

(2014) 10 BOM CK 0046

Bombay High Court

Case No: Writ Petition No. 2921 of 2014

Om Prakash Puri

APPELLANT

Vs

Nandita Puri

RESPONDENT

Date of Decision: Oct. 14, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Adoptions and Maintenance Act, 1956 - Section 23
- Hindu Marriage Act, 1955 - Section 24

Citation: (2014) 6 ABR 721 : (2015) 1 ALLMR 273 : (2015) 2 BomCR 735 : (2015) 2 DMC 607 : (2014) 6 MhLJ 645

Hon'ble Judges: M.S. Sonak, J

Bench: Single Bench

Advocate: I.A. Sayyed and Pooja Kulkarni, Advocate for the Appellant; Ashish Kamath, Vishal Kanade and Maya Idnani, Advocate for the Respondent

Judgement

M.S. Sonak, J.

This petition is directed against the order dated 25 September 2013 (impugned order) made by the Family Court at Bandra, awarding the following "interim maintenance" to the respondent and her minor child:

- (a) Rs.1,25,000/- per month to the respondent;
- (b) Rs.50,000/- per month towards the minor child.

The aforesaid amount of interim maintenance is over and above the sum of Rs.1,15,000/- towards the actual education and medical expenses of the minor child, which the petitioner has been paying and continues to pay to the respondent and the minor child.

2. Mr. I.A. Sayyed, learned counsel for the petitioner, at the outset made a grievance that the respondent has been resorting to a parallel "media trial" which is

occasioning severe prejudice, not merely to the petitioner, but also the proceedings before this Court. Accordingly, he submitted that appropriate restraint orders be made against the respondent in order to prevent her from indulging into such form of media trial. In support of such grievance, Mr. Sayyed tendered the affidavit dated 30 June 2014 made by the petitioner in this regard.

3. In these proceedings, there is no necessity to go into the aforesaid issue. Whatever rights and remedies the petitioner may have with regard to the prejudice which he claims is being occasioned to him, the petitioner is free to resort to the same. However, in the facts and circumstances of the present case, to say that these proceedings are being affected, is too far fetched and therefore untenable. The motion for issue of restraint orders is consequently denied.

4. At the query of the court as to whether any settlement was possible, the learned counsels for either parties stated that efforts have been made, which have unfortunately not borne significant success. However, one thing that should be said to the credit of Mr. I.A. Sayyed, as also the petitioner, who was personally present in the court is that both of them assured fullest cooperation, when it came to extension of support both emotional and financial to the minor child, who admittedly has some special needs. There was not the slightest hesitation on the part of both Mr. Sayyed, as well as the petitioner, whenever any issue arose in the matter of provisions for the minor child. This is indeed commendable.

5. Mr. Sayyed, was however his vehement self, when it came to attacking the impugned order, which according to him has ignored vital and relevant parameters in the matter of award of interim maintenance. Mr. Sayyed adverted to some of such vital parameters, which according to him have been totally ignored by the Family Court in making the impugned order.

(A) the circumstance that the respondent continues to enjoy the following properties of the petitioner, in respect of which the petitioner pays all costs and outgoings:-

- (i) Flat No. 703, Trishul -2 - 2 BHK with Terrace -1500 sq. ft., 7 Bunglows, Versova, Andheri (W), Mumbai 400061
- (ii) Flat No. 1, Trishul - 2, 7 Bunglows, Versova, Andheri (W), Mumbai 400061;
- (iii) Flat No. 203 - 2 BHK - 1000 sq. ft. - Nalanda Nanek Society, 7 Bunglows, Versova, Andheri (W), Mumbai 400061;
- (iv) Shop No. 5, Queen's land, Shastri Nagar, Lokhandwala Complex, Andheri (W), Mumbai 400053;
- (v) Ishan Kutir -a Bunglow - at Plot No. C-8, Lokhandwala Complex, Deccan Hills, Khandala;
- (vi) Property in Calcutta in her and in her mother's name by taking loan from petitioner.

(B) In contrast to the aforesaid, the circumstance that the petitioner is left with only two apartments i.e. 303, LIB Oakland Park, Lokhandwala Complex, Andheri (West), Mumbai 400053 and Flat No. 603, Jessal Park, Bhayandar (East), which flat is also occupied by his brother;

(C) The circumstance that it is the petitioner who has actually made payments towards club fees, electricity charges, gas bills, motor car insurance, salary towards cook, driver, taxes, society charges, travelling expenses, telephone charges, licence fees towards occupation of certain apartments, apart from actual money, the total of which would aggregate to approximately Rs.70,00,000/- for the period between November 2012 to September 2013.

(D) The circumstance that there are several bank accounts and fixed deposits in the name of both the petitioner and the respondent, which have virtually been frozen by the respondent. Therefore, a situation has arisen, whereby the petitioner is disabled from utilising the amounts in such fixed deposits and bank accounts on one hand, and at the same time the petitioner is required to make payments towards maintenance to the respondent and the minor child.

(E) The circumstance that the petitioner on his own has been paying an amount of Rs.1,15,000/- to the respondent and the minor child, apart from bearing significant financial burden towards their maintenance and upkeep, as aforesaid;

(F) The circumstance that the respondent was herself earning substantial amounts through journalism as well as rents of properties actually occupied by the petitioner;

(G) The circumstance that the petitioner bearing the expenditure with regard to educational and medical needs of not just the minor child but also the respondent's ailing mother.

6. Apart from the aforesaid, Mr. Sayyed submitted that the Family Court in making the impugned order had applied the incorrect tests and ignored the correct ones. There is no discussion as to the "reasonable wants" of the respondent and the minor child. There is no discussion as to the earnings and earning capacity of the respondent. Unnecessarily, adverse inference has been drawn against the petitioner for failure to submit tax returns post assessment year 2009-10, notwithstanding the fact that such audited tax returns were unavailable and therefore not produced. In the course of arguments, Mr. Sayyed offered to produce the tax returns which were by now available and submitted that the same demonstrate that there has been a decline in the petitioner's income. Further, Mr. Sayyed submitted that the Family Court has totally ignored the circumstance that the petitioner had at no stage neglected to maintain the respondent or the minor child. On the contrary, the petitioner has provided, not merely for needs but also for the luxuries of the respondent and the minor child. For all these reasons, Mr. Sayyed submitted that the impugned order is liable to be set aside.

7. Mr. Ashish Kamath, the learned counsel for the respondent objected to taking cognizance of income tax returns, on the ground that the same had not been produced before the Family Court, despite the petitioner being afforded an opportunity to produce the same. Further, Mr. Kamath submitted that by the impugned order, only interim maintenance had been fixed, which was by no means excessive or disproportionate. The impugned order is well within the bounds of jurisdiction vested in the Family Court and therefore this Court in exercise of its writ jurisdiction, may not interfere with the same. For all these reasons, Mr. Kamath submitted that the present petition may not be entertained.

8. The rival contentions, now fall for my determination.

9. At the outset, it is to be borne in mind that presently we are at the stage of award of interim maintenance only. Section 23 of the Hindu Adoptions & Maintenance Act, 1956 (said Act) confers a discretion upon the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of the said Act, and in doing so, the Court shall have due regard to the considerations set out in sub-sections (2) or (3), as the case may be. Sub section (2) of Section 23 provides that in determining the amount of maintenance to be awarded to a wife or a child, regard shall have had to the position and status of the parties, reasonable wants of the claimant, if the claimant is living separately, whether the claimant is justified in doing so, the value of claimant's property and any income derived from such property or the claimant's own earning from any other source and finally the number of persons entitled to maintenance under this Act.

10. The very language in which the section is couched indicates that wide discretion has been conferred on the court in the matter of order for interim maintenance. Although, the discretion conferred is wide, nevertheless the same is a judicial discretion and therefore has to be informed with reason, equity and good conscience. The section also provides for certain guidelines in form of parameters to be taken into consideration by the Court in determining the amount of maintenance to be awarded to a wife or a child. For example, the Court in exercising this discretion, is required to have regard to the position and status of the parties, reasonable wants of the claimant, justification for living separate, value of claimant's property or her earnings and so on. In so far as an order for interim maintenance is concerned, the same, by its very nature is temporary and therefore a detailed or elaborate exercise by the Court may neither be necessary nor feasible. However, even at the stage of award of interim maintenance, it is expected that the Court takes into consideration the relevant factors and parameters referred to in sub section (2) of Section 23 of the said Act and arrives at suitable amount towards interim maintenance. Some amount of guess work is inevitable, however same should not be fanciful or whimsical. Rather, the same should be within reasonable bounds and after regard is had to the relevant factors and parameters referred to in sub section (2) of Section 23 of the said Act.

11. In the case of Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, the Supreme Court has held that Section 24 of the Hindu Marriage Act, 1955 cannot be given a restricted meaning. The circumstance that the wife, in the said case was maintaining the eldest unmarried daughter, was required to be taken into consideration in the matter of award of maintenance to such wife. Further, it was observed that no such formula can be laid down for fixing the amount of maintenance. In the very nature of things, it has to depend upon the facts and circumstances of each case. Some scope for leverage has to be conceded by taking into consideration the status of the parties, their respective needs, capacity of the husband to pay regard to the reasonable expenses for his own maintenance and those whom he is obliged under the law to pay, involuntary payments or deductions and so on. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and 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 the case. At the same time, the maintenance fixed cannot be excessive or extortionate.

12. Therefore, applying the aforesaid test and principles, we have to examine whether the impugned order which awards interim maintenance to the respondent, warrants any interference.

13. As the petitioner failed to produce his income tax returns for the assessment year 2010-11 and 2011-12, the Family Court drew an adverse inference against the petitioner and chose to go by the income tax returns for the assessment year 2009-10 which show his gross total income at Rs.3,34,67,115/. As noted earlier, Mr. Sayyed, notwithstanding protest by Mr. Kamath produced the income tax returns for the assessment years 2010-11 and 2011-12, which indeed show a decline in the petitioner's income. Even if I were to over rule the objections of Mr. Kamath and accept the said income tax returns for consideration, the same indicate that even after payment of taxes, the balance income available to the petitioner would be in the range of about Rs.2.3 crores and Rs.1.53 crores for the two assessment years. This means that average monthly income of the petitioner for the two assessment years would be in the range of Rs.19 lacs and Rs.13 lacs respectively. If this is compared to interim maintenance awarded by the impugned order, over and above the payments and expenses which the petitioner voluntarily incurs for the maintenance of the respondent and the minor child, it cannot be said that the same is grossly disproportionate or that the amounts awarded are in any manner excessive or extortionate.

14. There is no merit in Mr. Sayyed's criticism that the Family Court has ignored relevant parameters and factors in the matter of award of interim maintenance. The impugned order takes cognizance of the circumstance that the petitioner has been making voluntarily payments, payments towards LIC premium, Mediclaim policy, school fees for the minor child, payments towards electricity bills, society

maintenance charges, phone bills etc. The impugned order also takes cognizance of the circumstance that the parties have joint bank accounts and fixed deposit receipts which are inoperable due to the dispute between the spouses. The impugned order also takes cognizance of the properties which the respective spouses hold and enjoy. After taking cognizance of such factors, the Family Court has determined the quantum of interim maintenance. It is possible that there is some element of guess work involved in such exercise. However, the same does not appear to be fanciful or beyond reasonable bounds. Ultimately, as noted earlier, at the stage of award of interim maintenance which, by its very nature is temporary, detailed and elaborate exercise by the court can neither be feasible nor advisable. As long as the Family Court is alive to relevant factors and parameters and the ultimate award is not extortionate or grossly disproportionate, there is no cause to interfere with the exercise of judicial discretion in the exercise of powers of judicial review under the Constitution of India.

15. Mr. Sayyed placed reliance upon the decisions of the Supreme Court in the cases of Chaturbhuj Vs. Sita Bai, , Shri Bhagwan Dutt Vs. Smt. Kamla Devi and Another, , Shail Kumari Devi and Another Vs. Krishan Bhagwan Pathak @ Kishun B. Pathak, , in support of his submission that object of award of maintenance is not to punish a husband for his past neglect, but to prevent vagrancy and therefore, it is always incumbent upon a court to determine whether a wife was "unable to maintain herself" before any award for maintenance is made whether at the interim or final stage.

16. It is to be noted that all the aforesaid decisions were basically in the context of the provisions contained in Section 125 of the Cr.P.C. Besides, in the cases of Chaturbhuj (supra) and Bhagwan Dutt (supra), even in the context of Section 125 of the Cr.P.C., the Supreme Court has observed that the test is whether a wife is in a position to maintain herself in the way she was used to in the place of her husband or that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with the status of the family. The expression "unable to maintain herself" does not mean that the wife must be absolute destitute before she can apply for maintenance under Section 125 of the Cr.P.C. The decision in the case of Shail Kumari Devi (supra) is an authority for the proposition of that despite the absence of any specific provision under Section 125 of the Cr.P.C. (before Amendment Act 50 of 2001) the court had the power by necessary implication to make interim order of maintenance subject to final outcome of the application.

17. Mr. Sayyed also placed reliance upon the decision of the Supreme Court in the case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , in which a tendency to grant interim order for mere asking or the tendency to grant interim order practically giving principal relief has been deprecated. In this case, it cannot be said that the Family Court has made an

order for interim maintenance for the mere asking or for that matter, the order made is virtually in the nature of final relief. Upon evidence being led by the parties and detailed examination thereof, it is always possible that the Family Court either reduces or enhances the maintenance amount. The reliance placed upon the decision in the case of Dunlop India Ltd. (supra) is therefore misplaced. Besides the said decision basically dealt with a situation where dues to the State were sought to be interdicted, without requiring the petitioner to resort to statutory alternate remedies, which is clearly not the position in the present case.

18. At this stage, there is no question of this court embarking upon any detailed examination as to the financial position of each of the spouses as well as their needs with regard to maintenance. Impugned order merely provides for interim maintenance. The amount awarded, cannot be said to be extortionate or grossly disproportionate to the material available on record at the *prima facie* stage. The Family Court has neither erred on principle nor ignored vital and relevant parameters. The judicial discretion exercised is within reasonable limits. Accordingly, no case is made out warranting interference in exercise of powers of judicial review. Of course, in determining the final maintenance, the Family Court will advert to the evidence which the parties may place before it and not be influenced by the *prima facie* findings recorded, either in the impugned order or this order.

19. Expressing the fond hope that the parties will attempt to arrive at some settlement in the matter, particularly in the interests of the minor child, this petition is dismissed. There shall however, be no order as to costs. The interim order, if any, stands vacated.