

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) No.326/2008 & CM No.10603/2008

VIVEK RASTOGI

.....Appellant through
Mr.Arun Monga &
Mr. Vivek Sharma, Adv.

versus

ARCHANA RASTOGI

.....Respondent through
Ms. Geeta Luthra, Sr. Adv.
with Mr. Parinay D. Sah,
Adv.

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Date of Hearing: December 03, 2009

Date of Decision: February 08, 2010

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SUNIL GAUR

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

1. This Appeal has been filed against the Judgment dated 3.4.2008 passed by the learned Single Judge granting interim maintenance in a suit filed by the Respondent/Wife in her Suit under Sections 18, 20 and 23 of the Hindu Adoptions and Maintenance Act, 1956 ('HAM Act' for short). By the impugned Judgment, the learned Single Judge has directed the Appellant/husband to pay interim maintenance at Rupees

one lakh per month, subject to the Respondent/Wife vacating the house allotted to the Husband by his employer. The Court took notice of the fact that spouses owned a Flat addressed as Flat No.702, Block No.A-3, Uniworld Citi, Gurgaon and another addressed as 102/46, Silver Oaks, DLF Phase-II. It was in this regard that the Respondent/Wife was granted the choice of residing in either of the two Flats; the Appellant/Husband was obligated to get the house chosen by the Respondent/Wife repaired/whitewashed etc. The Respondent/Wife was obligated to carry all his articles and belongings which were not owned by the Husband's Employer. The Court ordered that if the Respondent/Wife declined to shift to any of the two jointly owned flats, "she may take on rent any other house suitable to her and pay rent out of the maintenance, payable to her". The Wife has vacated accommodation provided by the Husband's Employer and hence enjoying interim maintenance from the date on which she vacated the said property.

2. Two questions arise for our consideration. Firstly, whether this Court possesses territorial jurisdiction to entertain the suit; and secondly whether the impugned Judgment calls for interference. So far as the first issue is

concerned, the parties married to each other in New Delhi. They, however, last resided together in Gurgaon where the Respondent/Wife avowedly maintains her residence. We have already recorded that the Suit has been filed under sundry provisions of HAM Act; there is no reference, whatsoever, to the Hindu Marriage Act, 1955 ('HM Act for short). In response to the Objection to the exercise of territorial jurisdiction by Courts in Delhi, Ms. Geeta Luthra, learned Senior Counsel for the Respondent/Wife argues that since the marriage was solemnized in Delhi, Courts located in Delhi would possess territorial jurisdiction to decide all disputes between spouses. Admittedly, a Suit for Partition has been filed by the Respondent/Wife in Gurgaon, where it is being presently adjudicated. Apart from the immovable properties mentioned above, it appears that the Wife/Respondent has ownership of a parcel of land in hi-tech city Ghaziabad. He, however, does not own any property in Delhi and does not reside in Delhi. According to the Appellant/Husband, he lost his employment because the Wife had refused to deliver back the possession of the company house, even after he was transferred. It is not denied that he is presently working as a Consultant in Pune where he is also residing. Our attention

has been drawn to Single Bench decisions where the provisions of Section 20 of the Code of Civil Procedure, 1908 ('CPC' for short) have been pressed into service for determining which Court is competent to exercise jurisdiction in the context of territoriality. In ***Darika Bhatia -vs- V.L. Bhatia***, 119(2005) DLT 518 an unmarried daughter had made the claim against her father which is also the position in ***Alisha Chaudhary -vs- Tarun Chaudhary***, 2009(110) DRJ 544. Our learned Brother, Pradeep Nandrajog, J. has noted in ***Darika*** that the marriage of the parents of the plaintiff is wholly irrelevant to an inquiry for maintenance by the daughter since the father was not residing in Delhi; the daughter was residing in Gurgaon, having taken possession of the flat situated there pursuant to a settlement between her parents. The Plaint was directed to be returned to the daughter for permitting her to file it in a Court of competent jurisdiction. In ***Alisha***, the Court again applied Section 20 of HAM Act. It kept in view the fact that the Defendant, at the time of commencement of the suit, actually and voluntarily resided in Delhi and, therefore, the suit was held to be entertainable by Courts in Delhi.

3. Section 19 of the HM Act stipulates that every petition under that Act shall be presented to the District Judge within the local limits of whose ordinary civil jurisdiction (i) the marriage was solemnized or (ii) the respondent, at the time of the presentation of the petition, resides, or (iii) the parties to the marriage last resided together, or (iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or (iv) where the petitioner is residing at the time of the presentation of the petition in a case where the respondent is, at that time, residing outside the territories, or has not been heard of as being alive for a period of seven years or more. The HM Act amends and codifies the enactments relating to marriage amongst Hindus. Section 24 thereof contemplates the grant of *pendente lite* maintenance and Section 25 pertains to permanent alimony and maintenance. It is manifest that an enquiry into whether a spouse should be granted maintenance, *pendente lite* or permanent, is clearly postulated by this Act. It is axiomatic that the provisions of the HM Act come into operation only once a petition for divorce or restitution of conjugal rights is filed thereunder. One important factor is that a nominal fixed fee is payable for seeking relief under the HM Act, whereas a

substantial ad valorem Court Fee must be affixed on a plaint for maintenance under the HAM Act. The claim for maintenance by a deserted wife would not lie under the HM Act. This right is enshrined and is available under Section 18 of the HAM Act. Unlike the HM Act, the HAM Act is totally silent on the question of jurisdiction. It seems to us that there is no warrant to compel a spouse to petition for a divorce in order to claim maintenance as a precondition to seeking succor through the provisions of Section 19 of the HM Act. In so doing, we do not ignore the general law, that is, the CPC.

4. Several Benches of different High Courts have opined that the *situs* of the place of marriage is abidingly relevant to determine which Court possesses territorial jurisdiction. There can be no debate on the question that disputes between spouses would inexorably be traced back to the solemnization of their marriage, and therefore the place where this event happens will always constitute one of the seats of the cause of action. We approve of this very reasoning articulated in *P.K. Bakshi -vs- Shika Bakshi*, 1998(2) HLR 43. This conclusion had been arrived at after garnering support from *K. Vajravelu -vs- Raj Lakshmi*, AIR 1954 Madras 358, *Chandrawati -vs- Lala Suraj Narain*, AIR

1955 Allahabad 384, *Subhash Chandra Jain -vs- Vidyut Jain*, AIR 1978 Allahabad 234 and *Sushilabai Rohani -vs- Rohani Prasad*, 2(1982) DMC 13. This very question has been considered by the Division Bench of the Calcutta High Court in *Arun Kumar Bedi -vs- Anjana Bedi*, AIR 1984 Calcutta 49. In that case, the Plaintiff/Wife was married at Delhi after which he departed to the United Kingdom to reside with her Husband. Due to a breakdown in the marriage (desertion by her Husband), she was constrained to return to a separate residence in Calcutta. The Suit for Maintenance, which was filed in Calcutta, was held not to be maintainable in Calcutta. The Division Bench considered Section 18(2) of HAM Act *en passant* mainly to mention that the right for maintenance was bestowed or enshrined by that Section. Section 20 of the CPC was found to be relevant. It was opined that no part of cause of action had arisen in Calcutta as the desertion had taken place in England; that the residence of the Plaintiff/Wife would not bestow jurisdiction to the Calcutta Courts where the Respondent/Husband was not resident. The case is, therefore, distinguishable from the factual matrix before us as the marriage in our case had taken place in Delhi. In *M.Ramalinga Iyer -vs- T.K. Jayalakshmi*, AIR 1941 Madras

695 the position was similar to that obtaining in ***Bedi*** and hence was applied by the Division Bench.

5. Although it is not conclusively or exclusively determinative of the question of which Court is competent to exercise territorial jurisdiction, we cannot ignore the fact that Respondent/Wife has filed a Partition Suit in Gurgaon, where she resides. In our opinion, the decision to file the suit for maintenance in this Court was taken under sanguinity that the Courts in the Capital and/or Cosmopolitan Metropolis would grant her a larger quantum of maintenance than the courts elsewhere. Even if this tantamounts to *forum shopping*, our opinion would remain steadfast. On the first question, therefore, our conclusion is that Section 20 of the CPC along with Section 19 of the HM Act would apply to any claim under the HAM Act. A perusal of paragraph 52 of the plaint makes it palpably clear that according to the Wife/Respondent courts in Delhi have jurisdiction to entertain the claim for maintenance because she got married to the Husband/Appellant in New Delhi. Accordingly, Courts in Delhi are competent to adjudicate the present disputes.

6. On the merits of the case, we think that it is apposite to immediately draw a distinction between a division of

matrimonial assets and grant of maintenance, be it *pendente lite* or permanent. Lord Denning was the first to recognize a wife's rights to the matrimonial assets in *Bendall -vs- Mcwhitter*, 1 All E.R. 1307. The House of Lords had a different opinion. Consequently, the right of wife to claim a share in the matrimonial assets was temporarily defeated. However, the British Parliament intervened and provided that a wife would be entitled to a share in the matrimonial assets. Similar law has not been brought in by our Parliament which is regrettable. If the Court is called upon to divide the matrimonial assets, the entire income of the spouses as also the aspect of either of the spouses being financially better than other, would be called into question. However, where the Court has to decide on the quantum of the maintenance *pendente lite*, the predominant principle to be implemented is that a spouse is entitled to live in accordance with the status enjoyed before the disruption of the matrimonial bonds and ties. *A fortiori*, while quantifying *pendente lite* maintenance, it is unnecessary to quantify the family income with absolute precision and exactitude. Considerable debate has been generated before us in this regard, namely, that the income of the Appellant/Husband was more than what has been

disclosed by him in the Court; conversely that currently after deducting expenses, his disposable income has drastically fallen to around Rupees thirty lac annually approximately. What law requires is that this left behind spouse should be granted maintenance so as to enable a continuance of the lifestyle enjoyed by the couple while they were matrimonially and emotionally united.

7. The wife undisputedly has comfortable residence inasmuch as she has possession of the Flat addressed as Flat No.702, Block No.A-3, Uniworld Citi, Gurgaon, and is also enjoying the control/income of a smaller flat addressed as 102/46, Silver Oaks, DLF Phase-II Silveroak, DLF. In the proceedings before us, the Appellant/Husband had offered all these immovable properties together with all jointly owned Mutual Funds and shares in return of a consolidated sum of Rupees fifty lac from the Wife. The Wife, however, had declined to accept anything below Rupees one crore, as well as the larger flat where she is presently residing, the value of which is more than Rupees one crore; whereas the smaller flat has a market value of about Rupees fifty-sixty lac. We cannot overlook the fact that no children have been born from this wedlock. Should the Respondent/Wife decided to shift to

the smaller accommodation in 102/46, Silver Oaks, DLF Phase-II, not only would the Husband/Appellant be liable to pay for the expenses of repairs, renovation etc. but no further deductions to the maintenance would be made. This will enable the income to be generated from the letting of the larger Flat.

8. Keeping all these factors in mind, we reiterate that in determining the quantum of maintenance the claiming spouse must be placed, as far as is possible, in a position similar to what was enjoyed while the spouses were living together. The learned Single Judge has directed that if the Respondent/Wife opts to take some property on rent, the rentals would be deducted from her maintenance. Further, the impugned Order contemplates that the wife may choose between the two flats jointly owned by the spouses, for her residence. It seems to us what the learned Single Judge had in mind was that if the wife exercises the option to reside in one of the two flats, the Husband would be financially obligated to carry out repairs, renovations etc. thereto. There may be a perceivable incongruence in ordering that if the Respondent/Wife elects to reside in rented premises, no extra amount could be demanded from the Husband on this account. However, we

understand the learned Single Judge to have put a cap or ceiling of Rupees one lac as maintenance regardless of the monetary outgoing.

9. It is in this conspectus that we are of the opinion that the maintenance of Rupees one lac per month should be reduced by a sum representing what the Flat No.702, Block No.A-3, Uniworld Citi, Gurgaon may reasonably fetch.

10. While we should not be understood to have quantified the rental of Flat No.702, Block No.A-3, Uniworld Citi, Gurgaon, where the Respondent/Wife is residing to be merely Rupees Twenty Thousand, the maintenance awarded by the learned Single Judge should be reduced by this amount. In other words, we are satisfied that the *pendente lite* maintenance of Rupees Eighty Thousand per month is adequate and proper to cover the reasonable expenses of the Respondent/Wife. It is ordered accordingly.

11. Appeal is disposed of in light of above stated directions. Pending application stands disposed of.

(VIKRAMAJIT SEN)
JUDGE

(SUNIL GAUR)
JUDGE

February 08, 2010
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