

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

%

Date of decision: 7th October, 2013

+

RFA 53/2005 & CM No.1498/2005

RAJESH KHANEJA

..... Appellant

Through: None.

Versus

RITA KHANEJA

.....Respondent

Through: Ms. Sumati Anand, Adv.

AND

+

RFA 70/2005

RITA KHANEJA

..... Appellant

Through: Ms. Sumati Anand, Adv.

Versus

RAJESH KHANEJA

.....Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. Both appeals impugn the judgment and decree dated 18th October, 2004 of the Court of the learned Addl. District Judge in Suit No.31/2002 filed by the wife Ms. Rita Khaneja under Sections 18 & 23 of the Hindu Adoption and Maintenance Act, 1956.

2. The wife Ms. Rita Khaneja filed the said suit, *inter alia* pleading:-

(a). that she was married to Shri Rajesh Khaneja on 30th September, 1998 according to Hindu Rites and Ceremonies;

- (b). that she was on 5th April, 1999 turned out of the matrimonial home;
- (c). that she on 8th August, 2000 filed a complaint against the husband Shri Rajesh Khaneja and his family members with the Crime Against Women Cell, Nanakpura, New Delhi;
- (d). that she also approached the Delhi Legal Services Authority for reconciliation ; the husband Shri Rajesh Khaneja therein paid a meagre amount of Rs.1,000/- as maintenance but refused to take her back in the matrimonial home;
- (e). that FIR No.141/2000 under Section 406/498-A IPC was registered with the Police Station, Lajpat Nagar, New Delhi against the husband Shri Rajesh Khaneja, his brothers and his parents and they were granted bail;
- (f). that since 5th April, 1999 she is living in her parental home and since her father has died long ago, is depended upon her brother; and,
- (g). that the husband Shri Rajesh Khaneja is working as Marketing Manager in Multiplex Corporation at Noida and earning about Rs.13,500/- per month.

accordingly a claim for maintenance @ Rs.6,000/- per month from April, 1999 till February, 2002 and @ Rs.7,000/- per month from March, 2002 onwards was made.

3. The husband Shri Rajesh Khaneja contested the aforesaid suit by filing a written statement and in which the date of marriage and the date from which the parties were residing separately was not disputed.

4. The learned Addl. District Judge, in the impugned judgment, has found/observed/held:-

- (i). that the wife Ms. Rita Khaneja is not entitled to any maintenance for the period from April, 1999 till February, 2002, when the suit was instituted, for the reason of having not given any reasoning as to why she did not apply for maintenance in the month of April, 1999;
- (ii). that vide order dated 6th June, 2003 in proceedings under Section 125 of the Cr.PC, the wife Ms. Rita Khaneja had been awarded maintenance @ Rs.3,100/- per month w.e.f. 6th June, 2003;
- (iii). that since the wife Ms. Rita Khaneja has instituted the suit from which this appeal arises on 12th February, 2002 she was entitled to maintenance from 12th February, 2002 till May, 2003 also @ Rs.3,100/- per month i.e in the total sum of Rs.48,300/-;
- (iv). future maintenance was also awarded @ Rs.3,100/- per month, and which the counsel for the wife Ms. Rita Khaneja informs has been enhanced in one occasion;

5. The wife Ms. Rita Khaneja is aggrieved from the judgment qua the rate of maintenance as well as qua denial of maintenance for the period April, 1999 till 12th February, 2002;

6. The husband Shri Rajesh Khaneja is aggrieved from the judgment and decree on the ground that the wife Ms. Rita Khaneja has been directed to pay the Court Fees only on the amount of Rs.48,300/- and not on the entire claim in the suit. He is also aggrieved from the award of maintenance w.e.f. 12th February, 2002 and generally from the judgment and decree.

7. Both the appeals were admitted for hearing though no interim relief sought by the husband Shri Rajesh Khaneja granted. The counsel for the wife Ms. Rita Khaneja states that the amount of Rs.48,300/- has since been recovered and future maintenance as directed is also being paid.

8. None has appeared for the husband Shri Rajesh Khaneja today inspite of the matter having been shown on the Board for a considerably long time. A perusal of the order sheet shows that he has not been appearing on the previous two occasions also. In fact, on 27th September, 2013, taking note of the non-appearance, in the interest of justice adverse orders were deferred. Need is thus not felt to await the husband Shri Rajesh Khaneja any further.

9. Thus, RFA No.53/2005 preferred by the husband Shri Rajesh Khaneja is dismissed in default. However while doing so, I may notice that his objection as to Court Fees is misconceived. The wife Ms. Rita Khaneja sued as an indigent person and has been directed to pay Court Fees on the relief granted to her; Rule 10 of Order XXXIII provides that where the indigent person succeeds, the Court Fee shall be recoverable from any party ordered by the Court to pay the same. Thus the liability for Court Fees can be placed on the husband Shri Rajesh Khaneja; reference in this regard can be made to

R.V. Dev. V. Chief Secretary, Govt. of Kerala AIR 2004 Kerala upheld by the Supreme Court in the judgment reported as (2007) 5 SCC 698. Thus, even if it were to be held that the Court Fees has to be more, the burden thereof can ultimately fall on the husband Shri Rajesh Khaneja only.

10. The counsel for the wife Ms. Rita Khaneja, without prejudice to her rights to press for enhancement of rate in the event the husband Shri Rajesh Khaneja applies for restoration of his appeal, has at this stage confined the relief in her appeal to the grant of arrears of maintenance from April, 1999 to 12th February, 2002.

11. I have perused the judgment. The only reason given by the learned Addl. District Judge for denying the arrears of maintenance to the wife Ms. Rita Khaneja is of her having not applied for the same in April, 1999. The counsel for the wife Ms. Rita Khaneja is unable to give the date when the petition under Section 125 Cr.PC was filed. However now on asking the wife Ms. Rita Khaneja present in person she states that the said petition was filed on 12th August, 2002. On enquiry as to why the order for payment of maintenance therein is w.e.f. 6th June, 2003, it is stated that the direction for payment therein is from the date of the order.

12. A perusal of Section 125(2) of the Cr.PC shows that the maintenance thereunder is payable from the date of the order or if so ordered from the date of the application for maintenance. A perusal of the order dated 6th June, 2003 of the Court of the Metropolitan Magistrate shows no reason to have been given for denying maintenance to the wife Ms. Rita Khaneja with effect from the date of the application. It is thus not as if the Court, even in

those proceedings, has denied maintenance to the wife Ms. Rita Khaneja for any period prior to June, 2003.

13. Otherwise the wife Ms. Rita Khaneja in a proceeding under Sections 18 & 23 of the Hindu Adoption and Maintenance Act is entitled to arrears of maintenance also, for a period of three years prior to the institution of the suit. I see no reason to deny the same to the wife Ms. Rita Khaneja in the present case, particularly when she has been awarded maintenance w.e.f. February, 2002.

14. I accordingly allow the appeal preferred by the wife Ms. Rita Khaneja i.e. RFA No.70/2005 and modify the decree for the past maintenance by directing that the wife Ms. Rita Khaneja is also entitled to maintenance @ Rs.3,100/- per month with effect from the month of April, 1999 till 11th February, 2002, with effect from which date the learned Addl. District Judge has awarded the maintenance.

15. Accordingly a decree in the sum of Rs.1,05,400/- is passed in favour of the wife Ms. Rita Khaneja and against the husband Shri Rajesh Khaneja. The wife Ms. Rita Khaneja shall also be entitled to interest on the said amount @ 8% per annum being the average of the rate of interest given by the Nationalized Banks on fixed deposits w.e.f. 12th February, 2002 till the date of payment. The costs of this appeal assessed at Rs.10,000/- also payable by the husband Shri Rajesh Khaneja to the wife Ms. Rita Khaneja.

16. It is made clear that if the husband Shri Rajesh Khaneja applies for setting aside of this *ex parte* judgment allowing appeal of wife Ms. Rita

Khaneja or for restoration of his own appeal, the wife Ms. Rita Khaneja shall be entitled to press also for enhancement of the rate of maintenance.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

OCTOBER 7, 2013

pp