(2012) 02 CAL CK 0004

Calcutta High Court

Case No: C.O. No"s. 1007 with 919 of 2009

Subhas Chandra Das		APPELLANT
	Vs	
Laxmi Rani Das		RESPONDENT

Date of Decision: Feb. 20, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Evidence Act, 1872 - Section 106, 114(g)
- Hindu Marriage Act, 1955 - Section 24
- Penal Code, 1860 (IPC) - Section 323

Citation: AIR 2012 Cal 175 : (2012) 2 CHN 828 : (2013) 1 DMC 25

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Advocate: Kabita Mukherjee and Manas Dasgupta, for the Appellant; Rabindra Narayan Dutt, Hare Krihna Halder, Prodeep Basil and Kaushik Bhattacharyya, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Harish Tandon, J.
The petitioner has assailed the order granting alimony pendente lite u/s 24 of Hindu Marriage Act, 1955 and also an order by which the said order granting maintenance is directed to be implemented by way of deduction from the retiral benefit. This matrimonial action is at the instance of the husband/petitioner praying for a decree for divorce on the ground of cruelty.

2. In the said proceeding, an application u/s 24 of the Hindu Marriage Act was taken out by the wife/opposite party in which it is contended that the marriage was solemnised according to the Hindu Ritual and Rites on 24.02.1973 and of the said wedlock, a son and a daughter is borne on 18.04.1975 and 16.11.1984 respectively. It is her further case that the petitioner left the matrimonial house of his own in the month of March 1995 and since,

thereafter, he never contacted the wife or the children. It is specifically stated in the said application that the husband is an employee under the Principal Director of Audit (Central Government) and is drawing the gross salary of Rs. 25,000/-. She claims a maintenance of Rs. 10,000/- for herself and her daughter as she has no independent source of income.

3. The petitioner, in his written objection, contended that the opposite party was convicted for committing an offence u/s 323 of IPC upon the petitioner and as such she is not entitled to maintenance. It is further contended that the petitioner has been forcibly driven out from his own house which he constructed by taking a loan from different comer. A writ petition was filed on the ground of police inaction in not rendering the adequate assistance to allow the petitioner to live in his own house which was disposed of with the direction upon the police authority to restore the possession of the petitioner in the said house.

4. The opposite party filed supplementary affidavit on 19th February, 2009 wherein she disclosed that prior to the instant matrimonial suit, an earlier matrimonial suit No. 110 of 1998 was filed by the petitioner where the court in an application u/s 24 of the Hindu Marriage Act granted the alimony pendente lite @ 2000/- per month which was recovered by attachment of the petitioner''s salary. It is further contended that there is no tenant in the said premises. In an affidavit-in-opposition to the said supplementary affidavit, the husband says that the wife is collecting a rent from the tenant and she is also working as a medical assistant in a specialised Doctor''s chamber and getting a sum of Rs. 16,000/- per month as salary/remuneration. He further says that the daughter is studying in M.A through correspondence course and is running a coaching centre and earned Rs. 14,000/- to Rs. 15,000/- per month.

5. On the basis of the above facts, the trial court found the net income of the husband at Rs. 30,000/- after compulsory deduction and awarded alimony pendente lite @ Rs. 8,000/-to the wife and unmarried daughter and in an addition thereto further awarded a sum of Rs. 5,000/- towards litigation cost. Such alimony was directed to be paid from the date of an application i.e. 30th June, 2008. The Trial Court further directed the petitioner to pay the arrear amount of maintenance within 15th of March. 2009 taking into account that the petitioner is going to be superannuated on the next month. The said order is assailed in CO. No. 1919 of 2009 before this Court.

6. In spite of the said order for payment of the arrear maintenance within 15th of March, 2009, the petitioner did not pay the same within the said stipulated period which constrained the opposite party to file an application for implementation of the said order which was eventually allowed, by the Trial Court vide Order No. 15 dated 20.03.2009 with a direction upon the employer of the petitioner to deduct a sum of Rs. 64,000/- from the retiral benefit of the petitioner as the petitioner is going to attain the age of superannuation on 31 March, 2009. The said order is assailed in CO. 1007 of 2009 by the petitioner.

7. Both the revisional applications were moved one after another on 19.05.2009. The court while admitting the aforesaid revisional application directed the petitioner to go on paying a sum of Rs. 3,000/- per month in addition to the amount which he is required to pay in terms of order passed by the learned Magistrate in a proceeding u/s 125 of the Code of Criminal Procedure to the opposite party towards the alimony pendente lite for the current month commencing from the month of June, 2009 and directed both the revisional applications to be heard together.

8. By this time when both the revisional applications are taken up, the petitioner has attained the age of superannuation. This has been brought to the notice of the court by filing supplementary affidavit. Certain facts which has been brought to the notice, of this Court is required to be narrated as it has some bearing on the disposal of the aforesaid revisional applications. It is now contended that the petitioner after superannuation is getting pension of Rs. 11,000/- and odd apart from receiving a sum of Rs. 4,000/- on investment in Monthly Income Scheme. Son of the parties is now a Doctor and is living in the same house where the mother lives along with his wife and a child.

9. In addition to the above the petitioner maintains his stand that the wife is drawing a considerable rental income from the different tenants inducted in the said premises.

10. this Court appointed the special officer to ascertain whether there is tenant in the said premises. From the report filed by the said special officer, it is manifest that there is no tenant in the said premises but the same is occupied by the opposite party and the son and a daughter.

11. On the above facts, the adjudication which is required to be made is whether the alimony pendente lite granted by the court below is justified or could be modified on subsequent events, more particularly, that the petitioner has been superannuated by this time. As stated above, it is categorical case of the petitioner that the wife is getting a monthly rent from the different tenants and is also working in a spcialised Doctor"s Chamber and getting a honorarium/ salary/ remuneration which is sufficient to cater her daily needs. Secondly, the claim of the wife is thwarted on the plea that she is found guilty in committing an offence u/s 323 of the Indian Penal Code and she is a lady of adamant character and quarrelsome nature.

12. On the bare reading of section 24 of the Hindu Marriage Act, it does not postulate that the court should weigh or consider the conduct of the spouse claiming maintenance, at the time of disposal of the said application. The conduct of the spouse cannot have any impact while assessing the quantum of maintenance or entitlement of maintenance. If the spouse applying under the said provision has no independent source of income, the said spouse is entitled to get a maintenance under the said provision. Thus the factum relating to commission of offence u/s 323, IPC cannot have any weightage at the time of disposal of an application u/s 24 of the said Act.

13. According to the petitioner, the opposite party is collecting rent from the different tenants of the premises owned by the petitioner. Although, some documents purported to be the rent receipts alleged to have been issued by the opposite party and an agreement are produced before this Court by the petitioner in supplementary affidavit which is denied by the opposite party to have been issued by her. this Court appointed a special officer to ascertain whether there is any tenant in the said premises. The Special Officer reported that there is no outsider in occupation of any portion of the said premises which is wholly occupied by the opposite party and the children. Therefore, the petitioner also cannot succeed on the aforesaid assertion that the wife has a considerable rental income.

14. The Trial Court has found the income of the husband to be Rs. 30,000/- per month and awarded the maintenance @ Rs. 8,000/-per month for the opposite party and unmarried daughter. Admittedly, the wife has not assailed the said order before this Court and thus is satisfied to the quantum of maintenance awarded by the trial court. It is the petitioner who has assailed the said order on the above noted plea which I have already discussed and found not tenable.

15. Only aspect which need to be considered is the subsequent fact of retirement of the petitioner from his service. Some documents have been annexed to the supplementary affidavit in support of his retiral benefits. It is contended that the petitioner is getting of pension @ Rs. 11,000/- per month in addition to an income of Rs. 4,000/- per month from the investment under Monthly Income Scheme. The certificate relating to the retiral benefit is annexed to the said supplementary affidavit which shows that the petitioner received Rs. 11,51,944/-on different heads.

16. Now, the petitioner further contends that he has to incur huge expenditure on medical expenses of her mother who is dependent upon him. Whereas, the opposite party says that the mother is living with her third son in his house and is not dependent upon the petitioner.

17. From the discharge certificate issued by a hospital which is annexed to the said supplementary affidavit, it is evident that the address of the mother is given under the care of Dilip Kumar Das of Farid Purpally, P.O-Birati, Kolkata-700051 which is not the address of the petitioner. The story of the petitioner to have incurred huge expenditure on the ailment of the mother and the recurring expenditure on her is unbelieved.

18. It is unbelievable that a person who has worked for so many years has an accumulated general provident fund balance of Rs. 1,09,248/-. I cannot disbelieve the statement of the wife that the husband has withdrawn a huge sum from a general provident fund and have suppressed the same from the court. If the material fact relating to the income is suppressed by the husband, an adverse inference should be drawn under sections 106 and 114(g) of the Evidence Act. Even if this Court takes into consideration of the subsequent event in view of the findings as above this Court does not find any justifiable ground to interfere with the impugned order by which the court

granted the alimony pendente lite which is impugned in C.O. 919 of 2009.

19. Furthermore, the court has exercised its discretion to grant the alimony pendente lite from the date of the application and directed such arrear alimony to be paid by the petitioner within 15th of March, 2009 which was not complied by the petitioner. For recovery of the said money an application was filed as the petitioner was attending the age of superannuation. The Trial Court directed the said arrear alimony to be recovered from the retiral benefits. The amount of arrear alimony is assessed by the trial court as Rs.64,000/-. Admittedly, the petitioner has attained the age of superannuation by this time and if the statement made by the petitioner in supplementary affidavit is taken to be true, the petitioner has been paid the retiral benefit by the employer. Therefore, the relief which was granted by the trial court which is impugned in CO. 1007 of 2009 has become inappropriate.

20. The Court in a suitable case where the relief granted or to be granted has become in-appropriate either by passage of time or by happening of some event, the court can mould the relief in order to do complete justice to the parties. In view of the subsequent event as noted above, the order No. 15 dated 28th March, 2009 is hereby modified to the extent that the petitioner shall pay, if not already paid, the arrear alimony pendente lite which is assessed at Rs. 64,000/- for the period from 30th June, 2008 and 28.02.2009 within a month from date. In default, the opposite party shall be at liberty to take recourse to know for realisation thereof.

21. At the time of admitting the aforesaid revisional application, this Court directed the petitioner to pay the monthly alimony @ Rs. 3000/- in addition to the maintenance awarded u/s 125 of Cr. RC. on and from the month of June, 2009. The petitioner shall also pay the maintenance on and from the month of March 2009 to June, 2009 within three months from date if not already paid at rate at which it is awarded by the Trial Court.

22. At the time of entertaining the instant revisional application, this Court permitted the petitioner to pay the monthly alimony @ Rs. 3000/- per month in addition to the amount of maintenance granted u/s 125 of Cr. RC. In view of the dismissal of the revisional application, the petitioner shall also pay the difference of the arrear-from the month of June till date within 6 months from date.

23. Both the revisional applications being CO. 919 of 2004 and CO. 1007 of 2009 are disposed of on above terms but in the facts and circumstances as indicated above with cost which is assessed at 300 G.Ms.

24. Let the Lower Court Record be sent down immediately. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.