon is stated to be about Rs. 8 lakh worth which measures two acres but the Mother and Brother of the defendant are also stated to have equal share with the defendant in the said immovable property. The defendant initially confined the admission of immovable property only to two of them but immediately thereafter in his testimony recollected and admitted the ownership of the 100 sq. yards plot in Lal Dora in Hariom Colony, Delhi. There is also a farm house situated in Aravali Retreat stated to have been purchased for a consideration of Rs. 6 lakh. The defendant, however, failed to produce any documents and claimed that the plaintiff has taken away the documents. The defendant admits that at Sainik farm, electricity is provided by a generator.

13. In view of the pleadings and documents placed on record, two aspects are absolutely clear:

i. that the plaintiff has an income of about Rs. 10,000/- and is staying with her parents and the allegations made by the defendant about there being other incomes of the plaintiff are, at least, not prima facie satisfied at this stage.

ii. The defendant is a man of means having considerable assets and actually forming a part of the joint Hindu family. Interestingly, the defendant while seeking to make out a case before the Guardianship Court of there being one unit of a family consisting of his mother, brother, sister-in-law and his nephews for the psychological security of the child as well as the family environment, on the issue of payment of maintenance seeks to take a U-turn and absolve the family of all responsibilities. It does appear from the pleadings and the documents as well as the statement recorded of the defendant before the Guardianship Court that the defendant is seeking to put certain assets outside his ownership only to defeat the claim of the plaintiff for maintenance. The defendant is also seeking to deny incomes from the business though the assets mentioned aforesaid could not be denied.

14. In my considered view the defendant has certainly not given before the Court

his true income and assets.

15. The Income Tax Department assessed the defendant's income at Rs. 70 lakh a year for the assessment year 1994-95. No doubt certain appeals were filed against it but during the course of the arguments, the defendant has sought to state that the orders were superseded. However, nothing has been placed on record. Even assuming there is some amount of exaggeration in assessment of the income of the defendant in view of the fact that the same were made pursuant to the raid and the defendant is claiming that he was not involved in any concealment of income, the figure of Rs. 70 lakh a year does indicate the substantive means and income of the defendant. The claim of the plaintiff is that the defendant has an income of about Rs. 3-5 lakh a month, which is considerably lower to the figure assessed by the Income Tax Department.

16. At this stage it is not possible to work out the exact figures since evidence is yet to be led. The arrangement has to be interim in nature. No doubt the child's expenses are being borne by the defendant but even if the family unit of three is taken into account, the plaintiff is at least entitled to 1/3rd of the same. The plaintiff is also out of the matrimonial home and is living with her parents which is the other factor to be taken into account. The plaintiff is working and earning Rs. 10,000/- per month. The plaintiff is liable to be maintained in the same environment as in her matrimonial home.

17. The claim of the plaintiff for maintenance is only Rs. 50,000/- per month and that too was made as far back as on 28.6.2000. The same was on the basis that the plaintiff was not drawing any income while now indisputably the plaintiff draws approximately Rs. 10,000/- per month as income. The plaintiff has also claimed provision for residential accommodation.

18. I am of the considered view that taking all the aforesaid factors into consideration the plaintiff should be held entitled to at least Rs. 25,000/- a month towards her maintenance inclusive of provision for residential accommodation. There is no doubt that no exact figures or calculations can be made since the defendant himself has been reticent in giving the proper details of his income, and had the income as assessed by the Income Tax Department been taken into account the same would come to more than Rs. 5 lakh a month. The plaintiff has only claimed Rs. 50,000/- a month and a provision of residential accommodation and this Court has considered Rs. 35,000/- in total, inclusive of provision for residential accommodation as a reasonable figure and deducted Rs. 10,000/- as the income of the plaintiff. The wife is an "Ardhangini" of the husband and has an equal share in what the husband owns. In that sense all the assets must be pooled and be treated as equally owned where naturally the responsibility of bringing up the child comes out of those funds. Some of the assets are owned by the defendant individually, while in some of the assets defendant has a share, which are owned by the mother and brother of the defendant. If these parameters were applied in the present facts of the case, the maintenance of Rs. 25,000/- per month is more than reasonable.

19. The defendant is also liable to pay arrears of maintenance starting from the date of the petition. Since, the petition has been filed in July 2000, the plaintiff would be entitled to maintenance commencing from 1.8.2000. The defendant is held liable to pay the arrears of maintenance from 1.8.2000 within three months from today. The defendant should pay the current monthly maintenance commencing from May 2006 on or before the 10th of the month in advance and should continue to do so for each succeeding month on or before the 10th of each month in advance.

20. This Court is conscious of the larger cumulated arrears but then the defendant himself has been responsible for the part of the delay and despite all endeavors to amicably settle the matter, defendant never came forth even while at each stage dates were being taken on account of the fact that the settlement talks were going on. The hearing of this application began as far back as in November 2004. The further directions were issued, whereby the plaintiff was even agreeing to dissolve the marriage so long as the custody of the child is shared equally and an amount/property is designated towards the maintenance of the plaintiff. The defendant failed to give any proper offer in this behalf and insofar as the issue of the custody of the child is concerned, the defendant has been making every endeavor to see that the plaintiff does not get access to the child. Attempts by this Court by issuing directions to at least bring the child to the Court did not succeed, as it is in the order dated 20.12.2005 stated that the child was in the hysterical state when he was brought in the custody of the defendant. All attempts by the Court to pacify the child in the chamber failed as the child had already been poisoned enough against the plaintiff.

21. The net result has been that the plaintiff has been deprived of the custody and the visiting rights of the child, deprived of any maintenance or place of matrimonial home while the defendant along with his joint family continues to be a person of considerable means. This situation cannot be permitted to continue at least to the limited jurisdiction of this Court, as far as fixation of maintenance is concerned.

22. The application is accordingly allowed in the aforesaid terms. The plaintiff shall also be entitled to costs quantified at Rs. 10,000/-.