IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CMM-50-2014 in
FAO-M-59-2013
Date of decision : 08.01.2016

Namrata Kalia

... Applicant-Appellant

Versus

Sameer Kalia

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Sukant Gupta, Advocate
for the applicant-appellant.

Mr. Sandeep Bansal, Advocate
for the respondent.

REKHA MITTAL, J.

Prayer in this application is for grant of maintenance pendente lite to the applicant-appellant Namrata Kalia and minor daughter of the parties Arushi Kalia, pending disposal of appeal (FAO-M-59-2013).

Counsel for the applicant-appellant has submitted that marriage of the parties was performed on 27.04.2003 at Hotel Pallavi, Sector 5, Panchkula. A daughter namely Arushi Kalia was born out of the wedlock on 04.09.2004. The child was initially admitted in Euro Kids, Pre-school Specialist, Sector 18-B, Chandigarh in the year 2007 and thereafter, in Carmel Convent School, Sector 9, Chandigarh in the year

2010. The applicant has to spend more than ₹70,000/- per month for up keep and maintenance of the child as well as herself. Before her marriage, she had a car and enjoyed other amenities of life as she is the daughter of an architect valuer and standing counsel for number of banks namely Sh.Jatinder Sharma. The respondent (husband) is doing business with his father Sh.Subhash Goyal under the name and style of M/s Kalia Trade Links, SCF 69, Grain Market Sector 26, Chandigarh and also own 10 marla house in Panchkula, maintains a car and lives a luxurious life. He is earning more than ₹5 lacs per month and the applicant may be awarded adequate maintenance to enjoy the status equal to that of her husband. She also requires money for the up keep and education of the child in the light of expenses incurred for her admission, school fee etc. and her other requirements to keep in pace with her growing needs and to face peer pressure. It is prayed that the applicant-appellant may be allowed maintenance pendente lite @ ₹70,000/- per month.

Counsel for the respondent has submitted that maintenance allowed to the child @ ₹3000/- per month in another proceedings has been enhanced to ₹10,000/- per month and the applicant (wife) is getting maintenance @ ₹5000/- pr month. The maintenance already awarded in favour of the applicant and the child is more than sufficient to satisfy their needs and is also commensurate to the income of the respondent. It is further argued that in the income tax returns filed by the respondent (husband) for the years 2012-13 and 2013-14, his gross income is approximately ₹ 3 lacs out of which the respondent has to incur personal expenditure. It is vehemently argued that the applicant is not entitled to maintenance more than what has been allowed in other proceedings.

In reply, counsel for the applicant has submitted that the respondent was owner of House No.618, Sector 10, Panchkula that was sold by him in favour of Mrs. Sonika Sharma for an amount of ₹90 lacs in the year 2012. The income tax returns relied upon by the respondent were filed during pendency of the proceedings, therefore, the same do not reflect correct income of the respondent. It is further argued that the respondent for the reasons best known has withheld his income tax returns filed prior to start of litigation between the parties, therefore, an adverse inference is to be drawn against the respondent for concealing his true income.

We have heard counsel for the parties and perused the records.

There is no dispute between the parties that the applicant-appellant is entitled to get maintenance for herself and the minor child of the parties. The only question for consideration is as to what amount of maintenance is required to be allowed in order to enable the applicant to enjoy the same amenities of life that she would have enjoyed had she continued living in the matrimonial home. Concededly, the applicant has an obligation to maintain the minor daughter of the parties born in the year 2004 and she is studying in Carmel Convent School, Chandigarh.

The applicant has placed on record a copy of the sale deed of house No.618, Sector 10, Panchkula which was sold by the respondent (husband) for a sale consideration of ₹90 lacs in the year 2012. There is no denial that the respondent (husband) is doing business in Sector 26, Chandigarh. The income tax returns in regard to income of the respondent from the business in the name of Kissan Seed Corporation, SCF-69, Grain Market, Sector 26, Chandigarh do not reflect the correct income for the reason that these returns were filed in March 2013 and March 2014, after initiation of proceedings between the parties. In view of the fact that the respondent (husband) received an amount of ₹90 lacs towards sale of his house coupled with the nature of business being carried out by the respondent and the income reflected by him in his income tax returns filed during pendency of the proceedings, in our considered opinion, the respondent (husband) is getting much more income than that reflected in the income tax returns. As per the settled position in law, the wife is entitled to enjoy the same status and amenities of life which she would have had she been residing in the matrimonial home. The prices of daily necessities of life are rising day by day. The minor daughter of the parties is more than 11 years old and is a student of a prestigious institution in Chandigarh.

Taking into consideration cumulative effect of the facts and circumstances discussed hereinbefore, we are of the considered opinion that it is expedient in the interest of justice that the applicant is allowed maintenance pendente lite @ ₹30,000/- minus the maintenance being paid in any other proceedings, for herself and the minor child of the parties from the date of application.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

January 08, 2016.
Davinder Kumar