

(2014) 10 DEL CK 0080

In the Delhi High Court

Case No : MAT.APP.(F.C.) 83/2014 and C.M. No. 12557/2014

Vikaas Ahluwalia

APPELLANT

Vs

Simran Ahluwalia

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Guardians and Wards Act, 1890 — Section 25
Hindu Marriage Act, 1955 — Section 24, 26, 9

Citation : (2015) 215 DLT 142 : (2015) 1 DMC 70

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Y.P. Narula, Sr. Adv., Abhey Narula, Ujas Kumar and Sugandha Anand, Advocate for the Appellant; Anu Narula, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—Issue notice. Learned counsel for the respondent accepts notice. With consent, the matter was finally heard.

2. The appellant claims to be aggrieved by the order of the Family Court dated 07.06.2014, by which the matrimonial proceedings being HMA No. 134/2011 was listed for arguments on 05.08.2014. It is stated that the Presiding Judge was on leave on the said date and now the matter is scheduled for considering the proceedings/hearing on 10.10.2014 for evidence and arguments.

3. Learned counsel submits that this Courts intervention is necessary inasmuch, as, the proceedings before the Family Court are to be regulated in terms of the order dated 02.04.2014 of the Supreme Court in C.A. Nos. 4978-79/2014. It was submitted that the conduct of proceedings before the Family Court are to be worked out in accordance with the overall directions of the Supreme Court, which is that the entirety of merits of the disputes are settled expeditiously but not later than six months from the date of the order, i.e.02.04.2014.

4. Briefly, the facts that are necessary for deciding this appeal are that the appellant and the respondent married each other on 26.11.2001; the respondent

wife gave birth to a daughter on 04.09.2002. Apparently, due to matrimonial dispute and discord, the respondent left the matrimonial home in 2008 along with her daughter. Thereafter, several proceedings have been instituted which include one under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights preferred by the wife; proceedings under Section 24 and 26 of the Hindu Marriage Act - again by the respondent wife; a guardianship proceedings under Section 25 of the Guardian and Wards Act by the appellant; an application for maintenance under the Hindu Adoption and Maintenance Act preferred by the respondent.

5. The last in the series was a divorce petition being HMA No. 134/2011 preferred by the present appellant/husband alleging cruelty and desertion by the respondent wife.

6. In the interlocutory proceedings under the Hindu Adoption and Maintenance Act, a learned Single Judge of this Court by order dated 05.03.2013 directed the appellant to pay maintenance at the rate of Rs. 75,000/- per month, besides extending other facilities such as providing a chauffeur driven car with certain quantities of fuel, and direction with respect to several other facilities.

7. In the matrimonial proceedings, an application for maintenance pendent lite under Section 24 was moved before the Family Court. On 08.02.2013, the appellant/husband was directed to pay Rs. 1,25,000/- per month to the respondent wife along with litigation expense of Rs. 1,00,000/-. This order was carried in appeal to a Division Bench of this Court, which upheld the Family Courts determination under Section 24, by order dated 20.12.2013.

8. The order of the learned Single Judge dated 05.03.2013 aforesaid was appealed against by the respondent wife and the daughter before the Division Bench, which rejected their appeal. A further appeal was preferred before the Supreme Court. This was eventually heard along with the appellant's appeal by special leave in respect of the order under Section 24 (as confirmed by the Division Bench on 20.12.2013) . Before the Supreme Court, the respondent wife had contended that even the order directing payment of Rs. 75,000/- and the further direction to extend certain facilities had not been complied with. The appellant's senior counsel, however, made a statement that there was compliance. This aspect was dealt with by the Supreme Court, which noticed the stand of the respondent wife and observed as follows:

"Having heard learned senior counsel for the parties, we are of the view, that we have no material nor the reason to doubt the statement of learned senior counsel appearing for the respondent-husband, who has made a statement in open Court that the order passed by the High Court granting maintenance to the appellants in the sum of Rs. 75,000/- per month along with the other facilities, has already been provided, and in case, the appellants have any reason to assail it on the ground that the order does not stand complied with, in the sense that the facilities have not been provided, it will be open for the appellants to initiate a

contempt proceedings against the respondent-husband, provided it is established that the same has not been paid".

9. Dealing with the contention that as to the liability to pay maintenance at the rate of Rs. 75,000/- per month and grant of other facilities should be effective from the date of the application, and not from the date of the order, the Court felt that the determinative date should be when the application was filed. So far as the appellant's appeal with regard to the determination of the Family Court and the liability to pay Rs. 1,25,000/-, the Court observed as follows:

"We deem it appropriate that this appeal be remitted to the Family Court where the question of determination of maintenance at the rate of Rs. 1,25,000/- per month under Section 24 of the Hindu Marriage Act, 1955 be considered and consolidated to be heard along with other matrimonial proceedings/cases including divorce and other cases relating thereto, which are pending before various Family Courts including the plea of the wife where the question as to whether the order passed by the Family Court is fit to be considered or not.

In view of the above, the order passed by the Family Court allowing enhancement shall be kept in abeyance until the matter is finally disposed of by the Family Court including the plea of the wife that the maintenance is fit to be enhanced".

10. The Supreme Court in its order finally concluded that as matters were pending for the last six years, it was just and appropriate that the Family Court ought to be given priority to all of them so that the dispute is finally settled between the parties "expeditiously but not later than a period of six months".

11. In view of the above order, the matter was to be taken up for further proceedings by the Family Court. Apparently, sometime in May, 2014, the respondent filed an application in the matrimonial proceedings contending that the husband had not discharged his liability in compliance with the Courts order. That application is the bone of contention in these proceedings.

12. It is asserted by the appellant that the Family Court has to complete the substantive hearing in the matrimonial proceedings itself and cannot side track the proceedings into considering whether there is substantial compliance of the direction to pay maintenance and determination of arrears, if any - as directed by the Supreme Court. It is submitted that the Supreme Court has reflected in its direction that the entire matter has to be decided and resolved once for all and within six months from the date of the order or before the first week of October, 2014. Therefore, the appellant contended that the application preferred by the respondent wife proceeds on misplaced reading of the Supreme Courts direction, and this Court ought to intervene and issue necessary corrective directions. It is also disputed that there is any violation or non compliance of the order of the Court so as to impede the progress of the proceedings; learned senior counsel sought to urge that contemporaneously with the Supreme Courts order, an amount of over Rs. 14 lakhs was made over to the respondent wife and that

subsequently a sum of ₹ 75,000/- has been paid regularly.

13. Counsel for the respondent wife urges that the primacy sought to be given to the directions does not imply that the respondent wife's options are completely foreclosed. It is submitted that substantial arrears of amounts payable in terms of the order of the Single Judge dated 05.03.2013 have not been paid. It is pointed out that even on a fair working of the said order, the liability of the appellant would be around ₹ 1.21 crore - against which an amount of about ₹ 45 lacs only have been paid, thus leaving an arrear to the tune of about ₹ 70 lacs unpaid.

14. It is also submitted that the reference to contempt proceedings to secure compliance of the Single Judge's order is not exhaustive of the options of the respondent wife, which in law entitle her to insist that before the matrimonial proceedings culminate into a final decision, the question of arrears and payment of maintenance thereof is gone into, and final order be made conditional in that regard. Learned counsel disputes that the arrears, in fact, have been discharged as is contended by the learned senior counsel for the appellant.

15. It is evident from the above discussion that there is some dispute as to whether the Single Judge's order of 05.03.2013 was complied with. One of the contentions on which the parties are not in agreement and are in dispute is as to the true effect of that order; the appellant urges that the said direction were watered down and were modified by the Single Judge on 19.03.2013, whereas the respondent submits that the latter order of 19.03.2013 itself has been set aside and superseded, and the matter, has been remitted for reconsideration by the Division Bench in its latter order dated 12.04.2013.

16. There could have been no dispute with the respondents wife submission that, ordinarily, in matrimonial proceedings, maintenance is a crucial issue which has to be decided before the final judgment is delivered, more so in the case of divorce proceedings being initiated by the husband - as in this case. Yet, in the present case, the Supreme Court was not oblivious of the facts, and was aware of this position; it was equally aware of the fact that the respondent/wife alleged that the entirety of arrears and maintenance had not been paid. In the circumstances, it left it to the decision of the concerned court to determine, if any, and to what extent- arrears were payable. This aspect assumes significance because the direction to conclude the proceedings finally was made after recording the divergent views on the matter i.e. as regards the existence of arrears. The disposal of the divorce proceedings was not made conditional on the prior determination of the issue - whether there were arrears payable by the appellant. In the circumstances, we are of the opinion that the respondents contention that the matrimonial proceedings ought not to be allowed to continue until and unless the issue of arrears of maintenance is decided, cannot be accepted. However, at the same time, this Court is equally alive to the possibility that some arrears might be payable. The extent of such arrears cannot be determined in this appeal.

17. In view of the aforesaid, the following directions are made which the Family Court shall adhere to while proceeding further with HMA No. 134/2011:

i) The evidence of the appellant shall be tendered in accordance with law. It is stated that the affidavit evidence has been filed. The Family Court shall proceed to take on record the evidence by way of examination in chief, and thereafter the cross examination of the appellant (who is stated to be the lone witness in support of HMA No. 134/2011) shall be taken up and concluded.

ii) The respondent's evidence and oral deposition of witness in support of her case shall be taken and cross examination of such witnesses shall be concluded thereafter.

iii) Immediately, upon completion of recording of oral evidence, the Family Court shall take up the pending question of arrears of maintenance in compliance with the courts orders, which is the subject matter of the respondents application - preferred in May 2014, and decide the same immediately after conclusion of arguments thereon.

iv) After following directions (i) to (iii) above, the Family Court shall proceed with the judgment in the HMA, after hearing the parties.

18. The appeal is disposed of in the above terms. All the contentions of both the parties are kept open before the family Court.

19. Dasti under signature of the Court Master.