

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

Date of decision: 11th December, 2013.

+ **RFA 200/2012, CM No.7926/2012 (u/O 41 R-27 of the CPC), CM No.7927/2012 (for stay), CM No.15161/2012 (for vacation of stay) & CM No.14645/2013 (for stay of execution).**

SATYAJIT CHATTERJEE

..... Appellant

Through: Mr. Pankaj Mehta & Mr. R.K. Mehta,
Adv.

Versus

DEEPA CHATTERJEE & ANR

..... Respondents

Through: Mr. S.N. Choudhri, Ms. Shruti
Choudhri & Mr. Anjan Sinha, Adv.

AND

+ **RFA 326/2012**

DEEPA CHATTERJEE & ANR

..... Appellants

Through: Mr. S.N. Choudhri, Ms. Shruti
Choudhri & Mr. Anjan Sinha, Adv.

Versus

SATYAJEET CHATTERJEE

.... Respondent

Through: Mr. Pankaj Mehta & Mr. R.K. Mehta,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. Both appeals impugn the judgment and decree dated 29th September, 2011 of the Court of the Additional District Judge (ADJ)-03 (C), Delhi in

Suit No.02/2009 (Unique Case I.D. No.02401C0091632003) filed by the appellants in RFA No.326/2012 against the appellant in RFA No.200/2012 under Sections 18 & 20 of the Hindu Adoption and Maintenance Act, 1956. Vide the impugned judgment and decree, the appellant Mr. Satyajeet Chatterjee (husband) in RFA No.200/2012 has been directed to pay to the appellant No.1 Ms. Deepa Chatterjee (wife) in RFA No.326/2012, a sum of Rs.10,000/- per month from 1st September, 2003 till the date of the decree and future maintenance at the rate of Rs.10,000/- per month, month by month and a sum of Rs.8,000/- per month to the appellant No.2 Mr. Indra Chatterjee (son) in RFA No.326/2012 from 1st September, 2003 till 21st December, 2004 i.e. till the date of his attaining majority.

2. Notice of RFA No.200/2012 was issued and vide *ex-parte* ad interim order dated 2nd May, 2012, the operation of the impugned judgment and decree was stayed on the appellant/husband depositing a sum of Rs.2,75,000/- in this Court and paying maintenance to the appellant/wife at the rate of Rs.6,500/- per month during the pendency of the appeal. The appellant/husband however did not comply with the said conditions and vide order dated 30th November, 2012, it was clarified that upon non-compliance by the appellant/husband with the said conditions, the stay of

execution earlier granted stood vacated and it was open to the appellant/wife to execute the decree.

3. Notice of RFA No.326/2012 was also issued.
4. Mediation attempted, remained unsuccessful.
5. The counsels have been heard.
6. The undisputed position is:
 - (i) that the parties are Hindu by religion and were married on 13th February, 1986 and are living separately since 13th April, 1986;
 - (ii) that the appellant No.2 son was born out of the wedlock on 21st December, 1986 and has been in the custody of the mother since birth;
 - (iii) that on 21st April, 1988, the appellant/husband filed a petition for divorce on the ground of desertion and which petition was granted on 1st October, 1994;
 - (iv) that FAO No.272/1994 preferred by the appellant/wife against the decree of divorce was allowed on 19th January, 2001 and the decree of divorce set aside;
 - (v) that the appellant/husband 're-married' during the pendency of the appeal and has a teen age daughter from such 're-marriage';

- (vi) that during the pendency of FAO No.272/1994, maintenance, *pendente lite* at the rate of Rs.2,000/- per month was granted to the appellant/wife;
- (vii) that SLP (CC) No.15091/2013 against the judgment dated 19th January, 2001 of this Court in FAO No.272/1994 is pending consideration in the Supreme Court;
- (viii) that the appellant/husband is working at a managerial position with UCO Bank;
- (ix) that the appellant/wife is non-working;
- (x) that the appellant No.2 son is informed to be working as a Computer Engineer, since attaining the age of 24 years.

7. The suit from which this appeal arises, was instituted on 22nd September, 2003 claiming maintenance at the rate of Rs.27,500/- for both the appellants in RFA No.326/2012.

8. The learned ADJ, in the impugned judgment, has held:

- (a) that the appellant/husband has admitted that 'his second wife' though earlier a house wife was earning Rs.5,000/- per month;
- (b) that though the appellant/husband had claimed liability of his mother also but since the father of the appellant/husband had retired

as a Class-I government officer, his mother was earning pension and was not financially dependant upon him;

(c) that as per the salary slip of the appellant/husband for the month of April, 2010, his gross salary was Rs.39,565.52 paise;

(d) that the appellant/husband had neglected the appellant/wife and son without any justifiable cause and had failed to establish that he was bearing any of their expenses; and, the amount paid by the appellant/husband towards interim maintenance was allowed to be adjusted from the decretal amount.

9. The counsel for the appellant/husband, has argued:

(I) that the learned ADJ has erred in awarding maintenance from the year 2003 onwards at the same rate of Rs.10,000/- which was fixed as per the salary slip of April, 2010;

(II) that the appellant/husband, on account of 're-marriage' also has to bear the expenses of 'his second wife' and teen age daughter from the said 'marriage';

(III) attention is invited to the statement of bank account for the period 1st January, 2010 to 7th December, 2012 of the appellant/wife to contend that she has been receiving credits therein;

(IV) that it was the plea of the appellant/husband before the learned ADJ also of the appellant/wife having huge amounts of deposits in her name from which she is earning interest but the appellant/husband at that stage could not prove the same;

(V) attention is invited to a certificate issued by the State Bank of India (SBI) of the Fixed Deposit Receipts (FDRs) in the name of the appellant/wife (and in which respect application under Order 41 Rule 17 CPC is filed) and it is contended that the appellant/wife is earning interest therefrom;

(VI) that it is thus urged that the appellant/wife played a fraud upon the Court and is not entitled to any relief.

10. The counsel for the appellant/wife, has argued:

(A) that the monies in the fixed deposits are of the father of the appellant/wife and the certificate of the SBI relied upon by the appellant/husband is mischievous and the appellant/husband has obtained such certificate being a banker and attention is invited to another certificate clarifying the position;

(B) that other monies in the account of the appellant/wife are gifted from her brother;

(C) that the learned ADJ has granted maintenance to the appellant/son till the date of attaining majority only, when he had not even started earning till then;

(D) that the appellant/wife in her affidavit by way of examination-in-chief had deposed that the appellant/husband was drawing a handsome salary of more than Rs.50,000/- excluding perks which includes free house, transport etc. and also earning from the deposits, debentures and other investments and rent from his own house and was thus having a total income of more than Rs.65,000/- per month and was not cross-examined on the said aspects;

(E) that the learned ADJ instead of awarding maintenance to the appellant/wife at the rate of 1/3rd of the earnings of the appellant/husband, has awarded only at the rate of Rs.10,000/- per month;

(F) that the appellant/husband has not disclosed his assets;

(G) that the appellant/husband in cross-examination admitted having LIC policies;

(H) that the 'second wife' of the appellant/husband was earning Rs.35,000/- per month.

11. While the appellant/husband has sought reduction of maintenance awarded, the appellants wife and son have sought enhancement.

12. I have weighed the aforesaid rival contentions.

13. I am not inclined to accept the appeal of the appellant/husband for reduction of arrears of maintenance or future maintenance for the following reasons:

(i) the appellant/husband has not been able to plead or prove the case of the appellant/wife being employed or carrying on any vocation or having any earning therefrom;

(ii) merely because the father or brother of the appellant/wife may be helping her, is no reason to reduce the liability of the appellant/husband towards appellant/wife; for this reason, no merit is found in the application under Order 41 Rule 27 CPC also;

(iii) no error is found in the learned ADJ applying the same monthly rate of maintenance as fixed for future to the arrears also, as the future maintenance fixed by the learned ADJ is found to be on the lower side and as grant of maintenance to the appellant/son has been restricted till the date of attaining majority when ordinarily a child does not become financially independent at that age and when it is

also not the case of the appellant/husband that his son had become financially independent on that date; thus in the overall scheme of the order, no reduction of rate applied for arrears is called for;

(iv) it cannot also be lost sight of that the arrears were payable by the appellant/husband month by month; the appellant/husband however enjoyed the monies and must have earned interest thereon and has not been directed to pay any interest on arrears from the date when the maintenance for each month fell due and till the date of payment;

(v) even otherwise, considering the status of the appellant/husband, the amount of Rs.10,000/- per month, is not found to be excessive considering the need of the appellant/wife to maintain herself in the same position as she would been if not forced to live separately from the husband;

(vi) though the appellant/wife had been living separately since 13th April, 1986 as aforesaid and literally single handedly brought up the son but the respondent/husband did not provide for her and the suit for maintenance was filed by the appellant/wife only on 22nd September, 2003; it can thus by no stretch of imagination be said that

the appellant/husband has been prejudiced in any way; rather, the learned ADJ is right in holding that the appellant/husband has neglected his wife and son.

14. As far as the appeal preferred by the appellant/wife for enhancement of the maintenance is concerned, though I am not inclined to enhance the rate of maintenance fixed for the arrears and for future till date, but I am of the view that considering that the salary of the appellant/husband also must have now increased, the appellant/husband with effect from 1st December, 2013 should pay maintenance at the rate of Rs.20,000/- per month to the appellant/wife. The said rate has been arrived at by taking the current salary of the appellant/husband to be Rs.60,000/- per month, as contended by the counsel for the appellant/wife during the hearing and not controverted by the counsel for the appellant/husband and finding the appellant/wife to be entitled to at least 1/3rd share thereof, as laid down in *Nimisha Vs. Saurabh Srivastava* 201 (2013) DLT 769, *Lalit Bhola Vs. Nidhi Bhola* MANU/DE/0487/2013, *Dev Dutt Singh Vs. Rajni Gandhi* AIR 1984 Delhi 320 and *Ashok Ratilal Trivedi Vs. Anjani Madhusudan Oza* MANU/DE/0213/1971 and considering the prevalent cost of living.

15. Resultantly, RFA No.200/2012 is dismissed and RFA No.326/2012 is

partly allowed to the aforesaid extent.

16. The appellant/wife is also awarded costs of these appeals assessed at Rs.25,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 11, 2013

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