

Jyotsna Sofat Vs Gaurav Sofat

Court: Delhi High Court

Date of Decision: Nov. 10, 2010

Acts Referred: Hindu Marriage Act, 1955 " Section 24

Citation: AIR 2011 Delhi 112 : (2011) 177 DLT 739 : (2011) 1 DMC 730

Hon'ble Judges: G.S. Sistani, J

Bench: Single Bench

Advocate: L.B. Rai and Ankit Tuli, for the Appellant; R.S. Goswami, for the Respondent

Judgement

G.S. Sistani, J.

Learned Counsel for the parties submit that there is no possibility of a settlement between the parties.

2. Present petition is directed against the Order dated 29.10.2009 passed by learned Additional District Judge - I (HMA), Delhi, on an application

filed by the Petitioner (wife) u/s 24 of the Hindu Marriage Act, in HMA No. 1552/08/07, by virtue of which, the Respondent (husband) was

directed to pay a sum of Rs. 2000/-, per month, to the Petitioner (wife) towards maintenance pendente lite for both children, who are in the care

and custody of the Petitioner (wife), from the date of filing of the application i.e. 31.7.2008. The Petitioner (wife) was also directed to contribute

Rs. 2000/-, per month, towards maintenance of both the minor children.

3. Learned Counsel for the Petitioner wife submits that maintenance awarded by the trial court is highly insufficient taking into consideration that

Petitioner is staying in a rented accommodation and besides she has to incur various expenses on school uniform, transport and other day-to-day

expenses for herself and two children. While learned Counsel for the Petitioner does not dispute the fact that Petitioner is working, counsel submits

that her earning and the paltry amount awarded by the trial court makes it almost impossible for the Petitioner to bring up her two school going

children.

4. While elaborating the submissions made, counsel for the Petitioner submits that the Petitioner has to pay rent, school fee for both the children,

school bus fee, other payments for the extra-curricular activities of the children and other day-to-day expenses for running the house. It is further

submitted that being a single parent she has to ensure for the safety and security of the children.

5. Learned Counsel for the Respondent has opposed this petition on the ground that Respondent is working as a Computer Operator and his

salary is only Rs. 3800/-, per month. Respondent, who is present in Court, does not dispute the fact that his brother runs a business of Call Centre.

Respondent also submits that he is not participating in the business of his brother, however, it is not denied that he has good relations with his

brother.

6. I have heard counsel for the parties and also perused the order dated 29.10.2009 passed by learned trial court. In an application filed before

the learned trial court the Petitioner wife had stated that although she is working but her income is insufficient to maintain herself as well as her two

minor children. In the application, Respondent wife outlined various expenses incurred by her including expenses of Rs. 3000/-, per month, for the

maid servant; rent @ Rs. 3000/-, per month, with respect to the premises bearing No. 109, Antriksha Apartment, H-3, Vikas Puri, Delhi, from

March, 2007, to July, 2007, and thereafter rent for the premises bearing No. 130, the same complex. The Petitioner wife had also stated in the

application that her husband is carrying on the business under the name and style of A.K. Earth Movers of which he is the sole proprietor and is

earning more than Rs. 50,000/-, per month. It was also stated that the husband owns two houses and he has no liability except to maintain his wife

and children. In response to this application, the husband had taken a stand that the wife is earning Rs. 18300/-, per month, which is sufficient for

her to maintain herself. It was further stated by the husband that the business of A.K. Earth Movers had been closed down and at present he is

working with M/s Vijay Bros. (Contractors and Engineers) and is getting a salary of Rs. 3800, per month. The husband also denied that he owns

any immovable property.

7. Learned trial court while considering the application has relied on the reply filed by the Respondent wherein it is stated that Respondent herein is

doing a job and is earning only Rs. 3800/- per month.

8. The short question which arises for determination in this case is whether, in addition to the earnings of the wife, a sum of Rs. 2000/-, per month,

awarded by the trial court is sufficient for the Petitioner to maintain herself and her two minor children.

9. Marriage between parties was solemnized on 2.12.2003. Out of their wedlock two children were born on 30.9.2004 and 11.3.2006,

respectively. The Petitioner has given details of her expenses which include Rs. 3000/-, per month, for a maid servant to look after the two minor

children keeping in view that she is working. Petitioner wife has also given details of the premises, which have been taken by her on rent @ Rs.

3000/-, per month. Petitioner has also given details with regard to expenses incurred towards registration of the minor children in Mother's Pride

Kindergarten, their admission, tuition fee, uniforms and transportation. Petitioner has also pointed out that recently both the children have got

admission in R.D. Rajpal Public School, Sector 9, Dwarka, Delhi, where she has paid Rs. 38,000/- towards their admission fee and now she has

to pay Rs. 11,200/- towards quarterly school fee of both the children and Rs. 6000/- towards school transport charges.

10. Admittedly, prior to March, 2006, Petitioner and her two minor children were living with the Respondent in the matrimonial home and the

Respondent was maintaining the Petitioner and his two children. Although, the Petitioner (wife) had made a categorical assertion in the application

filed u/s 24 of the Hindu Marriage Act that the Respondent (husband) is a businessman and doing business of ""Earth Movers"" under the name and

style of A.K. Earth Movers as its sole proprietor and is earning more than Rs. 50,000/-, per month, however, the same has been denied by the

Respondent. In reply to the application filed u/s 24 of the Hindu Marriage Act, it has been stated by the Respondent (husband) that ""the aforesaid

business stand closed"" and at present he is only doing a job and his salary is Rs. 3800/-, per month. Although, no reply to present petition has been

filed by the Respondent, the Petitioner (wife) has placed on record copies of affidavits filed by her as well as her husband before the trial court. In

the additional affidavit dated 10.7.2009 filed by the Petitioner before the trial court the Petitioner has deposed that on 23.3.2009 she visited the

alleged address of the employer of the Respondent i.e. M/s Vijay Bros. (Contractor and Engineers) at 2361, Shaadi Kham Pur, Patel Nagar, New

Delhi, as furnished by the Respondent herein along with his affidavit dated 16.3.2009 and on reaching the aforesaid address it was revealed that no

firm by the name of M/s Vijay Bros. (Contractor and Engineers) was functioning from the said address, a shop dealing in plastic material was

functioning and on an enquiry the Petitioner was informed that no such person by the name of the Respondent herein was working in the said shop.

In the Additional affidavit, the Petitioner herein further deposed that she went to find out the second address of employer furnished by the

Respondent herein along with his affidavit dated 16.3.2009 situated at WZ-276G, Inder Puri, New Delhi, and on reaching the said locality, she

learnt that the aforesaid address was incomplete. She called up the Telephone number 25832676 furnished by the Respondent herein along with

his affidavit dated 16.3.2009 and a person, who picked up the phone, confirmed that there was nobody by the name of the Respondent at the

address. The Petitioner has also deposed that she took the exact location of the place where the said phone was installed and on reaching there

she found that the said place was a residential property and the person, who was running the business from the said place was not available and

when the owner was contacted on his mobile phone and the particulars of the Respondent herein were mentioned he disconnected the phone.

11. The Respondent (husband) has made no efforts in the proceedings before the trial court or during the pendency of this petition to rebut the

allegations made by the Petitioner, which gives an impression that the Respondent is intentionally concealing his true and correct income with a

view to avoid making the payment of maintenance. Even otherwise, it cannot be believed that a person, who was carrying on the business of "Earth

Movers" as a sole proprietor would close down the business and seek employment for Rs. 3800/-, per month, which is less than the minimum

wages, especially when his own brother is a businessman.

12. In response to this petition, neither any reply has been filed by the Respondent nor any document has been placed on record to show that

Respondent, who is an able bodied person and who belongs to a family, where the brother is carrying out his own business, is earning only Rs.

3800/-, per month. Thus, the Respondent is only trying to mislead the Court and is avoiding to disclose his true and correct income. Respondent is

stated to be residing at Vikas Puri, in a house, which belongs to her mother.

13. The Supreme court in the case of Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, has observed that "where diverse claims

are made by the parties some conjectures and guess work by court are permissible". Para 8 of the judgment reads as under:

8. The wife has no fixed abode of residence. She says she is living in a Gurudwara with her eldest daughter for safety. On the other hand the

husband has sufficient income and a house to himself. The Wife has not claimed any litigation expenses in this appeal. She is aggrieved only

because of the paltry amount of maintenance fixed by the courts. 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 circumstance of each case. Some scope for leverage can, however, be always there. 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 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. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs. 5,000/- per month payable by

Respondent-husband to the Appellant-wife.

14. It has been repeatedly held by courts that while considering an application u/s 24 of the Hindu Marriage Act the Court must consider the

means and capacity of a person against whom an order of payment of maintenance is made. While determining the quantum of maintenance, not

only the actual income but also the potential capacity must be considered. Court must also take into account the position and status of the parties.

The Petitioner herein is an able bodied person and has a capacity to earn and maintain his wife. It is necessary that the wife and the minor children

are provided a similar standard of living as was being enjoyed by them in the matrimonial home. The Petitioner and her minor children must be

allowed to live with dignity.

15. Having regard to the aforesaid facts and taking into consideration the status of the parties and the fact that Petitioner is an able bodied person

and has a capacity to earn and maintain his family keeping in view his past financial status and the details of the minimum expenses of the Petitioner

and her two minor children, I find that the order awarding maintenance @ Rs. 2000/-, per month, is unreasonable and insufficient. The Respondent

is duty bound to share the expenses of his two school going children. Accordingly, the impugned order is modified and the maintenance is fixed @

Rs. 5000/-, per month, for the Respondent and her two minor children. All arrears shall be cleared by the Respondent within three months from

today.

16. Accordingly, petition stands disposed of in view of the above.