

Neutral Citation No. 2024:AHC-LKO:56014

Reserved on 22.07.2024

Delivered on 14.08.2024

Court No. - 16

Case :- MATTERS UNDER ARTICLE 227 No. - 2990 of 2024

Petitioner :- Mohit Tandon

Respondent :- Addl. Prin. Judge-4, Family Court, Lucknow And Another

Counsel for Petitioner :- Sanjay Kumar Srivastava, Amit Arora

Hon'ble Shamim Ahmed,J.

1. Heard Sri Sanjay Kumar Srivastava, learned counsel for the petitioner and Ms. Preeti Tandon, respondent no.2 (in-person) alongwith Sri Ashok Kumar Singh, learned A.G.A.-I for the State as well as perused the record.

2. The instant writ petition has been filed seeking following main reliefs:-

a. to set aside the order dated 08.05.2024 passed by the learned Additional Principal Judge-IV, Family Court, Lucknow in Criminal Misc. Case No.907 of 2016 (Preeti Tandon Vs. Mohit Tandon) contained in Annexure No.1.

b. to set aside the ex-parte order dated 22.07.2016 passed by the learned Additional Principal Judge-IV, Family Court, Lucknow in the Criminal Misc. Case No.907 of 2016 (Preeti Tandon Vs. Mohit Tandon) contained in Annexure No.2.

c. to quash the entire proceeding of Criminal Misc. Case No.907 of 2016 (Preeti Tandon Vs. Mohit Tandon) pending in the court of learned Additional Principal Judge-IV, Family Court, Lucknow which is in utter violation of the judgment and order dated 07.12.2009 passed by the Hon'ble High Court of Judicature, Lucknow Bench, Lucknow in First Appeal No.1 of 2007 and First Appeal No.2 of 2007 (Mohit Tandon Vs. Preeti Tandon).

3. Learned counsel for the petitioner submits that Mohit Tandon and Preeti Tandon got married on 03.03.1995. Thereafter, on 14.10.1995, Preeti Tandon left the matrimonial house voluntarily. Subsequently, the father of Preeti Tandon filed a criminal complaint under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act against the petitioner, wherein the petitioner alongwith his parents got arrested in the month of June, 1997. Thereafter, they were released on bail from the court of learned Chief Judicial Magistrate, Hardoi.

4. He further submits that Preeti Tandon filed an application for maintenance under Section 125 Cr.P.C. on 11.06.1997, wherein learned Magistrate initially awarded Rs.500/- per month as maintenance vide order dated 16.12.1998. Thereafter, Mohit Tandon filed a petition for divorce under Section 13(1)(a) and (b) of Hindu Marriage Act, 1955 in the year 1999 citing cruelty and desertion bearing Regular Suit No.174 of 1999. Meanwhile in the year 2001, the respondent no.2 had also filed a suit for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955 bearing Regular Suit No.1246 of 2001. Both the above mentioned matters i.e. the Divorce Petition under Section 13(1)a and (b) of the Hindu Marriage Act, 1955 as well as the Suit under Section 9 of the Hindu Marriage Act, 1955 were decided by a common judgment dated on 28.10.2006 by learned Principal Judge, Family Court, Lucknow.

5. He further submits that the Principal Judge, Family Court, Lucknow, after hearing the parties and on the basis of the evidence adduced as well as material on record, vide order dated 28.10.2006, dismissed Regular Suit No. 174 of 1999 filed by the petitioner under Section 13 of the Hindu Marriage Act, 1955 and decreed Regular Suit No. 1246 of 2001 filed by the respondent no.2 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in favour of respondent no.2. It was also provided in the aforesaid judgment dated 28.10.2006 that the petitioner would accept the respondent no.2 as his wife and shall live together as husband and wife.

6. He further submits that both the parties preferred appeal before this High Court against the aforesaid order dated 28.10.2006 bearing First Appeal No.1 of 2007 and First Appeal No.2 of 2007. Both the appeals were decided on 07.12.2009 by the Hon'ble High Court Lucknow Bench, Lucknow through a common judgment, wherein the High Court granted the decree of divorce to the parties and also awarded permanent alimony along with arrears of maintenance to respondent No. 2, amounting to Rs. 5,25,000/-. The District Magistrate, Lucknow was also directed to recover the aforesaid amount as arrears of land revenue from the petitioner and with further direction to pay the same to the wife i.e. respondent no.2.

7. Learned counsel for the petitioner further submits that the petitioner prepared a Demand Draft for Rs. 5,25,000/- and tried to give the same to the respondent no.2 but she did not accept the same.

8. He further submits that despite the judgment and decree dated 07.12.2009 passed by Division Bench of this Court granting divorce, permanent alimony and arrears of maintenance, the respondent No. 2 did not challenge this decision before the Hon'ble Apex Court rather she filed a Review Petition (Defective) No.89 of 2010, which was dismissed for want of prosecution vide order dated 26.05.2017.

9. He further submits that the petitioner was acquitted from a false and frivolous complaint case filed by the father of the respondent No. 2.

10. He further submits that after six years of the aforesaid judgment passed by Division Bench of this Court dated 07.12.2009, respondent No. 2 filed a second application under Section 125 Cr.P.C. before the learned Additional Principal Judge-4, Family Court, Lucknow bearing Criminal Misc. Case No. 907 of 2016 seeking maintenance on frivolous grounds and concealing material facts about earlier proceedings between them, wherein she had also obtained an ex-parte interim maintenance order of Rs. 2,000/- per month from the petitioner vide order dated 22.07.2016. Thereafter, the petitioner moved a recall application for recall of the order dated 22.07.2016, however, the same was dismissed vide order dated 20.10.2023. Thereafter, on 02.01.2024, the petitioner had moved an application for recall of the order dated 20.10.2023.

11. He further submits that during the hearing of the recall application, the court reserved its decision and scheduled the next date for 05.05.2024. Subsequently, without affording the petitioner an opportunity to present arguments or provide clarity on crucial matters, such as, maintenance and the application C-21 seeking the recall of the interim maintenance order dated 22.07.2016, the court passed an order imposing a substantial penalty amounting to 25% of the maintenance amount vide order dated 08.05.2024.

12. He further submits that both the impugned orders i.e. the order dated 22.07.2016 passed by learned Additional Principal Judge-IV, Family Court, Lucknow granting interim maintenance to the opposite party no.2 @ Rs.2,000/- per month as well as the order dated 08.05.2024, whereby the learned Additional Principal Judge-IV, Family Court, Lucknow has imposed a heavy cost @ 25% of the maintenance amount, are totally in violation with law as the same have been passed without considering the material available on record. He further submits that both the aforesaid orders are totally illegal and they suffer from perversity, as such, they are liable to be quashed alongwith the entire proceedings of the Criminal Misc. Case No.907 of 2016,

under Section 125 Cr.P.C. pending before the learned Additional Principal Judge-IV, Family Court, Lucknow.

13. On the other hand, learned A.G.A.-I for the State Opposite Party No.1 as well as the respondent no.2, namely, Preeti Tandon (in-person) submit that the respondent no.2 filed an application for maintenance under Section 125 Cr.P.C. in the year 1998, wherein Rs. 500/- per month was awarded to her. They further submit that it is important to highlight that divorce proceedings initiated by Mohit Tandon, citing cruelty and desertion, culminated in a High Court judgment granting divorce and awarding permanent alimony to her. The legal battles and subsequent appeals are reflective of the complex nature of marital disputes and the judicial oversight required in such matters.

14. They further submit that the petitioner's contention regarding maintenance and divorce-related judgments is duly noted and the respondent no.2's legal actions, including the filing of review petitions and recall applications, are legitimate under the framework of our judicial system. They further submit that these actions seek to address grievances and ensure that justice is served according to the law.

15. They further submit that the petitioner has highlighted instances of ex-parte interim orders obtained by the respondent no.2. It is pertinent to mention that while ex-parte orders are granted in exceptional circumstances, they are subject to judicial scrutiny and can be contested through appropriate legal channels, as evidenced by the petitioner's subsequent applications for their recall.

16. They further submit that the imposition of a penalty amounting to 25% of the maintenance amount, as mentioned by the petitioner, reflects judicial discretion exercised after due consideration of relevant facts and legal arguments as such penalties are typically imposed to ensure compliance with court orders and uphold the integrity of judicial decisions.

17. After hearing the learned counsel for the petitioner, learned A.G.A.-I for the State as well as the respondent no.2 (in-person), this Court finds no merit in the instant writ petition. The petitioner's contentions primarily challenge the procedural regularity and judicial actions concerning maintenance, divorce and subsequent legal proceedings initiated by the respondent no.2.

18. The Court acknowledges the history of marital discord between the parties, leading to multiple legal proceedings encompassing maintenance claims under Section 125 Cr.P.C., divorce on grounds of cruelty and desertion under Section 13(1)(a) and (b) of the Hindu Marriage Act, 1955 and subsequent appeals and review petitions. Judicial scrutiny has been consistently applied to adjudicate these matters, resulting in definitive judgments and orders upheld through appellate processes.

19. The petitioner's grievances primarily stem from ex-parte interim orders obtained by the respondent no.2, review petitions and applications challenging earlier court decisions. These actions, as highlighted by the A.G.A.-I, fall within the purview of procedural remedies available under the law to seek redressal and ensure judicial oversight in matters of matrimonial disputes.

20. The petitioner raises concerns regarding the closure of the court on 17.04.2024 and subsequent proceedings on 18.04.2024, arguing lack of specific intimation or application from the respondent no.2's side. However, it is noted that court proceedings were conducted in accordance with scheduled notices and general information provided to all parties concerned, adhering to procedural norms and ensuring transparency in judicial proceedings.

21. Further, Hon'ble the Supreme Court of India in the case of ***Rajnesh Vs. Neha and Another; (2021) 2 SCC 32*** elaborated upon the broad criteria and the factors to be considered for determining the quantum of maintenance. This judgment lays down a comprehensive framework for determining the quantum of maintenance in matrimonial disputes, particularly focusing on permanent alimony. The primary objective is to prevent the dependent spouse from being reduced to destitution or vagrancy due to the failure of the marriage, rather than punishing the other spouse. The court emphasizes that there is no fixed formula for calculating maintenance amount; instead, it should be based on a balanced consideration of various factors. These factors include but are not limited to:-

- i. Status of the parties, social and financial.*
- ii. Reasonable needs of the wife and dependent children.*
- iii. Qualifications and employment status of the parties.*
- iv. Independent income or assets owned by the parties.*

- v. Maintain standard of living as in the matrimonial home.*
- vi. Any employment sacrifices made for family responsibilities.*
- vii. Reasonable litigation costs for a non-working wife.*
- viii. Financial capacity of husband, his income, maintenance obligations and liabilities.*

22. The status of the parties is a significant factor, encompassing their social standing, lifestyle, and financial background. The reasonable needs of the wife must be assessed, including costs for food, clothing, shelter and medical expenses. The petitioner's educational and professional qualifications, as well as their employment history, play a crucial role in evaluating their potential for self-sufficiency. If the petitioner has any independent source of income or owns property, this will also be taken into account to determine if it is sufficient to maintain the same standard of living experienced during the marriage. Additionally, the court considers whether the petitioner had to sacrifice employment opportunities for family responsibilities, such as caring for elderly family members, which may have impacted their career prospects.

23. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation.

24. Maintenance is not merely a legal right. It is part and parcel of basic human right. For weaker sections, it is a problem in the sense that their very survival rests upon the maintenance. The object of providing maintenance is two-fold: firstly, to prevent vagrancy resulting from strained relations between the husband and wife, and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. On the breakdown of the marriage, it often so happens that

the husband pays nothing for the support of his wife and the wife has to fall back upon her parents and relatives to fend for her immediate needs. Reasonableness too demands extension of such a relief in favour of a needy spouse. Had not the parties drifted away from one another, the spouse, from whom support is sought, would have supported the other spouse entailing financial burden. Hence, it is but natural to make the husband bear the cost of maintaining his wife pending disposal of any dispute until some permanent relief is provided to her.

25. With regard to the imposition of a penalty amounting to 25% of the maintenance amount, the Court recognizes this as an exercise of judicial discretion aimed at enforcing compliance with court orders and upholding the sanctity of judicial decisions. Such measures are essential in maintaining the efficacy of judicial directives and securing equitable outcomes in contentious legal disputes.

26. Further, this Court is also of the view that the Division Bench of this Court has ordered the petitioner to pay Rs.5,25,000/- as a one time alimony to the respondent no.2, however, the same has not been paid till date. This Court asked thrice to the petitioner to show the original Bank Demand Draft of Rs.5,25,000/- which was prepared in compliance of this Court's order dated 07.12.2009, but he failed to show the same nor its copy has been annexed with this writ petition. Thus, it appears that the petitioner had canceled the alleged Bank Demand Draft and had not tried to pay the same to the respondent no.2. It also appears that the petitioner had not tried to deposit the same with the Family Court or in the High Court so that the same may be served upon the respondent no.2. Thus, it is a ploy adopted by the petitioner to safeguard himself from paying the amount to the respondent no.2. It is further clarified that if the aforesaid amount of Rs.5,25,000/- was deposited in the Family Court or High Court with intention to pay the same to the respondent no.2 and with request to deposit the same in the bank in any Fixed Deposit Scheme getting interest on the above amount, then the said amount must have been now more than thrice of the amount, however, the same effort was not made by the petitioner.

27. From the perusal of record, it is also evident that the petitioner had not paid the maintenance amount to the respondent no.2 which was ordered by the learned Family Court to be paid to the respondent no.2.

28. In light of the foregoing considerations, **the writ petition is hereby dismissed** for lack of substantiated grounds warranting interference by this Court as the Equity, Law and Principle of Natural Justice warrants to interfere in favour of the respondent no.2 i.e the wife of the petitioner.

29. As on today, a legitimate rate of Simple Interest is 9% per annum as granted by bank and also by RERA in most of the case. Thus, the amount which was ordered to be paid by the petitioner to the respondent no.2 vide order dated 07.12.2009 passed by the Division Bench of this Court in First Appeal No.1 of 2007 and First Appeal No.2 of 2007, which has not been paid by the petitioner till 22.07.2024, comes to total figures as calculated by learned A.G.A.-I on the direction of this Court is as under:-

Duration	Principle Amount	Interest
07.12.2009 - 06.12.2010	₹5,25,000	₹47,250
07.12.2010 - 06.12.2011	₹5,25,000	₹47,250
07.12.2011 - 06.12.2012	₹5,25,000	₹47,250
07.12.2012 - 06.12.2013	₹5,25,000	₹47,250
07.12.2013 - 06.12.2014	₹5,25,000	₹47,250
07.12.2014 - 06.12.2015	₹5,25,000	₹47,250
07.12.2015 - 06.12.2016	₹5,25,000	₹47,250
07.12.2016 - 06.12.2017	₹5,25,000	₹47,250
07.12.2017 - 06.12.2018	₹5,25,000	₹47,250
07.12.2018 - 06.12.2019	₹5,25,000	₹47,250
07.12.2019 - 06.12.2020	₹5,25,000	₹47,250
07.12.2020 - 06.12.2021	₹5,25,000	₹47,250
07.12.2021 - 06.12.2022	₹5,25,000	₹47,250
07.12.2022 - 06.12.2023	₹5,25,000	₹47,250
07.12.2023 - 22.07.2024	₹5,25,000	₹29,645
		Total Interest = ₹6,91,145
Total Amount = ₹5,25,000 + ₹6,91,145 = ₹12,16,145		

"Date of judgment from which the amount of Rs.5,25,000/- was ordered to be paid is 07.12.2009 and the date on which this judgment was reserved is 22.07.2024. Thus, there is a difference of approximately 14 years and 229 days. For the calculation of 14 years and 229 days on the Principle Value of Rs.5,25,000/-, the total Simple Interest @ 9% per annum comes to Rs.6,91,145/-. Thus, totaling the amount as Rs.12,16,145/-."

30. Further, this Court is also of the view that the respondent no.2 had suffered from physical as well as mental agony for a long period of time, which cannot be compensated to her in the terms of money, however, a reasonable amount may be awarded to her for balancing the same. Thus, this

Court deems it appropriate to award a sum of **Rs.1,50,000/-** in addition to the aforesaid amount so as to cover up the respondent no.2's physical as well as mental agony. Further, the respondent no.2 has also suffered from financial loss due to unnecessary and unwarranted litigation, thus, this Court also deems it appropriate to award a sum of **Rs.1,50,000/-** to cover up the expenditure made by her in lieu of unnecessary and unwarranted litigation.

31. Accordingly, the petitioner, namely, Mohit Tandon is directed to pay the amount of **Rs.15,16,145/- (Rupees Fifteen Lakhs Sixteen Thousand One Hundred and Forty Five Only)** to the respondent no.2, namely, Smt. Preeti Tandon as one time settlement within one month from the date of delivery of this judgment by Bank Demand Draft. In case, the petitioner fails to pay the aforesaid amount to the respondent no.2 within the aforesaid prescribed time of one month, the District Magistrate, Lucknow is directed to recover the said amount as arrears of land revenue from the petitioner and after its recovery, the same shall be paid to the respondent no.2, Smt. Preeti Tandon within a period of further one month. The District Magistrate, Lucknow is also directed to send a compliance report to this Court after recovery, if made, of the aforesaid amount immediately.

32. Let a copy of this order be communicated to the learned Family Court concerned as well as to the District Magistrate, Lucknow for immediate compliance.

(Shamim Ahmed,J.)

Order Date :- 14.08.2024

Saurabh