

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAT APP. NO. 24/2007

Date of Decision: August 13, 2010

BIMLA DEVI Appellant
Through: Mr. G.S. Ahuja, Advocate.

versus

SURESH CHAND MOUDGIL Respondent
Through: Mr.P.S.Vats, Advocate.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J.

MAT APP. No. 24/2007

1. This appeal is filed by the appellant assailing the order of the learned Additional District Judge dated 11th January 2007, whereby she rejected her petition under Section 25(2) of the Hindu Marriage Act (hereinafter referred to as the 'Act') for enhancement of the amount of maintenance.

2. Parties to the petition were divorced by mutual consent under Section 13B of the Act vide judgment dated 4th March, 1997. It was agreed between the parties that respondent would pay a sum of Rs.7,00/- per month to the appellant w.e.f. March, 1997. Now, the appellant has filed this petition seeking enhancement of her maintenance under Section 25(2) of the Act on the plea that income of the respondent has increased and she is not able to meet her expenses from meagre amount of Rs.7,00/- per month. She further submitted that respondent is a man of means and owns a house in Bahadurgarh, a TV, Fridge and a car. He has no other liability except to maintain her. It is alleged that keeping in view the status of the respondent, who is earning about Rs.30,000/- per month as his salary, which has increased twenty times, she is entitled to sum of Rs.10,000/- as maintenance.

3. Respondent has refuted the claim of the appellant alleging that his gross income is Rs.21,721/- and his net income is Rs.13,691/- only. He has performed marriage of his daughter as per the agreement and is looking after his mentally and physically handicapped son, his sick mother and himself being a heart patient has to incur heavy medical expenses. Since after solemnization of the marriage of his daughter, he is in heavy debts and that in view of

the settlement, appellant cannot seek any enhancement of her maintenance.

4. Following issues were framed by the Trial Court for consideration on 13th May, 2004:-

- “1. Whether the petitioner is entitled to the enhancement of the maintenance being received by her in view of rising cost of living and stated increase in the earnings of the respondent? OPP
2. In case the answer to issue No. 1 is in affirmative, to what extend?
3. Relief.”

5. I have heard Mr.G.S.Ahuja, counsel appearing on behalf of the appellant and Mr.P.S.Vats, counsel appearing on behalf of the respondent.

Issue Nos. 1 and 2:-

6. It is submitted by counsel for the appellant that after the Pay Commission, salary of the respondent has increased multifold and amount of Rs.7,00/- agreed between the parties which is being regularly paid by the respondent is very meagre and the appellant has to depend upon her brothers who are financing her and looking after her day-to-day needs. He has submitted that considering the fact that respondent is getting a salary of Rs.30,000/-

per month, appellant is entitled to maintenance at least @ Rs.10,000/- per month. He further argued that Trial Court committed a mistake by dismissing the petition on the plea that since maintenance was fixed as per the compromise, provisions of Section 25(2) of the Act could not have been invoked by the appellant.

7. Counsel for the respondent, while refuting the submissions made by counsel for the appellant has submitted that the net salary of the respondent is only Rs.13,691/-. He has to maintain his ailing mother, his mentally and physically handicapped son and he himself is a heart patient and has to incur heavy expenses on the medical treatment. He further submitted that in terms of the settlement, respondent is looking after his son. He also performed the marriage of his daughter and bore all the expenses of the marriage. He has also pointed out that besides maintenance @ Rs.7,00/- per month, appellant has also been provided with a house in Village Chhara, where she is residing. Since appellant is being properly taken care of by him, she is not entitled to any enhancement as claimed.

8. The Trial Court while dismissing the petition observed on issue No. 1:-

“15. It is clear from the record of

Petition No.HMA491/83 that divorce was taken by the parties on mutual consent and an amount of Rs.700/- p.m. was mutually agreed upon. The amount of Rs.700/- p.m. as maintenance was not granted by the court in exercise of the powers/jurisdiction U/S 25(1) of the Hindu Marriage Act 1955 and therefore, the question of enhancement U/S 25(2) does not arise at all. The petitioner has specifically and categorically agreed upon payment of Rs.700/- p.m. till her lifetime or remarriage also by considering the enhancement on account of Pay Commission Report and now, it is not open to the petitioner to claim enhancement of the said amount after finally settling all the issues and claims. In any event, the present petition cannot be allowed in favour of the petitioner as no order was passed U/S 25(1) of the Hindu Marriage Act at any point of time. The judgments relied upon on behalf of the petitioner are not applicable to the present case due to difference in the facts and circumstances. In both the cases referred to by the counsel for petitioner, the marriage was not dissolved on the basis of mutual consent by settling all the issues and claims.

16. Also, considering the case of the petitioner on its merits, I find no justification to grant enhancement.....”

9. To my mind, the Trial Court went wrong when it observed that once the maintenance is fixed on the basis of a compromise between the parties, wife has no right to file a petition under Section 25(2) of the Act for enhancement of the maintenance under changed circumstances, as it would not be a proper approach and appreciation of law as laid down. The compromise was arrived

at between the parties and a decree for divorce was obtained on 4th March, 1997. Over a period of thirteen years, the life has become very expensive. The maintenance under the provisions of law is a continuing right variable from time to time. Such discretion conferred on the Court under Sub-Section (2) of Section 25 of the Act to vary the maintenance awarded, may be by consent, under changed circumstances cannot be restricted and the substantive right conferred under the Statute cannot be denied to a party merely on the ground of an agreement contra between the parties. In fact such an agreement defeating the right of maintenance provided under a Statute being contrary to public policy is not a valid contract and therefore, cannot operate as a bar to exercise the jurisdiction conferred under Section 25(2) of the Act. Reference is made to '**P. Archana @ Atchamamba Vs. Varada Siva Rama Krishna**', AIR (2008) Abhimanyu Pradhan 216 and '**Sudhir Jain Vs. Prema Jain**', AIR 2005 Del 1'.

10. Now, it is to be seen whether it is within the means of the respondent to pay enhanced maintenance as claimed by the appellant.

11. Respondent is residing in a rented house and is keeping an attendant on a salary of Rs.5,000/- to look after his mentally and

physically handicapped son. At the time when maintenance @ Rs.700/- per month was agreed to be paid, daughter was living with her mother.

12. As per the settlement, respondent bore all the expenses of the marriage of his daughter and now the amount of maintenance, as received by the appellant, regularly is being used by her for her maintenance only as the liability to maintain the daughter, after her marriage is no more. Respondent is not maintaining any luxurious items like TV. Fridge, Sofaset, Washing Machine etc. It is not disputed that he is looking after his ailing mother who is dependent upon him. It has come in evidence of the parties and admitted by the appellant that respondent is not a qualified engineer and was working as an Engineer Assistant with Prasar Bharti Doordarshan. His carry home salary at the time of filing of the petition was Rs.13,691/-.

13. Now, respondent has retired in April, 2009 after attaining the age of superannuation. After his retirement, he must be getting pension only which under no circumstances could be Rs.30,000/- per month. From his income, respondent has to pay the rent of the premises in which he is residing. He has to maintain his mentally and physically handicapped son as well as his ailing mother. He himself is a heart patient and has to incur heavy

expenses on medical treatment. Appellant is getting Rs.700/- per month besides a residential house to live in till her life. The Trial Court rightly observed that she could not substantiate her plea that she was being looked after by his brothers and they were paying Rs.1,000/- per month to her, in view of her own cross-examination where she admitted that her brothers were not paying her any maintenance and that she was not dependent upon them.

14. Under these circumstances, when the appellant failed to substantiate the current income of the respondent and only bald averments have been made in the petition regarding his financial status, Trial Court was right in its approach while dismissing the petition.

15. As discussed above, income of the respondent has reduced due to changed circumstances as he is now a retired man and the pension which he might be getting must be barely enough to meet his day-to-day requirements as well as the medical expenses being borne by him for the treatment of his son, himself and his mother.

16. Hence, I find no merits in the appeal. The same is accordingly dismissed.

CM No.4994/2007 (for interim maintenance)

17. Since appeal has been dismissed, this application has become infructuous and the same is accordingly dismissed.

**ARUNA SURESH
(JUDGE)**

**AUGUST 13, 2010
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