
(2000) 04 MP CK 0023

Madhya Pradesh High Court

Case No: Civil Revision No. 2992/99

Dr. Avnish Pawar

APPELLANT

Vs

Dr. Sunita Pawar

RESPONDENT

Date of Decision: April 26, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Hindu Adoptions and Maintenance Act, 1956 - Section 20
- Hindu Marriage Act, 1955 - Section 13(1), 24, 24(3)

Citation: (2000) 3 MPHT 415

Hon'ble Judges: Dipak Misra, J

Bench: Single Bench

Advocate: Raman Patel, for the Appellant; Manish Verma, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dipak Misra, J.

Invoking the revisional jurisdiction of this Court u/s 115 of the CPC (hereinafter referred to as "the Code") the husband/petitioner has called in question the defensibility of the order dated 6-9-99 whereby the 4th Additional District Judge, Jabalpur in Civil Suit No. 251-A/98 has directed grant of maintenance in favour of a major son.

2. The facts as have been undraped are that the petitioner filed an application u/s 13(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") seeking divorce from his wife on many a ground including cruelty. The efforts of reconciliation by the trial Court became an exercise in futility. Undisputedly the marriage between the two was solemnised in the year 1979 and in the wedlock a son was born in the said year and he was named Prashant. It is the admitted position that said Prashant stays with his mother, the non-applicant herein.

3. The non-applicant filed an application u/s 24 of the Act for grant of litigation expenses of Rs. 5,000/- and maintenance allowance at the rate of Rs. 1,500/- per month for herself and Rs. 1,000/- for the son. The learned trial Judge has discussed at length with regard to earning abilities of the petitioner and the non-applicant as both of them are practising doctors and came to hold that the non-applicant is not entitled to pendente life maintenance. However, the Court below directed payment of Rs. 2,500/-towards litigation expenses.

4. It is to be noted here that the aforesaid aspects of the order are not challenged before this Court. What is assailed before this Court is the grant of maintenance by the trial Court to the son, Prashant, who is a major. The learned trial Judge to confer such benefit on Prashant relied on the decision rendered in the case of [Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others](#), .

5. Mr. Raman Patel, learned counsel, assailing the impugned order has contended that the learned trial Judge has fallen into grave error by granting maintenance to a major son which is not permissible in law. The learned counsel has also canvassed that the trial Judge has not appreciated the essence of a ratio laid down by the Apex Court in the decision of Jasbir Kaur Sehgal (supra).

Resisting the aforesaid submission Mr. Manish Verma, learned counsel for the non-applicant, has contended that the learned trial Court has rightly granted the maintenance at the rate of Rs. 500/- per month to the major son who stays with the wife-non-applicant and maintained by her. It is his further submission that the learned trial Judge has appreciated the decision of the Apex Court in proper perspective and there is no error in the same.

6. To appreciate the rival submissions raised at the Bar it is apposite to refer to Section 24 of the Act, 1955, which reads as under :

"24. Maintenance pendente lite and expenses of proceedings.--Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

7. This provision came to be interpreted by the Apex Court in the case of Jasbir Kaur Sehgal (supra) and their Lordships have expressed the opinion that when the wife claims maintenance u/s 24 of the Act she can claim maintenance for the daughter who stays with her and is maintained by her. It would be apposite to quote Their Lordships :

".... The fact remains that the wife has no source of income and she is also maintaining her eldest unmarried daughter. Under the Hindu Adoption and Maintenance Act, 1956 it is

the obligation of a person to maintain his unmarried daughter if she is unable to maintain herself. In this case since the wife has no income of her own, it is the obligation of the husband to maintain her and her two unmarried daughters, one of whom is living with his wife and one with him. Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceeding but this Section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since the wife is maintaining the eldest unmarried daughter her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife..."

Mr. Manish Verma, learned counsel for the non-applicant, has submitted with immense emphasis that when the daughter is maintained by the wife and she is entitled to maintenance from the husband there is no reason to make any distinction between the daughter and a son. One may keep the provisions of Hindu Adoption and Maintenance Act, 1956 in view. The Apex Court in the case of Jasbir Kaur Sehgal (supra) kept the provisions of said Act in view and held that the husband is under obligation to maintain an unmarried daughter and when an application u/s 24 of the Act, 1955 is filed, there is no reason for not granting maintenance to the wife who maintains the daughter. Their Lordships did not desire to read Section 24 in the narrow sense and appreciated the factual backdrop in the light of the provision enshrined under Hindu Adoption and Maintenance Act, 1956. In this context I may profitably refer to Section 20 of the aforesaid Act which reads as under :--

"20. Maintenance of children and aged parents.-- (1) Subject to the provisions of the Section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation :-- In this Section "parent" includes a childless stepmother."

On a bare reading of the aforesaid provision it becomes graphically clear that the child is entitled to maintenance as long as it is a minor. Exception has been carved out in Sub-section (3) which covers an unmarried daughter, but as far as a major son is concerned there is no exception. In my humble view a major son will not come within the purview of Section 24 of the Act, to be entitled to maintenance from the father. The decision rendered in the case of Jasbir Kaur Sehgal (supra) is distinguishable and is not applicable when a case of major son arises.

8. In view of my preceding analysis the impugned order passed by the learned trial Judge is pregnable to the extent of grant of maintenance to Prashant is concerned and accordingly that direction is set aside. Resultantly, the civil revision is allowed to the extent indicated above. However, there shall be no order as to costs.