
(2019) 08 RAJ CK 0299

Rajasthan High Court

Case No: Civil Miscellaneous Appeal No. 2153 Of 2019

Narveer Singh Solanki

APPELLANT

Vs

Vijeta Singh And Ors

RESPONDENT

Date of Decision: Aug. 9, 2019

Acts Referred:

- Hindu Marriage Act, 1955 - Section 9, 24, 26
- Limitation Act, 1963 - Section 5
- Code Of Civil Procedure, 1908 - Order 11 Rule 12, Order 11 Rule 14

Hon'ble Judges: Sangeet Lodha, J; P.K. Lohra, J

Bench: Division Bench

Advocate: Shreyansh Mardia

Final Decision: Dismissed

Judgement

1. This miscellaneous appeal is filed by the appellant assailing the legality of the order dated 11.3.19 passed by the Family Court No.2, Jodhpur in Civil

Original Case No.4/16, whereby an application preferred by the respondent under Section 24 of the Hindu Marriage Act, 1955 (for short "the Act

of 1955") has been allowed. The appellant has been directed to pay maintenance pendente lite a sum of Rs.3,000/- per month each for herself and

her two children and a sum of Rs.5,000/- towards litigation expenses. The petitioner has also questioned legality of order dated 11.3.19, rejecting an

application preferred by the appellant under Order XI Rule 12 CPC.

2. The appeal reported to be barred by limitation for three days is accompanied by an application under Section 5 of Limitation Act. For the reasons

stated in the application, the same is allowed. Delay in filing the appeal is condoned.

3. Heard learned counsel for the appellant.

4. The appellant filed a petition against the respondent for restitution of conjugal rights under Section 9 of the Act of 1955 before the Family Court

No.2, Jodhpur. During the pendency of the petition, the respondent filed an application under Section 24 & 26 of the Act of 1955, claiming

maintenance pendente lite and litigation expenses. The respondent averred in the application that she has no source of income and presently, she is

dependent upon her parents. The respondent further averred that she has responsibility of upbringing two children, a daughter and a son, studying in

Class VII and Class III in Saint Patrick Vidhya Bhawan, Jodhpur and Saint Paul School, Jodhpur, respectively. According to the respondent, the

appellant employed as Teacher in Panchayat Samiti, Reodar, District Sirohi, is drawing salary a sum of Rs.38,000/- per month and his total monthly

income is Rs.50,000/- to 60,000/-. The respondent claimed maintenance Rs.20,000/- for herself and two children and further, a sum of Rs.25,000/- as

litigation expenses and Rs.1,00,000/- towards the expenditure already incurred by taking loan.

5. The application was contested by the appellant by filing a reply thereto. The appellant submitted that while working as Teacher, after deduction, he

is drawing salary only a sum of Rs.24,994/- per month and has no other source of income. He incurs expenditure of Rs.6,000/- per month for

maintenance of his old aged mother. The appellant claimed that respondent is employed as Lecturer in Disha Sansthan, Jaipur and earning Rs.30,000/-

per month. The appellant filed an application under Order XI Rule 12 & 14 CPC, seeking directions to the respondent to produce her pay

slip/certificate issued by Disha Sansthan, where she is working as Lecturer. The respondent while filing a reply to the application supported by an

affidavit and denied the factum of her being employed as Lecturer in Disha Sansthan, as claimed by the appellant. The application was rejected by the

Family Court vide order dated 11.3.19.

6. Learned counsel appearing for the appellant submitted that the Family Court has seriously erred in rejecting the application preferred by the

appellant under Order XI Rule 12 & 14 CPC on account of same being not supported by an affidavit. Learned counsel submitted that the factum of

the respondent being employed in Disha Sansthan was not in dispute and without there being any evidence, the Family Court has seriously erred in

arriving at the finding that the respondent is working without any pay. It is submitted that the respondent who had taken two contrary stand before the

Family Court, has wrongly been extended protection under Section 24 of the Act of 1955. Learned counsel submitted that the respondent, who is well

qualified and having her own source of income, was not entitled to claim any maintenance pendente lite. Learned counsel submitted that where a

spouse who has capacity of earning but chooses to remain idle is not entitled to claim any maintenance pendente lite under Section 24 of the Act of

1955. In support of the contention, learned counsel relied upon a decision of Delhi High Court in Criminal Revision Petition No.344/11

“Damanpreet Kaur vs. Indermeet Juneja & Anr.”, decided on 14.5.12.

7. We have considered the submissions of the learned counsel and perused the material on record.

8. Indisputably, the appellant is employed as Teacher in Panchayat Samiti, Reodar and drawing monthly salary a sum of Rs.41,325/-, which stands

fortified from the salary certificate of the appellant of the month April, 2019 produced on record before the Family Court. The appellant claims that the

respondent is employed as Lecturer in Disha Sansthan, Jaipur. On the basis of documents produced on record, the Family Court concluded that the

respondent is employed in Disha Sansthan, Jaipur however, there was no evidence brought on record to establish that the respondent is in permanent

job and earning a reasonable income as claimed.

9. Indisputably, the purpose behind Section 24 of the Act of 1955 is to provide necessary financial assistance to the party to the matrimonial dispute

who has no independent income of his own sufficient for her or his support or to bear the expenses of the proceedings. While considering the

application for award of interim maintenance, the relevant consideration is the inability of the spouse to maintain himself or herself for want of

independent income or inadequacy of the income to maintain at the level of social status of other spouse.

10. Even if it is assumed for the sake of arguments that the respondent has some source of income, it is not denied that she is discharging the

responsibility of upbringing two children, who are studying in Class VII and Class III and thus, the appellant being father, cannot shirk from his

responsibility to maintain them as well. It is pertinent to note that ignoring the income of the appellant from any other source as claimed by the

respondent, admittedly, the appellant is earning a sum of Rs.41,325/- as monthly salary while working as Teacher and thus, the amount of maintenance

determined by the Family Court, a meagre amount of Rs.9,000/-, which is less than even 25% of the income of the appellant, in no manner can be said

to be excessive.

11. In the considered opinion of this court, taking into consideration the total income of the appellant and the expenditure bound to be incurred by the

respondent for herself and two children, in absence of any cogent evidence regarding the respondent having any adequate source of income, the

amount of maintenance pendente lite determined by the Family Court appears to be just and proper and does not warrant any interference by us in

exercise of appellate jurisdiction.

12. The appeal is therefore, dismissed in limine.