

(2011) 09 P&H CK 0225

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No"s. 949, 3792 and 3793 of 2008

Yash Pal

APPELLANT

Vs

Kaushal Rani and Another
 Kaushal Rani and Another
Vs Yash Pal

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Evidence Act, 1872 — Section 106, 114(g)
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 23, 25, 3(b)
Penal Code, 1860 (IPC) — Section 498A

Citation : (2013) 2 RCR(Civil) 52

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Lokesh Sinhal in RSA No. 949 of 2008 and Mr. Pavan Malik in RSA Nos. 3792 and 3793 of 2008, for the Appellant; Pavan Malik, Advocate in RSA No. 949 of 2008 and Mr. Lokesh Sinhal, Advocate in RSA Nos. 3792 and 3793 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—This judgment shall dispose of three regular second appeals viz. (1) RSA No. 949 of 2008 titled as "Yash Pal v. Kaushal Rani and another", and (2) RSA No. 3792 of 2008 and (3) RSA No. 3793 of 2008 both titled as "Kaushal Rani and another v. Yash Pal". RSA No. 949 of 2008 has been preferred by Yash Pal against his wife Kaushal Rani and minor son Kunal represented by his mother and natural guardian Kaushal Rani. RSA No. 3792 of 2008 has been filed by Kaushal Rani (wife) and her minor son Kunal against Yash Pal, husband of appellant No. 1 and father of appellant No. 2. RSA No. 3793 of 2008 is also filed by Kaushal Rani (wife) and her minor son Kunal against Yash Pal.

2. Yash Pal in RSA No. 949 of 2008 has prayed that the judgment and order passed by the Court of Additional Civil Judge (Senior Division), Gurgaon on 20th August, 2007 while deciding the petition/suit for maintenance u/s 18 of the

Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as, "the Act"), whereby the Court had awarded maintenance to the plaintiff-respondents to the extent of Rs. 4,000/- per month, be set aside along with the judgment and order dated 7th December, 2007, whereby the lower appellate Court held the aggrieved wife and her minor son entitled to maintenance @ Rs. 2,500/- per month with effect from the date of filing of the petition before the trial Court i.e. 4th February, 1999 with yearly increase of Rs. 250/- with effect from 1st January, 2000; 2001 and so on till the time the aggrieved wife disentitles herself as per law in claiming the maintenance.

3. In RSA No. 3792 of 2008, a prayer has been made that the aggrieved wife and the minor child be allowed maintenance to the extent of 50% of income of the husband per month and furthermore, respondent (husband) be directed to pay interest @ 1% per month for the period the maintenance remained unpaid.

4. In RSA No. 3793 of 2008, the aggrieved wife and the minor son have prayed that the appeal filed by the husband before the lower appellate Court, whereby the amount of maintenance was reduced be dismissed and that of the trial Court be restored.

5. To adjudicate the above said three appeals, it will be necessary to notice brief facts of the case. Counsel for the parties, during course of arguments, have provided a copy of the plaint, written statements and the replication to enable this Court to recapitulate the facts.

6. In the month of February, 1999, Kaushal Rani for herself and for her minor son Kunal had instituted a petition/suit for maintenance u/s 18 of the Act. In the petition/suit so filed, it was pleaded that Kaushal Rani was married with Yash Pal on 9th May, 1997 at Krishna Colony, Gurgaon, Tehsil and District Gurgaon. After the marriage, the plaintiff started cohabiting in her matrimonial home and due to consummation of marriage, Kunal-plaintiff No. 2 was born on 11th January, 1998. It was specifically averred that husband Yash Pal was earlier married and had obtained a divorce at the time of marriage with plaintiff No. 1-aggrieved wife Kaushal Rani. It was stated that due to greed and demand of dowry Kaushal Rani was ill-treated and subjected to cruelty which led her to approach the police authorities where a compromise was effected on 10th March, 1998. The compromise was not acted upon by the husband. Defendant (husband) being a habitual divorcee, who had divorced his earlier wife, had given beatings to plaintiff No. 1-Kaushal Rani and she was turned out of her matrimonial home. Thus, she was left with no other option except to reside with her parents where she is residing since 14th February, 1998. It was pleaded that the husband was posted in CVD-3-SS-D at Delhi and his monthly salary on the date of institution of the plaint was Rs. 6,000/- per month. Thus, maintenance of Rs. 4,000/- per month was required for the plaintiff (wife) and the child, who are stated to be in need of food, clothing, amenities and facilities, and also required a separate residential house on rent.

7. Upon issuance of notice of the suit, husband filed written statement and denied the averments made in the plaint and stated that the alleged compromise was arrived at the instance of police, which had threatened to arrest him for an offence punishable u/s 498-A IPC. According to the husband, on account of non-cooperation of the plaintiff (wife), it had become difficult for him to live with her. Furthermore, the husband had filed a divorce petition against the plaintiff (wife), which was withdrawn as the same was not maintainable having been filed within one year of the marriage. It was stated that mother and Mangu Ram father of the plaintiff (wife) used to visit the matrimonial home of their daughter and interfered in the family affairs. However, it was further stated that wife was earning Rs. 5,000/- per month and the husband was receiving salary of Rs. 3,000/- per month only.

8. On conclusion of the pleadings, the trial Court had drawn following issues:

(1) Whether the petitioners are entitled for the maintenance at the rate of Rs. 4,000/- per month from the date of filing of the present suit? OPP

(2) Whether the respondent has deserted his wife and treated her with cruelty? OPP

(3) Whether the suit is not maintainable? OPD

(4) Whether the petitioner has no cause of action to file the present petition? OPD

(5) Whether the petitioners are estopped from filing the present petition by their acts, conduct etc.? OPD

(6) Relief.

9. The aggrieved wife herself appeared as PW-1. She also examined her mother Laxmi Devi as PW-2 and Ramesh Bhatia as PW-3. Whereas, Yash Pal (husband) appeared as RW-1 and tendered his affidavit Ex. R1.

10. Counsel for the parties have laid much emphasis on Ex. P3, salary certificate issued by the Central Vehicle Depot, Delhi Cantt., which depicts the details of salary of the husband as under:

11. Thus, the gross salary of husband was Rs. 6,868/-. Whereas Rs. 1,000/- were deducted towards GP Fund, Rs. 30/- towards CCEGIS and Rs. 150/- towards Dushehra Advance. Therefore, out of the gross salary of Rs. 6,868/-, there was a deduction of Rs. 1,180/- per month and the net salary payable to the husband was Rs. 5,688/- per month.

12. Counsel appearing on behalf of the aggrieved wife and the child has also placed on record salary certificate Ex. A1 issued by Rajesh Joshy, Col. Head Quarter, Delhi Area (RTI Cell), Delhi Cantt-10, in which details of the salary of husband with effect from 1999 till today have been given. As per certificate Ex. A1 in the month of July 2010, salary of the husband was Rs. 21,383/-.

13. In the present case, the trial Court has awarded maintenance of Rs. 4,000/-

per month to the aggrieved wife and the minor son with effect from the date of filing of the petition. For determining the amount of maintenance, the trial Court held as under:

13. As far as the income of the respondent is concerned, there is a salary certificate on record to show that his salary is Rs. 10,417/-. The counsel for the respondent submitted that the salary certificate was not admissible in evidence. There is no merit in the contention of the Ld. counsel for the respondent. The salary certificate came on record by the order of the Court dt. 29.1.2007. LDC Ramesh Bhatia appeared in the Court and produced the document. His statement was recorded on oath. This is a public document which has come from proper custody. Therefore, it is admissible in evidence. There is no evidence on record to show that the respondent is having any house or a shop.

14. From the aforesaid discussion, it is proved that the petitioners have no source of income. The petitioner No. 1 is dependent upon her parents for livelihood. Petitioner No. 2 is a school going child. The respondent is store keeper and is earning around Rs. 10,417/- per month. Therefore, the petitioners are entitled to maintenance of Rs. 4,000/- per month from the date of filing the petition. Both the issues are decided in favour of the petitioners.

14. The lower appellate Court held that the salary certificate, which reflects salary of the husband as Rs. 10,417/- per month pertains to the month of February, 2007, therefore, grant of Rs. 4,000/- per month as maintenance was excessive, and it reduced the maintenance to Rs. 2,500/- per month. The lower appellate Court further granted enhancement of Rs. 250/- per year to the wife till she becomes disentitled for the same due to any disqualification, which she may entail because of the provisions of law.

15. In the present three appeals, a very pertinent question has been raised as to whether awarding of maintenance of Rs. 4,000/- per month by the trial Court and its reduction to Rs. 2,500/- per month by the lower appellate Court with yearly increase of Rs. 250/- is justifiable or not? What should be the adequate compensation to which the aggrieved wife and the child shall be entitled to?

16. Mr. Lokesh Sinhal, Advocate appearing on behalf of the husband, has stated that as per the salary certificate, in the year 1999 husband was drawing a salary of Rs. 6,868/- out of which Rs. 1,000/- was deducted towards GP Fund, Rs. 150/- towards Dushehra Advance and Rs. 30/- towards CCEGIS and thus, the husband was getting a net salary of Rs. 5,688/-. Therefore, awarding of Rs. 4,000/- per month by the trial Court is excessive.

17. Whereas, Mr. Pavan Malik, Advocate appearing on behalf of the aggrieved wife and the child, has stated that the husband was a Government employee. There was continuous increase in his salary due to grant of annual increments, award of dearness allowance and pay revision. Learned counsel has placed reliance upon the salary certificate Ex. A1 to state that the husband has got arrears of salary due to revision of pay-scales and as the salary certificate Ex. A1

shows, in the month of July, 2010 husband was drawing a salary of Rs. 21,383/-.

18. Counsel for the husband has disputed the salary certificate Ex. A1 on the ground that the same cannot be taken into consideration by the Court until the authority, who has issued the same, is examined as a witness and an opportunity is granted to the husband to cross-examine the official.

19. Counsel for the aggrieved wife and the minor son has further stated that in the year 2008 the child was a student of Class VI. Learned counsel has referred to ground No. 11 of the grounds of appeal contained in RSA No. 3793 of 2008 to contend that more than Rs. 37,000/- per annum was paid to the school for education of the child. It is apt to reproduce one of the grounds taken in RSA No. 3793 of 2008 as under:

11. That the school expenditure of appellant No. 2 who is in 6th class in convent school is more than Rs. 37,000/- per annum only in the following manner:

20. It is further submitted that now the child is a student of class IX and for appearing in entrance examination for admission to any professional course he requires extra coaching. It is submitted that it is always aspiration of parents to give best available education to the child for advancement of his/her career.

21. To controvert these arguments, counsel for the husband has stated that if the judgment of the lower appellate Court is sustained, the total maintenance which the aggrieved wife and the minor son will draw as on today will be Rs. 5,500/- per month which is more than what has been demanded in the plaint, i.e. Rs. 4,000/- per month. Learned counsel states that the maintenance could not be awarded beyond what was pleaded and demanded in the suit.

22. To appreciate the rival submissions made and to arrive at an adequate amount of maintenance, it will be necessary to notice the relevant provisions of the Act. Section 3(b) gives parameters for determining maintenance and the same reads as under:

3. Definitions.

(a) XXXX XXXX XXXX

(b) "Maintenance" includes-

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment.

23. The relevant considerations for fixing quantum of maintenance are given in Section 23 of the Act, which reads as under:

23. Amount of maintenance- (1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case maybe, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to-

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect, of the dependent;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependent;
- (e) the past relations between the dependent and the deceased;
- (f) the value of the property of the dependent and any income derived from such property, or from his or her earnings or from any other source;
- (g) the number of dependents entitled to maintenance under this Act.

Section 25 gives powers to the Court to alter the amount of maintenance on change of circumstances. The same reads as under:

25. Amount of maintenance may be altered on change of circumstances-The amount of maintenance, whether fixed by a decree of court or by agreement either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

24. Considering the provisions of the Act, the courts from time to time have laid principles for determining the quantum of maintenance.

In " Radhika Narang and Others Vs. Karun Raj Narang and Another, , a Division Bench of Delhi High Court supplemented the definition of maintenance by holding as under:

13. The term Maintenance as defined in the Advanced Law Lexicon, 3rd Edition 2005 as published by Wadhwa Nagpur includes in all cases, provision for food,

clothing, residence, education and medical attendance and treatment. As per Bouvier Law Dictionary Maintenance is also the means of subsistence, supply of necessities and conveniences; aid, support, assistance; the support which one person who is bound by law to do so, gives to another for his living. The Hon"ble Supreme Court in the case of Rajesh Burmann Vs. Mitul Chatterjee (Burman), bearing SLP (C) No. 14183/2007 decided on 4th November, 2008 held as follows:

24. The term "maintenance" is defined in Black's Law Dictionary, (6th Edn. pp. 953-54) thus; "The furnishing by one person to another, for his or her support, of the means of living, or food, clothing, shelter, etc., particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child or husband and wife.

25. Likewise, the word "support" as defined in the said Dictionary (p. 1439) reads as under;

That which furnishes a livelihood; a source or means of living; subsistence, sustenance, maintenance, or living. In a broad sense the term includes all such means of living as would enable one to live in the degree of comfort suitable and becoming to his station of life. It is said to include anything requisite to housing, feeding, clothing, health, proper recreation, vacation, traveling expense, or other proper cognate purposes; also proper care, nursing and medical attendance in sickness and suitable burial at death.

25. In Radhika Narang's case (supra), further reliance was placed upon Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, and this Court being in agreement with the reasoning propounded in Radhika Narang's case (supra) relies upon the following portion of the said judgment:

16. For computing maintenance the following test have been laid down by the Hon"ble Supreme Court in Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, , wherein it has been observed that -

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.

(emphasis supplied)

XXXX XXXX XXXX

XXXX XXXX XXXX

18. We find force in the contention of the learned counsel for the Appellant. The Hon"ble Supreme Court in the case of Dr. Kulbhushan Kumar Vs. Smt. Raj Kumari and Another, approved the principle enunciated in AIR 1929 128 (Privy Council) that Maintenance depends upon a gathering together of all the facts of the situation, the income of the parties, a survey the conditions and necessities, regard being had to the scale and mode of living, and to the age, habits wants and class of life of the parties. The Hon"ble Supreme Court in the case of Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others, held as follows:

Maintenance, 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. The Hon"ble Supreme Court in the case of Her Highness Maharani Kesarkunverba Saheb of Morvi Vs. Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, , held that Maintenance must vary according to the position and status of a person. It does not only mean food and raiment.

26. This Court has to determine the authenticity of salary certificate Ex. A1 produced by the aggrieved wife and the minor son. This Court cannot ignore the fact that the husband was in special knowledge of his income and therefore, it was incumbent upon him to prove that his income was either less or more than what was alleged by the aggrieved wife.

27. Gujarat High Court, in Maganbhai Chhotubhai Patel Vs. Maniben, invoked Sections 114(g) and 106 of Indian Evidence Act, 1872 to hold that if document of income is withheld by the husband, an adverse inference is to be drawn against him. Thus, taking totality of circumstances into consideration, counsel for the husband is not permitted to obstruct the doctrine of onus of proof. The Court therefore, is justified in drawing an adverse inference against the defendant (husband) and he cannot be allowed, in a case of determining maintenance, to invoke doctrine of strict onus of proof upon the plaintiff (wife). In these circumstances, the Court will not be precluded to have some guess work regarding income of the defendant (husband). A judicial notice can be taken of the fact that the salary of Government employees keeps on increasing, as not only the revision of pay-scales takes place but the employee also gets annual increments in addition to dearness allowance twice a year depending upon the price index. It is an admitted fact that the defendant (husband) is posted as a senior store keeper at the Central Vehicles Depot at Delhi Cantonment. Thus, this Court will rely upon the document Ex. A1 which gives consistent rise of salary of the husband on year to year basis. Furthermore, this Court cannot ignore that there is a steep escalation in the price of essential commodities and they are not immune from inflation. Taking totality of circumstances into consideration this Court is of the view that the trial Court has rightly awarded Rs. 4,000/- per month as maintenance to the aggrieved wife and the child.

28. Thus, this Court will restore the judgment of the trial Court and will set aside that of the lower appellate Court. As a result thereof, RSA No. 3793 of 2008 preferred by the aggrieved wife and the minor son is accepted.

29. Now to answer the second substantial question of law formulated by counsel for the defendant (husband) as to whether this Court in a regular second appeal can award maintenance more than what was pleaded and demanded in the plaint. To answer this question, this Court has to notice that in the present case, plaint was instituted on 3rd February, 1999. A period of more than 12 years has elapsed and in the last 12 years circumstances have changed. This Court has already noticed Section 25 of the Act, which states that due to subsequent material change in circumstances the Court may alter the amount of maintenance if such an alteration is justifiable.

30. In 21st Edition of "Mulla Hindu Law" as revised by Satyajeet A. Desai, while interpreting Section 25 of the Act, it has been stated that this Section confers ample powers on the Court to vary, modify or even discharge any order fixing the amount of maintenance made by decree of the Court if there is a material change in the circumstances to justify such an action. It is stated therein that circumstances justifying alteration would principally be changes in pecuniary circumstances of the parties and the conduct of the parties is not a relevant consideration for the Court in varying or modifying the amount of maintenance. When the plaint was filed in the year 1999, the litigant wife would not have imagined that she will be in the corridors of the Court for more than 12 years. If the contention of counsel for the husband is accepted and the aggrieved wife is told that in the appeal amount of maintenance cannot be enhanced more than what was demanded in the plaint and she is relegated to file another suit for variation of the amount of maintenance, it will not be just and appropriate. It could not be ignored that to save the matrimonial dispute from the Civil Court trappings, Family Court Act, 1984 has been enacted.

31. It was held by a Single Bench of Karnataka High Court in Mrs. Komal S. Padukone Vs. Principal Judge, Family Court, Bangalore City and Another, that though the Family Court is deemed to be a Civil Court, the procedure of summary proceedings is to be invoked and a Family Court may receive as evidence, any report, statement, document, information or other matter, that may, in its opinion, assist it to deal effectively with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.

32. Thus, taking into consideration salary certificate Ex. A1 which depicts salary of the husband in the month of July, 2010 as Rs. 21,383/-, this Court can safely hold that from today onwards the aggrieved wife and the minor son are entitled to Rs. 7,000/- per month (being one third of the salary) as maintenance. To vary the amount of maintenance, this Court has taken into consideration education of the child who is a student of Class IX, current income of the husband and escalation of the price of essential commodities due to inflation. The appeal being

an extension of trial, this Court is of the view that another bout of litigation will not only multiply sufferance of the parties but will also burden them with cost of litigation (which of course is to be paid by the husband) and thus, relying upon Section 25 of the Act, the Court will vary the amount of maintenance. This Court will reject the very hyper-technical contention raised by counsel for the husband that the amount of maintenance awarded cannot be more than what was pleaded in the suit, as the ultimate dispensation of justice cannot be circumvented by the technicalities and the endeavour of the Court is to do substantial justice. Accordingly, both the appeals filed by the aggrieved wife and the minor son are accepted to the extent that they are entitled to an amount of Rs. 7,000/- per month as maintenance from the date of passing of this judgment and order. However, as a result of the discussion made above, RSA No. 949 of 2008 filed by the husband is dismissed.