

(2012) 10 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4007 and 4160 of 2012 (O and M)

Maneesh Mittal

APPELLANT

Vs

Brij Bala

RESPONDENT

Date of Decision: Oct. 18, 2012

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 14(1), 18
- Hindu Marriage Act, 1955 - Section 13B, 24, 25, 3

Citation: (2013) 169 PLR 214

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Anil Kshetarpal in Civil Revision No. 4007 of 2012 and Mr. S.S. Bains in Civil Revision No. 4160 of 2012, for the Appellant; Anil Kshetarpal in Civil Revision No. 4160 of 2012 and Mr. S.S. Bains in Civil Revision No. 4007 of 2012, S.S. Bains in Civil Revision No. 4160 of 2012, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Jindal, J.

This order shall dispose of two connected revision petitions bearing Nos. 4007 of 2012 filed by Maneesh Mittal-husband and 4160 of 2012 filed by Smt. Brij Bala-wife, arising out of the common order and involving the similar questions of law and facts. However, for convenience, the facts are being taken up from Civil Revision No. 4160 of 2012.

2. During the proceedings u/s 13-B of Hindu Marriage Act (for brevity, "the Act"), Smt. Brij Bala-petitioner (herein referred as, "the petitioner) moved an application u/s 24 of the Act for seeking maintenance pendente lite and litigation expenses for herself as well as her minor child namely Archit Mittal. She claimed that she is unable to maintain herself as well as minor son. Now she is working as Assistant Manager, Kotak Mahindra Bank Chandigarh with effect from February, 2012 and

drawing salary of Rs. 40,000/- per month. Previously, she was working as Assistant Manager with Deutsche Bank, Ludhiana and was drawing salary of Rs. 30,000/- per month. It has been further submitted that Maneesh Mittal-respondent (herein referred as, "the respondent") is working as Senior Vice President in Barclays Bank, Connaught Place, New Delhi and drawing salary to the tune of Rs. 2 crores per annum. He drew bonus of Rs. 65 lacs in the year 2009, 2010 and 2011 each, besides salary and other emoluments. He has also additional income from various investments made in the share market and the property and rental income from one kanal house at Panchkula. Consequently, she has claimed a sum of Rs. 5.00 lacs as litigation expenses and similar amount per month as maintenance for herself as well as minor child.

3. In reply, the respondent took some preliminary objections, inter alia, that the application has been filed on the basis of the false claim. The petitioner is drawing a salary of more than Rs. 50,000/- per month and she is also in possession of Rs. 71 lacs as paid to her by the respondent on 30.7.2009, to save the marriage of being disturbed but still he could not save. It was also settled at that time that in case they failed to make the settlement, in that eventuality, the sum of Rs. 71 lacs paid to her would be treated as maintenance/ permanent alimony and parties would file the petition u/s 13-B of the Act. The petitioner had joined the matrimonial house on 4.8.2009, however, she could not adjust with the respondent and left him on 28.9.2009 and started litigation with him. The relief available u/s 24 of the Act is not available to the petitioner as the said section is attracted to the woman who have no independent source of income for her support and meet the necessary expenses of the proceedings but the petitioner having sufficient is not entitled to any further sum. While admitting that Archit Mittal, their son, is living in the custody of the petitioner and that, he (the respondent) is working as Senior Vice President with Barclays Bank has stated that he was drawing salary of Rs. 2 crore per annum, further stated that now he is drawing monthly salary of Rs. 2,44,333.33. Actually, his total gross salary is Rs. 5,40,416.57 per month, out of which a sum of Rs. 1,49,822/- is deducted as tax at source besides other deductions and his carry home salary is Rs. 3,61,274.67. His daughter is in his custody and she is studying in one of the best schools at Delhi. He has not received any bonus of Rs. 65 lacs as alleged. The respondent has also to spend huge amount on gifts, concessions and expenses on lunch, dinner etc. on special functions. The respondent being the private banker with a multinational, his job is not secure specially in times of recession. The job being risky, he could be terminated at any time. Many people have lost their jobs on account of recession in the banks. The bonus in the private banking has been closed down and it also depends on the market conditions. The respondent has no bank balance and has to take care of his parents also. His expenses at Delhi are much more than could be spent on the livelihood at Chandigarh. The petitioner is living a lavish life as she has the income of Rs. 1,20,000/- as fully described above. She is enjoying the same, status and standard of living as of the respondent which is

evident from the fact that she has bought two cars in last two years and has gone on overseas to exotic destinations like Kanyakumari, Bangalore etc during vacations.

4. The lower court vide order dated 19.5.2012, had awarded a sum of Rs. 50,000/- as maintenance pendente lite and Rs. 50,000/- as litigation expenses.

5. Arguments heard. Record perused.

6. 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 necessaries and conveniences; aid, support, assistance; the support which one person who is bound by law to do so, gives to another for his living. Though, the word maintenance has been interpreted and explained from time to time by the various courts at the instance of the persons not having means to maintain themselves or having some petty or little means or having not such means as may suit to their living conditions and are not equal to the life style and standard as her husband is living, the Supreme Court in case of Rajesh Burmann Vs. Mitul Chatterjee (Burman), 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 expenses, or other proper cognate purposes; also proper care, nursing and medical attendance in sickness and suitable burial at death.

26. The Court below also considered some of the decisions cited before them. In Pradeep Kumar Kapoor Vs. Sbailja Kapoor, the High Court of Delhi interpreted "maintenance" and "support" u/s 24 of the Hindu Marriage Act and observed:

Under Section 24 of the Act, the court has to see if the applicant who may either be wife or husband has non independent income sufficient for her or his support and the necessary expenses of the proceeding, and then award expenses of the proceeding and such sum every month, having regard to the applicant's own income and the income of the Respondent which may seem to the court to be

reasonable. This section may be contrasted with Section 25 of the Act which deals with permanent alimony and maintenance. u/s 25, the court may order the Respondent to pay to the applicant for her or his maintenance and support, till her or his lifetime, either a lump-sum amount or such monthly or periodical sum, having regard to the respondent's own income and other property, if any, and the income and other property of the applicant, the conduct of the parties and other circumstances of the case, which the court might deem just. It may be noticed that heading of Section 24 of the Act is "maintenance pendente lite and expenses of proceedings". The section, however, does not use the word "maintenance", but, to me, it appears that the words "support" and "maintenance" are synonymous, "Support" means "to provide money for a person to live on", like "he supports a family" or "he supports his old mother. " Maintenance is "an act of maintaining", i.e. to support with money. For example, "he is too poor to maintain his family". It may be useful at this stage to refer to the definition of "maintenance" as given in the Hindu Adoption and Maintenance Act, 1956 (for short, "the Act of 1956").

Under Section 3 of that Act, "maintenance" includes -

- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;
- (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage. I would, therefore, think that when we talk of maintenance and support, the definition of "maintenance" as given in the Act of 1956 should be adopted. Section 18 of the Act of 1956 also refers to maintenance of wife and gives the circumstances under which a Hindu wife is entitled to live separately from her husband without forfeiting her claim to maintenance.

7. The Apex Court in the case of Komalam Amma Vs. Kumara Pillai Raghavan Pillai and Others, laid down the following proposition of law with regard to maintenance:-

9. Maintenance, as we see it, 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. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a preexisting right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1).

8. In accordance with the law laid down by the Apex Court in Komalam Amma's case (supra), I am of the view that the petitioner certainly cannot be put in a position where she and her children are suddenly deprived of the lifestyle and comfort they

were used to, merely because of the separation from the husband. The payment of maintenance to an estranged spouse provides means for sustenance so as to ensure that so far as possible, the same living standards, enjoying prior to the breakup of spouse, are retained. The wife claiming interim maintenance can, therefore, not be put to a severely disadvantaged position of a drastic reduction in the quality of her life on the premise that she would get the appropriate maintenance at the final award of maintenance/alimony. The existence and survival of an estranged wife seeking interim maintenance cannot be treated akin to a suit for rendition of accounts on recovery of money, where at the final hearing of the suit accounts can be adjusted and parties recompensed by costs and interest. A human life is far more precious than a ledger, particularly when lives of children living with the wife are also involved.

9. Thus, after considering the above position of law, the following principles emerges from the above judgments:-

- a) Maintenance depends upon the summation of all the facts of the situation [as laid down in [Dr. Kulbhushan Kumar Vs. Smt. Raj Kumari and Another,](#)
- b) For granting maintenance, the scale and mode of living, the age, habits, wants and class of the life of the parties has to be regarded [as laid down in Dr. Klbhushan Kunwar v. Raj Kumari (supra)]
- c) Maintenance being such that the wife could live in a reasonable comfort; considering her status and mode of life which she was used to while living with her husband [as laid down in [Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others,](#)
- d) During the pendency of the suit for maintenance, which may take a considerable time to attain finality, the wife cannot be forced to face starvation till she is subsequently granted maintenance from the date of the filing of the suit [as laid down in [Neelam Malhotra Vs. Rajinder Malhotra and Others,](#)
- e) Maintenance must necessarily 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, [as laid down in [Komalam Amma Vs. Kumara Pillai Raghavan Pillai and Others,](#)
- f) 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 life and take into account the basic need of a roof over the head, [as laid down in [Mangat Mal \(Dead\) and Another Vs. Smt. Punni Devi \(Dead\) and Others,](#)
- g) Maintenance must vary according to the position and status of a person. It does not only mean food and raiment, [as laid down in [Her Highness Maharani](#)

Kesarkunverba Saheb of Morvi Vs. Commissioner of Income Tax, Bombay North, Kutch and Saurashtra,

10. The advance law, now which has been laid down by the Apex Court is deviating from the old law that the wife should be awarded maintenance only for survival but the purpose of providing maintenance, according to the Apex Court, is meant to secure the wife/spouse, claiming maintenance, as far as possible the status and the facilities enjoyed by her prior to her separation from her husband, when her maintenance claim is finally determined, which has been left with the discretion of the court.

11. Thus, keeping in view aforesaid law laid down by the Apex Court from time to time, this Court is of the opinion that the maintenance awarded u/s 24 of the Act would be sufficient if added to the income already drawn by the petitioner would enable her to live in the same style and standard and in the same condition as she was living with her husband.

12. Admittedly, the petitioner is living in Chandigarh and is working as Assistant Manager in Kotak Mahindra Bank. It also cannot be denied that the cost of living in Delhi is much higher than that of Chandigarh. One has to spend lot on transport for going from one place to other. No doubt, she is also maintaining the child, yet it cannot be denied that she has been paid Rs. 71 lacs at one time for permanent alimony and maintenance, in the hope that the parties may settle but the reconciliation proceedings failed and the money was not returned. In the absence of any explanation about the expenses, it would be presumed that the amount of Rs. 71 lacs is with her in all human probabilities, she is in possession of the said amount which is also incurring monthly interest not less than Rs. 70,000/- per month which is normally incurred in the business transaction. In addition, the court has also provided her Rs. 50,000/- more. Thus, while calculating the total monthly return in the hands of petitioner wife for her maintenance comes to Rs. 1,70,000/- per month which is more than the salary as drawn by an IAS Officer nearing retirement.

13. In the circumstances, it cannot be said that the petitioner could not maintain herself as well as her minor child well and provide all necessary comforts available in this material world. The provisions of maintenance has not been introduced on the statute book for undue enrichment of the party claiming or for saving that amount for future but the object to provide maintenance pendente lite was as under:-

1. A destitute spouse may not suffer for maintenance.
2. He/she may not have to go to the others for livelihood.
3. He/she may not have to be in disadvantageous/helpless situation after the separation is forced to live separate by the other spouse.
4. As spouse has legal obligation to maintain the other spouse who is unable to maintain himself or herself.

14. Even otherwise, if the income of the respondent after making deductions is treated as Rs. 3,50,000/- in approximation, he having girl child in his custody has to maintain her and spend on her education. That apart, he has old parents to whom he has to look after. It may further be mentioned that earning member of the family besides his obligation to maintain wife and children has to suffer many unforeseen expenses. He has to bear expenses on the marriage of his brothers and sisters or their children, the religious ceremonies to be performed in the family, the deaths and births in the family, the untoward incidents or sufferings occurring in future. In any case, the maintenance which comes in the hands of the petitioner, including her own salary, comes to Rs. 1,70,000/- per month, which is not disproportionate to the income of the respondent and is sufficient to provide every comfort of life. Thus while keeping in view that the respondent is maintaining his own parents, minor daughter and spending on himself for maintaining his vehicles and other necessities of life, this court is also of the opinion that the maintenance awarded to her is quite appropriate and reasonable.

15. Consequently, while keeping in view over all circumstances, income of the respondent and the law as referred to above it would not be inappropriate to hold that there are no grounds to reduce the maintenance or quash the order altogether in favour of the respondent. Consequently, both the revision petition Nos. 4160 of 2012 filed by the petitioner Smt. Brij Bala (for enhancement of the maintenance) and No. 4007 of 2012 (filed by Maneesh Mittal-husband) stand dismissed.