
Jay Vs Darshak Rameshbhai Shah

Special Civil Application No. 695 of 2013

Court: Gujarat High Court

Date of Decision: Aug. 27, 2014

Acts Referred:

Constitution of India, 1950 " Article 227#Hindu Adoptions and Maintenance Act, 1956 " Section 18, 23#Hindu Marriage Act, 1955 " Section 18, 23, 23(1), 24

Citation: (2014) 3 GLR 2335

Hon'ble Judges: C.L. Soni, J

Bench: Single Bench

Advocate: Ravindra Shah, Advocate for the Appellant; Kunjal D. Pandya, Advocate for the Respondent

Judgement

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C.L. Soni, J.

The petitioner, wife of the respondent, has filed this petition under Art. 227 of the Constitution of India challenging the order

dated 20-12-2012 passed by the Family Court, Ahmedabad below application Exh. 6 preferred by the petitioner for interim alimony under Sec.

24 of the Hindu Marriage Act, 1955 ("the Act") in Family Suit No. 1247 of 2011 filed by her for divorce. The Family Court considered the

income of the husband at Rs. 1 lac per month after giving admissible deduction relying on the salary slip of the respondent for the month of

November 2011 and awarded Rs. 10,000/- as interim alimony to the petitioner from the date of the application, i.e. 8-11-2011 till disposal of the

divorce petition. While granting such amount of interim alimony, the Family Court considered the income of the wife at Rs. 13,802/- per month.

Learned Advocate Mr. Ravindra Shah appearing for the petitioner submitted that the respondent in his written statement clearly stated that his

salary was Rs. 2 lac per month, however, subsequently while presenting the written submissions by his Advocate, salary slip was produced, based

on which the learned Judge considered the income of the respondent at Rs. 1 lac per month. Mr. Shah submitted that in fact, as per the copy of the

salary slip now placed before this Court, the gross income of the husband is Rs. 1,59,814/- per month. Mr. Shah submitted that learned Judge

awarded meager amount of Rs. 10,000/- per month as interim maintenance, which would not be sufficient for the petitioner to live her life with

same status and comfort with which she was living as a wife of the respondent. Mr. Shah submitted that learned Judge has not given any reason as

to how Rs. 10,000/- was arrived at as interim maintenance, especially when the respondent has no other liability to discharge. Mr. Shah submitted

that the father of the respondent is a retired officer from the University and elder brother of the respondent, who is stated to have left the job, was

earning more than Rs. 50,000/- and it is not correct to say that the respondent is required to discharge liability to maintain his elder brother. Mr.

Shah submitted that even though the petitioner is earning Rs. 13,802/- per month, which is now increased to Rs. 17,000/-, the petitioner was

entitled to get sufficient amount from the respondent-husband to maintain herself and to live with status in the society especially when the

respondent-husband is holding high position in a company at Bangalore. Mr. Shah thus urged to quash and set aside the impugned order insofar as

the learned Judge ordered the respondent to pay Rs. 10,000/- per month as interim maintenance to the petitioner and to fix Rs. 30,000/- as interim

alimony to the petitioner.

2. In support of his submissions, Mr. Shah has relied on following decisions:

(1) In the case of Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, ;

(2) In the case of Neeta Rakesh Jain Vs. Rakesh Jeetmal Jain, .

3. As against the above arguments, learned Advocate Mr. Kunjal Pandya appearing for the respondent-husband submitted that the respondent

having realised that figure of Rs. 2 lac per month stated in the written statement was a mistake, he filed clarificatory affidavit before the Court

below. Mr. Pandya submitted that the petitioner is also responsible to suppress her real income. Mr. Pandya submitted that when there was

increase in the salary of the petitioner from Rs. 13,000/- to Rs. 17,000/-, it was expected of her to disclose such increase in the salary, instead, the

respondent is alleged to have suppressed his real income. Mr. Pandya submitted that the gross income of the respondent was Rs. 1,38,813/- and

after deducting the amount towards income tax, professional tax, etc. net income of the respondent-husband would come to Rs. 99,905/- per

month. Mr. Pandya submitted that subsequently, there was increase in the salary of the respondent and as per the latest salary slip, gross income of

the respondent is Rs. 1,59,814/-, wherefrom deduction of Rs. 41,118/- is allowed and the net income of the respondent is now Rs. 1,18,696/-.

Mr. Pandya has placed on record xerox copy of the salary slip of the respondent for the month of July, 2014.

4. Learned Advocate Mr. Pandya submitted that the petitioner cannot be permitted to live luxury life at the cost of the respondent and what is

required by the petitioner for her maintenance is in fact less than the amount of Rs. 10,000/- per month as the petitioner is now earning Rs.

17,000/- per month which is sufficient for her sustenance. Mr. Pandya submitted that considering the liabilities on the shoulder of the respondent

towards his aged parents, who are suffering from diabetes and other age related ailments, as also his liability towards his unmarried sister, awarding

of Rs. 10,000/- per month by the learned Judge could not be said to be in any way on lower side. Mr. Pandya submitted that Rs. 10,000/-

awarded by the learned Judge is not a permanent alimony but is an interim alimony and the learned Judge having exercised sound discretion on the

basis of the material available on record, this Court may not interfere with the impugned order made by the Family Court. He thus urged to dismiss

the petition.

5. In support of his submissions Mr. Pandya has relied on following decision(s):

(1) In the case of Dharamsi Dahyabhai Patel Vs. Devyani Dharamsi Patel, .

6. Having heard learned Advocates for the parties, it appears that the learned Judge while deciding the application for interim alimony, though

considered net salary income of the respondent at Rs. 1,00,000/- on the basis of salary slip of one year before the date of impugned order,

however, has not discussed as to how he arrived at Rs. 10,000/- for interim maintenance of the petitioner. It appears that what has weighed with

learned Judge for grant of Rs. 10,000/- as interim maintenance to the petitioner is the earning of the petitioner of Rs. 13,802/- per month.

However, even while considering the income of the petitioner, learned Judge could not have ignored high earning of the respondent.

7. As per salary slip of the respondent for the month of March, 2011, the net income of the respondent was taken at Rs. 1 lac and after increase in

salary of the respondent as per latest salary slip, net income of the respondent-husband would come to Rs. 1,27,750/- after admissible deduction.

Considering first salary income and deducting Rs. 10,000/- therefrom, the respondent was still left with Rs. 80,000/- per month and considering

the present income, the respondent-husband will be left with around Rs. 1,17,000/- per month.

8. In the case of Dharamsi Dahyabhai (supra), this Court while deciding the question about grant of maintenance in the context of Secs. 18 and 23

of the Hindu Adoptions and Maintenance Act, 1956 has held and observed in Paras 15 to 19 as under:

15. Section 18 of the Act substantially reiterates the Hindu Law principle that the right of the wife for maintenance is an incident of the status of

matrimony and a Hindu is under legal obligation to maintain his wife. The obligation to maintain the wife is personal in character and arises from the

very existence of the relation between the parties.

16. Section 18 is required to be read with Sec. 23 which is material for the purpose of this Revision Application and relevant portion thereof reads

as under:

Section 23(1) it shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the

provisions of this Act, and in doing so, the Court shall have due regard to the considerations set out in sub-sec. (2) or sub-sec. (3), as the case

may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had

to--

(a) The position and status of the parents,

(b) The reasonable wants of children,

(c) If the claimant is living separately whether the claimant is justified in doing so,

(d) The value of the claimant's property and any income derived from such property or from the claimant's own earnings or from any other

source,

(e) The number of persons entitled to maintenance under this Act.

17. The aforesaid provisions vest wide discretion in the Court to decide whether any maintenance should or should not be awarded? In exercising

its discretion in the matter of assessing the quantum of maintenance to be awarded to the wife, the Court must have regard to all the factors set out

in sub-sec. (2) of the Sec. 23. The Court must be guided by the relevant provisions of the Act, and must have regard to its object. However, the

fixation of quantum of maintenance cannot be the matter of mathematical certainty.

18. Sub-section (2) read with sub-sec. (1) of Sec. 23 leaves the matter of fixation of amount of maintenance to the discretion of the Court while

stressing that the position and status of the parties, reasonable wants of the claimant, the income and the property of the claimant and the number of

persons when the husband is bound to maintain are among the factors and circumstances which must be taken into consideration by the Court. In

fixing the quantum of maintenance it would be necessary and of primary importance to consider the overall financial position of the husband. The

words "position and status of the parties" in sub-sec. (2) are wide enough to include the financial position of both the parties as a matter of vital

consideration in the matter.

19. While considering the aforesaid factors, and mainly question as to what is required by the wife to maintain herself, the Courts have to steer

clear of the two extremes, namely, they should not give maintenance to the wife which would keep her in luxury and would make judicial

separation profitable and also impede any future chances of reconciliation. They should also steer clear of the other extreme, namely,

penuriousness, i.e., not to drive the wife in penury (See Kashinath Sahu Vs. Smt. Devi and Others, .

9. In the abovesaid decision, though the Court was not considering the question about grant of interim alimony under Sec. 24 of the Act, still

however, the Court has observed that the matter of fixation of maintenance is of the discretion of the Court while stressing that the position and

status of the parties and other aspects are to be considered.

10. In the case of Jasbir Kaur Sehgal (supra), the Hon"ble Supreme Court has held and observed in Paras 8 and 9 as under:

8.No set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstances 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 those he is obliged under the law and statutory but

involuntary payments or deductions. 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.

9. The question then arises as to from which date the wife would be entitled to claim the enhanced amount of maintenance pendente lite. If wife has

no source of income it is the obligation of the husband to maintain her and also children of the marriage on the basis of the provisions contained in

the Hindu Adoptions and Maintenance Act, 1956. Her right to claim maintenance fructifies on the date of the filing of the petition for divorce under

the Act. Having thus fixed the date as the filing of the petition for divorce it is not always that the Court has to grant the maintenance from that date.

The Court has discretion in the matter as to from which date maintenance under Sec. 24 of the Act should be granted. The discretion of the Court

would depend upon multiple circumstances which are to be kept in view. These could be the time taken to serve the respondent in the petition; the

date of filing of the application under Sec. 24 of the Act; conduct of the parties in the proceedings; averments made in the application and the reply

thereto; the tendency of the wife to inflate the income out of all proportion and that of the husband to suppress the same and the like. There has to

be honesty of purpose for both the parties which unfortunately we find lacking in this case. We are, therefore, of the opinion that ends of justice

would be met if we direct that maintenance pendente lite as fixed by this judgment to be payable from the date of impugned order of the High

Court which is October 16, 1996. We order accordingly. The impugned judgment of the High Court shall stand modified to that extent. All arrears

of maintenance shall be paid within a period of two months from today and then regularly every month.

11. In the case of Neeta Rakesh Jain (supra), the Hon^{ble} Supreme Court has held and observed in Paras 9 and 10 as under:

9. Section 24 thus provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may

apply to the Court to direct the respondent to pay the monthly maintenance as the Court may think reasonable, regard being had to the petitioner's

own income and the income of the respondent. The very language in which Section is couched indicates that wide discretion has been conferred on

the Court in the matter of an order for interim maintenance. Although the discretion conferred on the Court is wide, the Section provides guideline

inasmuch as while fixing the interim maintenance the Court has to give due regard to the income of the respondent and the petitioner's own income.

10. In other words, in the matter of making an order for interim maintenance, the discretion of the Court must be guided by the criterion provided

in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the

background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its

very nature is temporary, a detailed and elaborate exercise by the Court may not be necessary, but, at the same time, the Court has got to take all

the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute.

12. In light of the above settled principles of law, the question of grant of interim alimony claimed by the petitioner under Sec. 24 of the Act is

required to be decided.

13. Learned Advocate Mr. Pandya, however, submitted that since the respondent-husband has other liabilities towards his aged parents and his

unmarried sister as also towards his elder brother who is presently unemployed whereas there is increase in the salary of the petitioner from Rs.

13,802/- to Rs. 17,510/-, this Court may not interfere with the impugned order.

14. It is worth mentioning here that as per the affidavit dated 12-7-2014 filed in the present petition by the respondent, the elder brother of the

respondent named Bhavik Shah resigned as Business Manager from I.B.M. India Pvt. Ltd. vide letter dated 6-3-2014 with effect from 21-3-

2014. Mr. Shah submitted that the four lines handwritten resignation shown to have been accepted by I.B.M. Company on the very same date is

got up to make a show that the respondent is also to discharge additional liability to maintain his elder brother who as Business Manager was

earning more than Rs. 50,000/- per month and cannot be expected to depend upon the respondent. Irrespective of such submission of Mr. Shah,

in any case, the so-called resignation was recently tendered. It will have no bearing on determination of the interim alimony of the petitioner. But,

instead such elder brother who retired as Business Manager is capable to share the burden of liability towards his parents and the unmarried sister

with the respondent.

15. As pointed out by learned Advocate Mr. Pandya, the father of the respondent is a retired employee of the University but since retired as a

non-teaching staff, he is not getting any pension. It cannot be ignored that the respondent is under obligation to maintain his aged parents and such

maintenance would include even to spend for their medical treatment at the old age. It also cannot be ignored that the respondent is to look after

his unmarried sister. However, even while discharging such liabilities towards the parents and unmarried sister, the respondent cannot remain

unmindful to the fact that his wife needs to live, not luxurious life, but with comfort and with same status when lived with the respondent. It is true

that the petitioner is earning Rs. 17,510/- per month. Adding such amount to Rs. 10,000/- awarded by the Court below under the impugned

order, total amount with petitioner would come to Rs. 27,510/- per month.

16. In such facts situation, the question is whether the petitioner who was otherwise living life with comfort and enjoying good status as wife of a

well placed husband in software company at Bangalore earning handsome salary per month could be awarded amount of Rs. 10,000/- or some

enhancement is required to see that she could live life with same status as she was living with her husband. If the husband is left with an amount of

Rs. 1,17,000/- per month even after paying maintenance amount of Rs. 10,000/- per month as per the impugned order, he could certainly provide

reasonable more amount of interim maintenance for his wife while discharging other liabilities. In such view of the matter, the Court is of the view

that the interim maintenance awarded by the Family Court under the impugned order needs to be increased to Rs. 20,000/- per month and to that

extent, the impugned order shall be required to be modified.

17. Learned Advocate Mr. Shah also made serious grievance as regards awarding of only Rs. 5,000/- to the petitioner by way of expenses

towards Advocate fees and other ancillary expenses for the litigation. Learned Judge has observed in Para 15 of the order that the petitioner has

stated that she has engaged an Advocate for Advocate fees of Rs. 35,000/- and Rs. 2,000/- for ancillary expenses. It is also stated that the

petitioner has already paid Rs. 5,000/- towards Advocate fees and Rs. 1,000/- towards other ancillary expenses on 2-11-2011 and for such

payment, receipt is considered by the learned Judge.

18. The Court finds that though learned Judge has recorded that wife has engaged Advocate by fixing Advocate fees of Rs. 35,000/- and Rs.

2,000/- for ancillary expenses, no reasons are provided as to why only Rs. 5,000/- is awarded towards expenses of Advocate fees and other

ancillary expenses. Such amount of Rs. 5,000/- towards expenses appears to be on lower side and the same is required to be enhanced to Rs.

20,000/-.

19. For the reasons stated above, the petition is partly allowed. Order dated 20-12-2012 passed by the learned Principal Judge, Family Court,

Ahmedabad stands modified so as to award Rs. 20,000/- per month as interim maintenance to the petitioner under Sec. 24 of the Act till disposal

of the divorce petition filed by her. The petitioner shall be thus entitled to Rs. 20,000/- per month as interim maintenance with effect from the date

of the application, i.e. 8-11-2011 till the final disposal of the divorce petition. The respondent is also directed to pay Rs. 20,000/- towards cost of

the litigation to the petitioner. The respondent is directed to comply with this order and pay to the petitioner or deposit the difference of amount of

interim maintenance as also the difference of amount of cost within a period of FOUR WEEKS from today with the Family Court. Rule is made

absolute to the aforesaid extent.

20. At this stage, learned Advocates for the parties pointed out that the family suit is of the year 2011 and there is no chance for re-union of the

parties. They, therefore, request to direct the Family Court to expedite the hearing of the family suit. In the facts of the case and since the family suit

is of the year 2011, interest of justice would be subserved if the family suit between the parties is heard at the earliest. The Family Court is,

therefore, directed to hear and finally decide the Family Suit No. 1247 of 2011 within a period of ONE YEAR from today.