
(2004) 11 AHC CK 0231

Allahabad High Court

Case No: Civil Revision No. 32 of 2002

Smt. Sandhya Singh

APPELLANT

Vs

Maj. Sandeep Singh

RESPONDENT

Date of Decision: Nov. 19, 2004

Acts Referred:

- Hindu Marriage Act, 1955 - Section 24

Citation: (2005) 1 AWC 317 : (2005) 1 DMC 484

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: M.K. Gupta, for the Appellant; Swapnil Kumar, B.D. Mandhyan, Ajit Kumar, V.S. Sinha, Satish Mandhyan, Prashant Kumar and P.K. Tripathi, for the Respondent

Final Decision: Allowed

Judgement

Sunil Ambwani, J.

Heard Sri M. K. Gupta learned counsel for applicant wife, and Sri B. D. Mandhyan, senior advocate for the opposite party-husband.

2. This is wife's revision against the judgment dated 14.1.2002 passed by Additional District Judge (Court No. 1) Aligarh, by which she has been awarded only Rs. 3,000 towards the cost of litigation. The trial court has refused to award maintenance pendente lite u/s 24 of the Hindu Marriage Act, 1955 (in short, the Act) claimed by her @ Rs. 5,000 per month, in the divorce petition initiated by her husband, on the grounds of cruelty and desertion.

3. The husband filed a divorce petition u/s 13 of the Act in the Family Court at Jodhpur. In pursuance of order passed by Hon'ble Supreme Court, the divorce petition was transferred to the Court of District Judge, Aligarh, and was assigned to the Additional District Judge (Court No. 1), where it is pending. The applicant filed an application u/s 24 of the Act, for maintenance pendente lite, with the allegation that she does not have any independent income. Her husband is a Major in the Indian

Army with an income of about Rs. 20,000 per month. She also claimed expenses of travelling from Aligarh to Jodhpur via Delhi and a sum of Rs. 5,000 per month towards interim maintenance. The application was opposed by the husband on the ground that she had applied for maintenance to the Headquarters Northern Command, which has awarded, a part of his salary as maintenance to her. The applicant has admitted in her additional counter-affidavit that under the Army Rules, she is getting Rs. 1,584 as 10% of her husband's salary, in pursuance of order dated 13.8.1999 with effect from 6.4.1999. She has not received any other amount from the petitioner for the last 38 months since the filing of the divorce petition. She denied that she is engaged in any service in Hotel Heritage at Gurgaon. She had taken up a job as teacher in Air Force School, Jaisalmer from July, 1997 to September, 1998 which has no relevance thereafter. She further stated that she does not possess National Saving Certificate as the said savings have already been invested during the course of litigation. The car given in dowry was sold by the husband and that the husband is operating a Locker in the Bank at Jaisalmer. She denied that her husband is getting only 6,106 after all deductions and that in fact he is getting salary of Rs. 20,000 approximately.

4. The trial court by a short and cryptic order, found that since the divorce petition has been transferred from Jodhpur to Aligarh, the respondent-wife is not entitled to the expenses of travelling and staying at Jodhpur, and that since the wife is admittedly getting Rs. 1,584 per month towards the maintenance from the Army and an order has been passed u/s 125. Cr. P.C., on 7.8.2001 for payment of Rs. 400 per month, she is not entitled to any further maintenance. The trial court also found that the husband is getting only about Rs. 5,106 towards salary after all the deductions. It recorded a finding that both husband and wife belong to respectable family as both their fathers are retired Lt. Cols. from Indian Army and thus a sum of Rs. 3,000 only towards the cost of litigation will be sufficient.

5. The order-sheet of this revision shows that both the parties were called to appear before this Court, and an effort was made for reconciliation. The orders dated 24.7.2002, 25.7.2002 and 31.7.2002 are quoted as below :

"24.7.2002 :

Smt. Sandhya Singh, applicant (wife) and Major Sandeep Singh, opposite party (husband) are present along with their counsels.

I have talked to the husband and wife separately and suggested them to sit together in my Chamber for getting their past and find out ways to reassure other party of such conduct which may help their smooth matrimonial life.

The matter shall be taken up again at 3.15 p.m. in my Chamber.

24.7.2002 :

Put up tomorrow (25.7.2002). Both the parties shall remain present tomorrow.

25.7.2002 :

At 10 a.m. both the parties are present along with their counsels. It is already about 12.15 p.m. First husband and wife were heard in Chamber along with their counsels. Thereafter counsels were requested to leave the couple for consideration of negotiation. Subsequently, fathers of both the parties were called. They were heard and thereafter in their presence parties were also called and joined. Parties are no more required.

Case shall be listed in the next supplementary cause list on 31st July, 2002.

31.7.2002 :

The endeavour made by the Court and the steps taken for reconciliation between the parties have unfortunately failed.

The Court regrets that there was no positive attempt on the part of the husband and his father for reconciliation. Rather, the Court noticed that the father of the husband suffered from superiority complex and ego which came in the way of mutual reconciliation. Hence, this Court has no option but to proceed with the hearing of the case on merit."

6. The parties have exchanged affidavits and supplementary affidavits. It is admitted to both the parties that at present the applicant-wife is receiving Rs. 2,293 with effect from May. 2003, as maintenance, from deductions by the Army from her husband's salary. Sri B. D. Mandhyan, learned senior counsel appearing for the husband submits that the applicant has encashed the National Saving Certificate worth Rs. 94,845 and the fixed deposit of Rs. 41,701 on maturity. She has been selected for Special B.T.C-2004 training of the Education (Basic) Department, Government of U. P. and has been sent for training at District Institute of Education and training at Hathras with stipend of Rs. 2,500 per month and thus her financial condition has improved to the extent that she does not require any maintenance. It is further contended by him that the applicant is M.A. in English literature. B.Ed. and M.Ed. and M.B.A. from Symbiosis Institute, Pune. She is also pro-efficient in Computer Applications with one year Diploma Course and Diploma in Beauty Care from Shahnaz Husain Institute, and Diploma in Modelling and has work experience when the parties were living together.

7. It is unfortunate that both the parties coming from Army background, are living separately and are engaged in a fierce legal battle. There is nothing on record to show that the trial court had made any effort of conciliation between them. This Court made a futile attempt to bring them together. It is apparent from these proceedings that husband's father who is actively persuing the matter, is playing a dominant role in keeping them separate. He had sworn all the affidavits in this Court and was found actively briefing his counsel all the time. The trial court will do well to allow the parties some time to live together without the intervention of then

parents. I am, however, not much concerned with reconciliation at this stage, in these proceedings, which are confined to fixing reasonable amount of maintenance pendente lite and the expenses of litigation to the wife, during the pendency of divorce proceedings.

8. In [Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others](#), the Supreme Court held that while fixing the amount of maintenance, the Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under the law and statutory but voluntary 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 should not be excessive or extortionate.

9. The submission of Sri B. D. Mandhyan that the consideration for fixing maintenance should only be confined to the sustenance and bare maintenance till the conclusion of proceedings, is not a valid argument. He has relied upon the judgment of Delhi High Court in Pradeep Kumar Kapoor v. Ms. Shailja Kapoor AIR 1989 Del 10. which is not a binding precedent for this Court and specially in view of the Supreme Court decision in Jasbir Kaur Sehgal's case cited above.

10. The statement of account of the salary of Major Sandeep Singh, respondent in this case, Unit 66 Armed Regt. C/o 56 APO, issued by P&S Bank Atta Branch P.O. NOIDA, Bank Account No. 5270/22 of July, 2004, shows that he is getting a salary of Rs. 25,258 out of which Rs. 1,000 is debited to AGIF Rs. 3,130 to Income Tax Rs. 5,000 to DSOP Subscription and Rs. 62 to OASP. The counsel appearing for the respondents was not able to explain, even after seeking instructions from the father of the respondents, who is a retired Military Officer, the nature of deductions described as DSOP subscription. Even if these deductions are taken into consideration, the applicant is getting a salary of about Rs. 15,000 with no one else to support. The Army is deducting 10% of his salary and is remitting Rs. 2,293 to the applicant. The question whether the National Saving Certificates were purchased from the income of the husband and wife is a disputed question of fact, which prima facie, I find that these certificates have been encashed by the wife and have been invested by her for her own financial security. This amount as such cannot be taken into consideration while determining maintenance pendente lite. There is absolutely no proof on record of the fact that the applicant has received the stipend for training from the State Government.

11. The applicant, as a daughter and wife of an Army Officer, must be used to a decent and comfortable life. She is entitled to reasonable comfort in accordance with her status and mode of life and should not be handicapped in prosecuting her case. Taking into account the income of her husband as well as the stipend which

she may receive in training, and the expenses which she is likely to bear in taking the training at Hathras, I find that her claim for Rs. 5,000 as maintenance pendente lite is quite reasonable and that she is entitled to the maintenance from the date of filing of her application u/s 24 of the Act, i.e., with effect from 28.4.2001. The Court takes judicial notice to the fact that the cost of litigation has increased considerably and thus the award of only Rs. 3,000 will put her to serious handicap in defending herself. For this purpose, an amount of Rs. 15,000 shall be fair and reasonable.

12. The revision application is accordingly allowed. The order of the Additional District Judge (Court No. 1), Aligarh, dated 14.1.2002 in Marriage Petition No. 25 of 1998, Smt. Sandhya Singh v. Sandeep Singh is modified to the extent that the applicant Smt. Sandhya Singh will be entitled to and shall be paid Rs. 5,000 per month as maintenance pendente lite, with effect from 28.4.2001. The entire arrears shall be paid to her after adjusting the maintenance received by her from the deductions made and paid to her out of her husband's salary. She will be paid Rs. 5,000 per month as maintenance pendente lite by her husband including the deductions from his salary every month until the conclusion of the divorce proceeding. She is also entitled to receive 15,000 towards the cost of litigation from her husband.