

Equivalent citations: 2003 IAD Delhi 697, 102 (2003) DLT 756

Bench: M A Khan

Shakti Pershad vs Ratna Pershad on 31/1/2003

JUDGMENT

Mahmood Ali Khan, J.

1. In this civil revision petition filed under Section 115 of the CPC the petitioner Shakti Pershad, who is husband, has assailed the order of an Additional District Judge dated 25.2.2001 whereby he has dismissed the application filed by the petitioner under Section 24 of the Act but has allowed a similar application under Section 24 filed by the respondent wife Ms. Ratna Pershad fixing her pendentelite maintenance at Rs. 12,000/- per month besides awarding Rs. 10,000 as expenses of the proceedings in a divorce proceedings instituted by the respondent wife.

2. Briefly stated the facts are that Ms. Ratna, respondent, has filed a petition for a decree of divorce against the petitioner Shakti Pershad on the ground of cruelty under Clause (ia) of Section 13(1) of the Hindu Marriage Act (the Act). She also filed an application for grant of her pendentelite maintenance and an amount for meeting expenses of the proceeding. In the application she alleged that she does not own any movable or immovable property and has no independent income to support her. She is financially dependent upon her parents. Her jewellery was disposed of from time to time for meeting necessary expenses at the behest of the petitioner husband. The petitioner husband belonged to one of the Delhi's richest families and was living an affluent lifestyle. He was member of several clubs but he had no money for the respondent wife, who was a mere housewife. She had to sell her jewellery to meet expenses on her bread and butter and expenses of her son. Both she and the petitioner were divorcees. She had a daughter from her first marriage who was living with her while the petitioner had two daughters from his first marriage but both of them were living with their mother. After the marriage with the petitioner she had given birth to a son in 1984 who was living with her and she had to bear expenses of his education also. The son is at present studying in 10th class in Vasant Valley School and both she and the son are dependent upon his father. The petitioner was born in a wealthy family. He had a house in a posh Friends Colony East and he was a member of Gymkhana Club, Noida golf club and some other clubs. He owns ancestral property in Chandni Chowk, Delhi. Some of these properties have been sold by him and he had received huge amount as sale consideration which is in his personal knowledge and he should be directed to disclose it. He owns a two storeyed palatial house built over an area of 1800 square feet bearing No. 45, Friends Colony East. His mother sold an annexe building built on 800 square yards of land for a consideration of over a crore. A part of the land in Friends Colony was also sold to Unitech Builders for building flats and the petitioner has received his share from the huge consideration. She alleged that she was spending about Rs. 2,80,000 on the maintenance and schooling of her son which is roughly about Rs. 27,000 per month. This sum is being borrowed by her from her father. She has to repay about Rs. 1.5 lakhs for the maintenance of her son since he was abandoned by the respondent on 23.3.1999. She is not maintaining good health. Her medical expenses, food and boarding will amount to at least Rs.25,000 monthly on a modest estimate. She tires easily and has to employ at least 2 female servants to nurse and look after her. The petitioner had forced her into litigation and she needed minimum Rs. 50,000 in the first instance to meet in and out of pocket expenses and charges. The court should direct the petitioner to pay Rs. 25,000 per month for meeting the rent of the house for her in Delhi as a temporary measure since her father would then be able to return back to Hyderabad and carry on his consultancy business there as before. She claimed that she had been paid Rs. 60,000 for her and her son's maintenance and besides the petitioner should also be directed to pay Rs. 25,000 per month as rent of the premises to be taken by her for her and her son's residence. She also claimed Rs. 50,000 as expenses of the proceedings. Further more she wanted Rs. 1.5 lakhs to be given by the petitioner to enable her to return to her father who had incurred the expenses on her and her son since they started living separately from the petitioner.

3. In the application which the petitioner Shakti Pershad filed it was alleged that after the marriage he had been giving all his attention to the respondent and was spending huge sums of money on her maintenance and treatment. He had provided best medical assistance to her. The respondent wife is a woman of substantial means and has a regular source of income. She is driving a Honda City car, has credit cards, she is maintaining a cellphone and she is living a luxurious and expensive life for which she is not dependent on anybody. The son of the parties is staying with the petitioner and the respondent wife should be directed to pay the expenses to him which she was claiming in her application for the upkeep and the education of the son to him. The petitioner was an old man of 55 years and he is unable now to start a new business to sustain himself and his son. He has only one property which he inherited from his father. It is built on 330 square yards of land in New Friends Colony, East. The said property is mortgaged against a loan which was taken by him from Bank of Punjab. The bank has obtained an order of injunction against the alienation of the said house against him in the recovery proceeding before the Debt Recovery Tribunal. He himself and his son are both financially dependent upon his mother who had inherited some wealth from his father. He himself does not have any income since 1998. The industrial unit set up was closed down because of financial losses. Its machinery was hypothecated in favor of the bank. No money has been paid to the bank against the outstanding loan. Over the years his wealth has depleted, consequently, he is totally dependent on his mother. He does not own any car or vehicle. He does not pay any tax He did not file income tax return. He had been borrowing money from his friends and relatives. He became member of Gymkhana club 30 years back and now he owned a sum of Rs. 6000 to the club which he is not able to pay. Similarly, he was indebted to Noida Golf club and has stopped going to clubs. His residence telephone has also been closed due to non payment of the telephone bill and the outgoing calls have been stopped. He is not in a position to pay the legal expenses. His mother has taken upon herself to bear the educational expenses of his son. His monthly expenditure for running the household which included himself and his son was Rs. 12,000. The monthly tuition fees of the son was Rs. 3000. His son also needed Rs. 2500 per month which includes his private tuition, pocket money, medical expenses, school uniform, stationary books, entertainment and other like expenses. Because of his financial incapability he is forced to borrow this money from his mother and friends. He has to return the money. It is also difficult for him to pursue the legal proceedings. Since the respondent wife is better off, therefore, he has prayed that she should be directed to pay Rs. 12,000 per month as pendente lite maintenance for running the household and Rs. 5500/- per month as interim maintenance for meeting the expenses of his son etc.

4. The trial court after hearing the parties by the impugned order held that the petitioner husband has failed to bring on record any evidence suggesting that the respondent wife has income and that she owned a car, a cellphone or had a credit card. On the other hand upon consideration of the allegations made in the petition, the written statement and the application and also the material placed on record he held that the petitioner husband had income. He was spending lacs of rupees on providing medical assistance and surgery of the respondent, he was providing Rs. 50,000 as household expenses to the respondent, he was providing all the luxuries to her, he himself was a rich man. He owned property, he came from a very rich and affluent family of Delhi. He had been selling the properties and was meeting all the expenses from which it could be inferred that he had sufficient income. In the totality of the facts and circumstances he rejected the application of the petitioner and allowed that of the respondent wife and fixing the pendente lite maintenance of the respondent wife at Rs. 12,000 and also directed the petitioner to pay Rs. 10,000 to her for meeting the expenses of the proceeding.

5. The petitioner is aggrieved and has filed the present petition.

6. I have heard the counsel for the parties and have gone through the record.

7. Counsel for the petitioner has strenuously canvassed that in the divorce petition the respondent herself had averred that the petitioner was not earning since 1994 and that he was disposing of the property for running the household. It is submitted that the respondent has further admitted in the divorce petition that the petitioner had set up a factory in 1993 borrowing money from the bank of Punjab which was closed down and

the bank had filed proceedings for recovery of money before the Debt Recovery Tribunal. She had admitted that she was the guarantor to that loan. She also argued that the petitioner, though member of Gymkhana club became its member 30 years back and now he owed Rs. 6000 to it which he is not able to pay. He has stopped going to Noida golf club because he could not bear the expenses. He does not own a car, cellphone or credit card. He also stated that he does have a dog in his house. But he is now totally dependent upon his mother who had inherited some wealth from his father who died in 1989. Counsel for the petitioner also argued that interim maintenance could be paid to the husband and wife under Section 24 of the Act having regard to the income of both the spouses. It is urged in the instant case that it is the respondent's own case that the petitioner has no earning at all and that he is disposing of his property to meet the expenses and if it is so the petitioner husband could not be said to have "income" out of which he may be required to pay the pendulite maintenance to the respondent. Moreover it is argued by her that the maintenance is payable to the wife under Section 24 of the Act only when she does not have independent income to support her. It is contended that the respondent is leading a luxurious life. She owns a Honda City car, a cellphone, credit cards and she is spending lavishly and therefore, her contention that she does not have income is false.

8. Controverting the above arguments of counsel for the petitioner counsel for the respondent stated that the respondent had no independent income. She is entirely dependent upon her father who is living in a rented flat. It is submitted that the petitioner has not placed on record any evidence or other material to show that his household expenses and the expenses of the child are being born of petitioner's mother. According to him the respondent is maintaining a palatial house, running the household, maintaining a dog, enjoying membership of clubs etc and he could not have done it with no income accruing to him from any source. It was contended that the petitioner who belonged to one of the richest business family of Delhi owned properties which he was selling. He got money from the sale of land. He also got money when his mother sold annexe house for over a crore of rupees. It is, therefore, canvassed that the petitioner had income and its source was in his special knowledge which he had not disclosed, so the trial court was justified in passing the order of maintenance in favor of the respondent.

9. Section 24 of the Hindu Marriage Act provides establishment of two essential conditions to enable the court to pass an order of pendulite maintenance and award the expenses of the proceeding in favor of the husband or wife. These are that the husband or wife does not have independent income to support him/her and that the interim maintenance and the expenses of the proceedings are to be fixed having regard to the income of both the spouses. In the divorce petition the respondent wife has indeed alleged that the petitioner husband is not running any business. His factory has closed down. The bank from which loan was taken for the factory had started proceeding for its recovery before the Debt Recovery Tribunal. The money has not been paid. It is further alleged by her that the petitioner had stopped giving her money for meeting the household expenses since 1994. The petitioner, however, in his reply has submitted that he did not have income since 1998. Certain more facts are worth noticing. The petitioner husband belonged to a very rich family of Delhi. He owns ancestral property in Old Delhi and also owned a big house in Friends Colony East. Anyhow owning property itself will not make the petitioner saddle him with the liability to pay the maintenance under Section 24. The petitioner would be liable to pay if he has income. The word "income" used in this Section 24 of the Act is of widest amplitude. The income may be in cash or kind but it has to be an accrual from the movable or immovable assets. It will definitely not include the immovable or movable property itself. For instance the wages, salary, interest or dividend, agricultural produce of a land, the fruits from fruit bearing tree or orchard, the rent from the house etc will be income. Section 24 uses the word "income" juxtaposed the words 'income and property' used in Section 25 of the Act. The income and the property or capital assets, as such, are not one and the same thing. A spouse may own huge immovable properties of immense value but if there is no yield or accrual of interest or rent they would not be reckoned for calculating the amount of maintenance. But if the spouse has money in its hand may be by the sale proceeds of any immovable or movable property which he or she is using for meeting the personal expenses or the expenses of the household then that could certainly be taken into account. Shares or bonds may not be included in the term income but what was yielded in the shape of dividend or interest would become income. This view finds support from the judgment of the Calcutta High Court in Gita Chatterjee Vs. Probhat Kumar Chatterjee, and Kerala High Court in Hema Vs. S. Lakshmana

Bhat, .

10. In the backdrop of the above proposition of law now I may proceed to consider as to whether the petitioner and the respondent had income. The trial court had repelled the contention of the petitioner husband that the respondent wife is an earning hand or has some source of her income on which she is allegedly sustaining her luxurious life, her car, credit card or cellphone etc. In fact apart from making a hollow allegation that the respondent wife owned a Honda City car, a cellphone or a credit card he has not been able to bring forth any tangible proof to substantiate his allegation barring that in the year 1998 she had worked in the concern of her father and had earned income for which she had submitted an income tax return. There is no allegation or proof that before that or after that year she had submitted the return. There is no proof that she was maintaining a car or had a cellphone or the credit card which she is using. It is also not denied that her father is living in a rented flat and the respondent is presently staying with him there. It is also not denied that her father was running some consultancy work in Hyderabad before shifting to Delhi and that he was running some business here as well. The oral allegation of the petitioner that the respondent is having source of income to enable her to sustain and support herself, therefore, had no proof. The contention of the petitioner husband was rightly rejected by the trial court.

11. Adverting to the income of the petitioner husband, as stated above, the respondent wife had made allegation in the divorce petition that after the failure of the business in 1994 the petitioner husband was not earning but was sustaining himself by selling the immovable properties. The petitioner husband has himself stated that he belonged to a very rich and affluent family. He has not denied that his family owned large immovable property and houses. It is also not disputed that his father had given him a built up house which he says is standing on a large piece of land in New Friends Colony East. Disposal of the properties by him for meeting the expenses has not been denied. It is also not denied that he was member of Gymkhana club though alleged that he had become its member 30 years back and still owed a sum of Rs. 6000 to the club. He did not deny that he was also member of Noida Golf club. According to him his son has now started residing with him and he was spending Rs. 3000 on his school fees and another sum of Rs. 5500/- on his other expenses. He also says that he was maintaining the household expenses of Rs. 12000 per month by borrowing money from his mother and other friends. He has a telephone. According to the petitioner since 1998 he did not have income and that he was only dependent upon his mother but he did not disclose as to whether he had received his share from the sale of any of the ancestral properties or the sale of the land to Unitech Builders or the sale of the annexe building in New Friends Colony by his mother. He has also not disclosed the names of his friends and relatives from whom he had borrowed the money. Nor did he disclose the amount which his mother is spending upon him. It may also be remembered that the petitioner and his son are living in a separate house and they are not living with the mother. How the petitioner is meeting the household expenses and other expenses and maintenance of his son was also in his special knowledge and he should have disclosed it. When the petitioner has not truthfully come out with all this information the trial court was perfectly justified in making some guess and estimate about the money which he has and that he has some latent source of income which during these hard days are sustaining him, the lifestyle to which he was accustomed or a little less than that. But his living standard is not reflective of any financial strain on him.

12. In terms of Section 24 of the Act the maintenance of the applicant spouse whether he is a husband or a wife is to be fixed on a sum which seems to be reasonable. There is no infirmity in the finding of the learned trial court that the respondent wife does not have independent source of income for her support. Conversely his finding that the petitioner husband had some source of income which he has not disclosed can also not be discarded since it is based on sound principles of law in the facts and circumstances of the case.

13. According to the case of the petitioner he was accustomed to pass a life of luxury. He was paying Rs. 50,000 to the respondent wife for meeting the household expenses, she was also using credit card provided by him and was spending up to Rs. 30,000 per month. He was spending thousands rather lakhs of rupees on her medical treatment and surgery. The petitioner says that he now does not live the style of his former life but the respondent wife is also entitled to live to the standard of life which the petitioner is now leading.

14. Having regard to the above discussion and the facts and circumstances of the case I do not find any jurisdictional error or any material irregularity in the exercise of the jurisdiction by the trial court when it fixed the interim maintenance of the respondent wife at Rs. 12,000 per month and her expenses at Rs. 10,000. The amount of pendente lite interest fixed by the trial court is reasonable. In the totality of the facts and circumstances of the case I do not find any merit in the petition. It is dismissed leaving the parties to bear their own cost.