

(2010) 02 BOM CK 0124

Bombay High Court

Case No: Writ Petition No. 6686 of 2009

Ritula Singh

APPELLANT

Vs

Lt. Col. Rajeshwar Singh

RESPONDENT

Date of Decision: Feb. 26, 2010

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 20(2), 20(3)
- Hindu Marriage Act, 1955 - Section 24, 25

Citation: (2010) 3 ALLMR 828 : (2010) 4 BomCR 816 : (2010) 1 DMC 447 : (2010) 3 RCR(Civil) 450

Hon'ble Judges: Roshan Dalvi, J

Bench: Single Bench

Advocate: Sumangala and Veena Goud, for the Appellant; G.S. Hegde, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Roshan Dalvi, J.

Rule, returnable forthwith.

2. The parties are wife and husband. They have been married since 22.10.1986. The wife has filed a Divorce Petition in the Family Court in 2008. She has applied for interim maintenance u/s 24 of the Hindu Marriage Act, 1955 for herself and her 2 daughters admittedly born on 13.10.1988 and 4.1.1991. Her Advocate argued that the daughters are 19 years and 17 years old respectively which is arithmetically incorrect. The daughters are 21 years and 19 years, respectively.

3. The interim maintenance application would have to be considered for the Petitioner-wife u/s 24 of the Hindu Marriage Act and for her children u/s 20(2) and (3) of the Hindu Adoptions and Maintenance Act, 1956. The learned Judge has considered the application on behalf of three of them. The wife has been refused

the interim maintenance. The children have been granted interim maintenance of Rs. 3,000/- each. They attend college and are dependent children though they have attained majority.

4. The wife has not been granted any interim maintenance. She has challenged that part of the order. The Petitioner-wife is a teacher. She earns Rs. 35,000/-. The interim maintenance has to be granted u/s 24 of the Hindu Marriage Act, 1955, which runs thus:

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, 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.

Under that section, the Court has to see whether the Petitioner-wife earns any independent income sufficient for her support and the expenses of the proceedings. Rs. 35,000/- can be taken to be sufficient for the support of the Petitioner pending the Petition.

5. The Petition has reached the stage of the cross-examination of the Petitioner-wife who has filed the Petition. She has instead taken out the application for enhanced amendment of the Petition to claim maintenance on the ground that the husband's income has been enhanced under the 6th Pay Commission Report. The husband is a Military Officer. He used to earn Rs. 35,000/-. He now earns Rs. 65,000/-. The wife has been refused the interim maintenance on the ground that she has independent income sufficient to maintain herself. Because the husband starts earning additional amount, she cannot be taken not to have income sufficient to maintain herself ipso facto.

6. This rule of law applies to interim applications. That is because extensive evidence relating to all the assets and properties of the husband as also his income from all sources cannot be looked into in an application for interim maintenance.

7. The wife would be entitled to alimony, depending upon the income of the husband and his assets and properties at the final hearing of the Petition for divorce when the permanent alimony and maintenance would be considered u/s 25 of the Hindu Marriage Act, which runs thus:

25. Permanent alimony and maintenance.- (1) Any Court exercising jurisdiction under the Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband,

as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment maybe secured, if necessary, by a charge on the immovable property of the respondent.

Consequently, for determination of the permanent alimony and maintenance, the Petitioner's other income and other properties as also the Respondent's income and other properties as also conduct of the parties and other circumstances would be seen by the Court upon the entire evidence led in that behalf. It is at that time that the wife's equal right to the property of the husband would be adjudicated upon. It is at that time that the status the parties enjoyed whilst their marriage continued would also be seen from the evidence which is led.

8. It may be mentioned that the Petitioner being a wife of 22 years before the Petition came to be filed would certainly be entitled to an equal share in the assets and propitiates of the husband as also in the amount of alimony upon the law of equality of spouses laid down since 1979 in the case of [Dinesh Gijubhai Mehta Vs. Usha Dinesh Mehta](#), .

9. However, since the Petitioner has income sufficient for her maintenance that principle of equality would essentially apply at the final hearing after the entire evidence is recorded which would be soon hereafter, the insistence upon being given interim maintenance and applying for enhancement thereof is counter productive and a cause for delay of final relief.

10. The distinction between the law laid down under Sections 24 and 25 of the Hindu Marriage Act is distinct and clear. It is so because of the specific circumstances that the Court would require to see at the time of each of these applications. It may be clarified that for considering the application for interim maintenance u/s 24 of the Hindu Marriage Act, which is decided upon affidavits of the parties alone, the Court cannot and would not consider the precise income, standard of living, conduct of the parties, other properties and other circumstances of the case. The amount that would have to be granted for the maintenance of the wife would be for her support and necessary expenses of the proceedings. That amount would be granted if she does not have income sufficient for her support and necessary expenses of the proceedings. The ambit for grant of interim maintenance u/s 24 is, therefore, far narrower than the ambit u/s 25. It is the distinction between the two sections which is required to be understood for the Court to grant the maintenance amounts thereunder.

11. u/s 25 of the Hindu Marriage Act as aforesaid, the entire evidence relating to the income, properties of both the parties and their conduct and circumstances would

be and can be seen. That is because the evidence is led in that behalf at the time of final hearing.

12. Consequently, the impugned order not granting any maintenance pending the Petition to a wife who earns Rs. 35,000/- per month cannot be faulted. Of course, she would be entitled to permanent alimony and maintenance from the date of the Petition itself on the merits of her case which would be adjudicated upon on completely different parameters which can be seen from the evidence that she would lead.

13. The Advocate on behalf of the husband states that the Petition is adjourned to 17th April 2009 for her cross-examination and the Respondent would go on with the hearing on that day.

14. The Advocate for the wife states that she has applied for amendment of the Petition to claim an enhanced amount of maintenance consequent upon the enhancement of the salary of the Respondent. Such amendment would certainly be allowed by the Family Court as the wife would be ultimately granted any such amount upon she proving the additional income for grant of additional maintenance amount at the final hearing of the Petition on merits. In view of the aforesaid statement of the Advocate of the husband, I am sure, the husband would not, as he cannot, needlessly oppose such amendment. The case of both the parties would then be considered on merits and the sooner it is considered the better for both.

15. Under the aforesaid circumstances taken together, the order of maintenance is not required to be interfered with.

16. The Writ Petition is dismissed and Rule is discharged except for the clarification that the parties shall proceed with the Petition as allowed to be amended by the learned Judge of the Family Court on 17.4.2010 and thereafter from day to day as fixed by the learned Judge.

17. No order as to costs.