

(2002) 96 DLT 463

Delhi High Court

Case No: I.A. 13002 of 2000 in IPA No. 28 of 2000

Rupali Grover and
Another

APPELLANT

Vs

Rajesh Grover and
Others

RESPONDENT

Date of Decision: Dec. 19, 2001

Acts Referred:

- Guardians and Wards Act, 1890 - Section 25, 7

Citation: (2002) 96 DLT 463

Hon'ble Judges: Vinod Sagar Aggarwal, J

Bench: Single Bench

Advocate: Prabhjit Jauhar, for the Appellant; Arvind Nigam, for the Respondent

Judgement

V.S. Aggarwal. J.

1. On 11th July, 2001 as agreed at the bar, an order was passed that for petitioner no. 1 interim maintenance may be fixed at Rs. 4000/- per month. Keeping in view the said fact interim maintenance for the minor daughter of the plaintiff Rupali Grover was fixed at Rs. 4000/- per month.

2. Learned counsel for the plaintiff had urged that interim maintenance of plaintiff no. 2 should also be fixed. The plaintiff no. 2 is stated to be the wife of the defendant. He contends that she has no moveable or immovable property nor any source of income whatsoever. She has no money to take care of her day to day living expenses. Defendant no.1 is alleged to be belonging to an affluent business family which amongst another is carrying on business in the name and style of Ram Lal Grover & Sons which is the stockiest ACC Dumping unit. They have a retail outlets at Loha Mandi. The monthly income of defendant no. 1 was stated to be not less than Rs. 2 lakhs per month. Defendant no. 1 is alleged to be leading a luxurious life and enjoying all the modern

amenities. A maintenance at Rs. 20,000/- per month for both the petitioner as such was claimed.

3. Reply has been filed by respondent no. 1. It has been asserted that applicant no. 2 belongs to an affluent and wealth business family having family business of export of various items and turnover in terms of crores. Applicant no. 2 with whom applicant no. 1 is residing has a palatial house in plot in Qutab Enclave, Gurgaon. They have several properties in South Delhi. Applicant no. 2 was further alleged to behaving business interest in the family business and his father and brothers. It was denied that respondent no. 1 is well off. He is making efforts to rehabilitate himself and re-start the business. Respondent no. 1 claims that he was suspected to be suffering from cancer. He was required to visit several doctors. His means in the process had been exhausted. Respondent was earlier a partner in the firm known as M/s Grover Agencies. The said firm was closed in 1996-97. Respondent claimed that the only has a rental income of Rs. 10,000/- per month from the house and his income tax return also shows that annual income of the respondent from the sole proprietorship firm is Rs. 16,665/- and after deduction of income tax comes to Rs. 7,304-60.

4. During the course of submission it was pointed that when maintenance of the petitioner no. 1 who is the daughter of the applicant no. 2 and defendant no. 1 was fixed, not interim maintenance of petitioner no. 2 was fixed and Therefore, presently maintenance for the wife should be fixed.

5. As already pointed above it was an agreed order and in the said order there is no mention that the claim of petitioner no. 2 is not being pressed. In that view of the matter it cannot be termed that by virtue of the said order petitioner no. 2 is barred from claiming the interim maintenance.

6. With respect to the mode of fixing the income of defendant no. 1, parties were at dispute because learned counsel for the petitioner no. 2 urged that the income of the family which according to him was a joint Hindu Family business should also be taken note of while evaluating prima facie the income of defendant no. 1.

7. In support of his contention he relied upon the decision of this court in the case of [Neelam Malhotra Vs. Rajinder Malhotra and Others](#), Therein the court had found that business was being carried by the brother of the concerned person for the benefit of the entire family and that prompted the court that the income of the firm could be taken into account not only to determine the husband's status but fixing the quantum of interim maintenance. As notices hereinafter that the said fact has been not so established and Therefore the decision in the case of Neelam Malhotra (supra) would be distinguishable.

8. Identical was the decision rendered by this court in the case of Renu Jain v. Mahavir Prasad Jain AIR 1987 Delhi 43. This court once again concluded that in deciding the maintenance particularly of daily transactions the properties of the husband and his

joint family property should be taken not of.

9. In that event reliance was placed on the decision of this court in the case of Kanchan B.R.v. Akash alias Yusuf Hussain 1(2001) DMC. This court held that a spouse is entitled to a life style commensurate with the status of the parties. The surest indicators of the lifestyle is the matrimonial home which the parties have been living. In that case it was concluded that the husband had not been suffering such a peculiar loss and accordingly the maintenance had been fixed.

10. In the present case in hand it apparently is an unfortunate case where the son of the parties is residing with respondent no. 1 while daughter is residing with petitioner no. 1. A copy of the petition filed by petitioner no. 2 u/s 7 and 25 of the Guardian and Wards Act has been placed on the record. In the said petition the petitioner claimed that respondent no. 1 suffers from various ailments. He was always mentally disturbed and was undergoing treatment from various hospitals. He even attempted to commit suicide. The petitioner had prayed for the custody of the son asserting that she can be looked after better by him.

11. A copy of the plaint filed by the petitioner no. 2 dated 3rd November, 1997 before the Women's Cell has also been produced. Therein the petitioner no. 2 asserted that respondent no. 1 is unemployed and does not make any effort to find work. These assertions prima facie for purposes of the present order support the contentions of respondent no. 1 that he has been suffering mentally. He has suffered also in the business dealings. He was undergoing treatment for a suspected cancer and presently he is trying to re-establish himself. Therefore, in the peculiar facts it cannot be termed that respondent no. 1 has sufficient means as alleged by the petitioner no. 2 that the petitioner should be granted Rs. 20,000/- per month as maintenance. The one house which is available with respondent no. 1 has been let out and he is getting rental income. So far as other family property is concerned it was explained during the course of arguments that the property was of the grandfather of respondent no. 1 and he has bestowed all the properties to his widow. Respondent no. 1 further is maintaining the son of the parties to the present litigation, namely petitioner no. 2 and respondent no. 1. Taking note of the fact that respondent no. 1 gets about Rs. 10,000/- as rent, he is yet to establish his business once again and he is also maintaining his son and paying Rs. 4,000/- per month for the daughter, the claim of the petitioner must be stated to be excessive. Taking stock of the above facts the petitioner no. 2 must be held to maintenance only at Rs. 1500/- per month from the date of the filing of the application. Order is made accordingly.

12. List the I.P.A. on 22nd March, 2002.