

(2010) 09 DEL CK 0210

Delhi High Court

Case No: CS (OS) No. 316 of 2009

Shukla Chakraborty

APPELLANT

Vs

Sudeep Mitra

RESPONDENT

Date of Decision: Sept. 14, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Evidence Act, 1872 - Section 114
- Hindu Adoptions and Maintenance Act, 1956 - Section 18
- Hindu Marriage Act, 1955 - Section 18, 24

Citation: (2011) 161 PLR 57

Hon'ble Judges: V.K. Shali, J

Bench: Single Bench

Advocate: S.K. Bhaduri, for the Appellant; Satish Kumar, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Shali, J.

IA No. 2215/2009

1. This order shall dispose of an application bearing No. 2215/2009 filed u/s 151 CPC for grant of ad interim maintenance.

2. Briefly stated the facts of the case are that the plaintiff got married to the Defendant on 06.02.2007 according to Hindu Rites and Ceremonies at Delhi. It is alleged that there is no issue from the wedlock between the parties. After the marriage the plaintiff was taken to her matrimonial home at flat No. 411, Heritage Tower, Plot No. 1, Sector-3, Dwarka, New Delhi-110075 which is a three bedroom flat. It is alleged that the behavior of the husband and mother-in-law against the plaintiff was not good and she was subjected to cruelty with a view to demand dowry, as a consequence of which the relation between the plaintiff and the

Defendant husband became strained. It resulted in lodging of a complaint by the plaintiff with the Crime against Women Cell and an FIR was registered. It is alleged that the plaintiff was thrown from the matrimonial home and she started living with her parents.

3. The plaintiff has filed the present suit u/s 18 of the Hindu Adoption and Maintenance Act claiming the maintenance @ Rs. 20,000/- per month from the Defendant and also prayed for a suitable residential accommodation to be provided to the plaintiff by the Defendant. The plaintiff is claiming to be employed in a private firm and is getting a meager salary of Rs. 13,000/- which is not sufficient to maintain herself. As against this, the Defendant is stated to be earning more than Rs. 60,000/- per month from various sources including the salary, rental income etc.

4. The Defendant filed his written statement and contested the claim of the plaintiff. It was stated by the Defendant that the plaintiff had deserted matrimonial home without any valid cause or justification and thus the plaintiff is not entitled to any maintenance much less @ Rs. 20,000/- per month. It is alleged that the plaintiff is employed in a private firm and earning more than Rs. 25,000/- per month which is more than the salary of the Defendant. The Defendant has stated that he is working in a private concern where he is earning Rs. 20,000/- per month. So far as the other sources of income of the Defendant are concerned, it is stated that the flat No. 411, Heritage Tower, Plot No. 1, Sector-3, Dwarka, New Delhi-110075 belongs to the Defendant's mother. It is denied that the Defendant owns a car. It is stated that the car belongs to his brother-in-law who is presently posted out of Delhi. The Defendant has admitted that he owns a motor cycle. It is stated that the same was obtained on monthly installments. The entire loan amount has been paid in September, 2008. The Defendant has also denied that he is getting any regular income from the interest or from any property in Howrah (West Bengal). It is also stated that even a sum of Rs. 20,000/- which the Defendant was getting as a salary from a concern in Gurgaon has been stopped because the Defendant has resigned from the said concern and is looking for a new job. On the basis of these averments the Defendant has contested the claim of the plaintiff for grant of ad interim maintenance.

5. I have heard the learned Counsel for the parties.

6. The learned Counsel for the plaintiff has contended that there is no dispute that the plaintiff is employed in a private concern and is earning only Rs. 13,000/- per month as against an income of Rs. 60,000/- per month approximately from different sources being earned by the Defendant. The learned Counsel for the plaintiff has contended that the Defendant is earning an amount of Rs. 40,000/- to 50,000/- from his employer by way of salary and the balance amount he is getting by way of rental incomes and interest etc. So far as the assets of the Defendant are concerned, it was contended by the learned Counsel for the plaintiff that the Defendant owns a flat in Dwarka and a property in Howrah (West Bengal) which was let out and is bringing

him regular income. It was also stated that apart from this, the Defendant owns a car, motor cycle, a number of Fixed Deposits, credit cards etc. On the basis of all these facts it was contended that the Defendant had substantial source of income and means which he was not willing to use for the purpose of maintenance of the plaintiff. It was contended that since the plaintiff has filed the present suit u/s 18 of the Hindu Adoption and Maintenance Act and the plaintiff did not have sufficient means to maintain herself, therefore, the Defendant ought to be directed to pay a sum of Rs. 20,000/- by way of ad interim orders as maintenance to the plaintiff from the date she was turned out from the matrimonial home. The learned Counsel for the plaintiff has relied upon on a number of judgments in this regard. They are 2008 III AD Delhi 1, [Rekha Deepak Malhotra Vs. Deepak Jagmohan Malhotra, , Gaurav Nagpal Vs. Sumedha Nagpal, .](#)

7. The learned Counsel for the Defendant has refuted the contention of the plaintiff and took a plea that the present application for grant of ad interim maintenance u/s 151 CPC was not maintainable. It was alleged that the plaintiff on her own saying is employed in a private concern where she was admittedly earning Rs. 13,000/- per month. According to the Defendant's averments, the plaintiff was actually earning Rs. 25,000/- per month and she has deliberately not placed on record the documents with regard to her salary. As against this, it was contended by the learned Counsel for the Defendant that he was earning only Rs. 20,000/- from his employer and a salary certificate was also filed by him. The learned Counsel for the Defendant has also contended that after filing of the suit and the application, the Defendant has resigned from the said company in order to find better prospects. A copy of the acceptance of the resignation letter has been placed on record. The Defendant has admitted that he is owner of a motor cycle which was purchased by him on installments. It was also stated by him that the car which is alleged to be owned by the Defendant actually belongs to his brother-in-law. The photocopy of the registration certificate of the car has been placed in record in support of the contention. The Defendant has also denied that he has any property in Howrah (West Bengal) from which he is getting any rental income. It has been urged that the plaintiff has deliberately not placed on record her salary certificate, and therefore, an adverse inference ought to be drawn against her. It is urged that the plaintiff's salary is not Rs. 13,000/- but Rs. 25,000/- per month and that is the reason why salary certificate has not been placed on record.

8. Keeping in view all these facts, it has been contended by the learned Counsel for the Defendant that the plaintiff has sufficient means to maintain herself and there is no reason to pass an ad interim order granting her maintenance, as she is unable to sustain herself.

9. I have heard the learned Counsel for parties and perused the authorities.

10. So far as the judgments which have been relied upon by the learned Counsel for the plaintiff are concerned, they are not of much help to the plaintiff because the

question to be decided in the instant case is as to whether the plaintiff has sufficient means to maintain herself or not and as to whether the Defendant should be directed to pay a sum of Rs. 20,000/- to the plaintiff by way of ad interim maintenance during the pendency of the suit while as the factual matrix of all the cases relied upon are totally distinguishable.

11. The first judgment which has been relied upon by the plaintiff is *Sudhir Diwan (Sh.) v. Smt. Tripta Diwan and Anr.* III AD 2008 Delhi 1. It was a case where the learned Single Judge of this Court has observed that while passing an order for grant of maintenance u/s 24 of the Hindu Marriage Act a presumptive finding of income could not be passed by the Matrimonial Judge. In the instant case, there is no such presumptive income being assumed in favour of the Defendant or the plaintiff. The plaintiff claims to be earning Rs. 13,000/- per month without producing the certificate of the salary. As against this, the husband has alleged that the plaintiff is earning Rs. 25,000/- per month while as he himself is earning Rs. 20,000/-. He has produced his salary certificate. Further, a letter indicating the acceptance of resignation of the Defendant is also produced which obviously shows the version of the Defendant to be true and credible whereas the bona fides of the plaintiff are suspected on account of non-production of the salary certificate and the Court has to take prima facie view of the matter at this stage. Moreover, the law laid down by the Court in a particular judgment have to be seen in the context of the facts of the said case rather than to be applied generally to all other cases.

12. In [Rakha Deepak Malhotra Vs. Deepak Jagmohan Malhotra](#), the learned Single Judge of the Bombay High Court had held that the wife was entitled to maintenance u/s 18 of the Hindu Marriage Act as in that case her leaving the matrimonial home was justified, and therefore, merely on account of leaving the matrimonial home she could not be debarred from claiming the maintenance. In the instant case the plaintiff's case is that she was turned out of the matrimonial home while as the Defendant has alleged that she has deserted the matrimonial home without any just and reasonable cause.

13. Although providing of residence to the wife by the husband has been held by courts to be an integral part of the maintenance, but in the instant case in the absence of any prima facie evidence to show that the plaintiff has been thrown out or has left without just cause, it is difficult to grant maintenance at this ad interim stage.

14. In [Gaurav Nagpal Vs. Sumedha Nagpal](#), the Division Bench of this Court had held that u/s 18 of the Hindu Marriage Act an ad interim maintenance to the wife can be granted, and if so granted, the quantum thereof to be challenged. Somewhat a similar view is taken by the learned Single Judge in case titled [Neelam Malhotra Vs. Rajinder Malhotra and Others](#), wherein it was observed as under:

That being the position in law, when it is imperative for the husband to maintain his wife, it does not stand to any reason that during the pendency of the suit for grant of maintenance, which may take decades to attain finality, the wife in the first instance be forced to face starvation and then subsequently is granted maintenance from the date of the filing of the suit, if she is fortunate enough to survive till then. I feel that such a view will be against the very intent and spirit of Section 18 of the Act.

15. In another case titled *Raj Kumar v. Vijay Laxmi* 2002 (61) DRJ 485, the learned Single Judge of this Court had granted interim maintenance at a particular rate.

16. The sole question which arises for consideration is as to whether the plaintiff in the instant case is entitled to an ad interim maintenance when she herself is earning Rs. 13,000/- per month where her petition u/s 18 of the Hindu Adoption and Maintenance Act is pending adjudication. It may be pertinent here to mention that the plaintiff is claiming maintenance u/s 18 of the Hindu Adoption and Marriage Act @ Rs. 20,000/- per month. It is alleged by the learned Counsel for the plaintiff that she was subjected to cruelty, mental torture and harassment as a consequence of which she got an FIR lodged against the Defendant and his family member Rs. She was turned out from her matrimonial home on 22.09.2008 and since then she is living with her parents. It is not disputed by her that she is earning a sum of Rs. 13,000/- per month from her employer where she is employed. However, the plaintiff has not placed on record her salary certificate. There ought to have been no difficulty for the plaintiff to place her salary slip on record, but it seems that the plaintiff has deliberately withheld this vital piece of document or information.

17. Section 114(g) of the Evidence Act specifically lays down that if a party is in possession of a particular kind of evidence and the same is withheld then an adverse inference can be drawn against such a party on account of withholding of the said evidence.

18. The Defendant in his written statement has taken a specific plea that the plaintiff is employed in a private concern where she is earning Rs. 25,000/- per month. In the light of these averments, it becomes all the more imperative for the plaintiff to have placed on record her salary certificate which she has not done, therefore, one can safely assume that the objection of the Defendant regarding the payment of ad interim maintenance to the plaintiff on account of her alleged insufficiency of funds to maintain herself is grossly exaggerated and self created. The Defendant of his own has placed on record salary certificate purported to have been issued by his erstwhile employer which shows that his salary is Rs. 20,000/- per month. This clearly tilts the balance in favour of the Defendant and against the plaintiff. He has further resigned from the said post. It is not a case where the husband is earning a substantial amount of money as against a few thousand as claimed by the plaintiff. I agree with the contention of the learned Counsel for the plaintiff that in a given case even if the wife is earning she may be given ad interim maintenance but much would depend on the status of the parties, the income of the wife and the husband

etc. But in the present case in totality of circumstances it does not qualify to be a case where the wife deserves to be given as interim maintenance.

19. The Defendant has also denied that he owns a house in Dwarka where he is living or that he owns a car. The photocopy of the registration of the car is placed on record which shows that the car is in the name of Mr. Anik Bose who is claimed to be Defendant's brother-in-law. Similarly, the Defendant has stated that the flat in question where he is living actually belongs to his mother. No doubt, it has come on the record that the said flat originally belonged to his mother and the Defendant jointly and the latter has relinquished his 50 % of the share in the said flat in favour of her mother sometime in the year 2008 but that does not change the situation in favor of the plaintiff because the flat is being used for residence and is not as a source of income.

20. The Defendant has further stated that apart from this, the Defendant does not own any other property in Delhi or in Howrah (West Bengal) nor is there anything on record which shows that the Defendant is living a lavish life. The Defendant has also placed on record a letter showing the acceptance of resignation from his employer. In the light of all these facts while granting ad interim maintenance, the Court has to form a prima facie view of the matter on the basis of pleadings and the documents which are placed on record. I find that preponderance of probability is in favour of the Defendant to assume that his version is more truthful and correct as compared to that of the plaintiff who has withheld the information not producing her salary certificate which was the minimum expected from her.

21. I do not consider it to be a fit case to allow the application of the plaintiff for grant of interim maintenance as she is earning Rs. 13000 per month while as the Defendant is earning approximately Rs. 25000 per month, though he has resigned from the post. Accordingly the application is dismissed.

22. Expression of any opinion hereinbefore, may not be treated as expression of opinion on the merits of the case.