CMM 78 of 2016 in
FAO 2475 of 2015
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Jaspreet Kaur Vs. Balpreet Singh Gumber

Present: Mr. R.S. Mamli, Advocate for the applicant- appellant.

Mr. Piyush Khanna, Advocate for the non-applicant/respondent.

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Appeal of the applicant- wife against the decree dated January 15, 2015 allowing the application of the respondent for dissolution of marriage is pending before this Court. During the pendency of her petition, the applicant-wife has filed an application under Section 24 of the Hindu Marriage Act for grant of maintenance pendente lite. It is averred in the application that the applicant has got no source of income and she has to maintain and educate the minor child born out of the wedlock. The education expenses are stated to be Rs.8000/- p.m. to Rs.10000/- p.m. The family of the respondent is having property of more than Rs.200 crores out of which respondent is having share of Rs.50 crores. He is having a transport business in the name and style of M/s S.K. Golden Transport and M/s Guru Nanak Associates. He deals in the business of real estate also besides having godowns in Gurgaon which are being given on lease as such the income of the respondent is more than Rs.80 lacs per month. Ms/ S.K. Golden Transport Company, as per the information derived through internet, has got seven branches at different places in Gurgaon, Faridabad, Ghaziabad, New Delhi, Ludhiana and Bhiwadi (Rajasthan). The respondent is allegedly running 30 trucks throughout India and owns flats in DLF Phase I and Phase 2, five flats in South City, more than four plots in Gurgaon, more than 10 plots and two farm houses at Sohana Road, Kinder Garden School, Massage Parlour, Beauty Parlour and Real Estate Business is being run in Gurgaon by the respondent. The annual income has been alleged to be more than Rs.10 crores. It is averred in the application that before the lower Court the respondent had undertaken, during the course of proceedings, that in case she is willing to send the daughter to live with respondent, he will pay her Rs.50000/- per month, provide two servants and a Driver besides a luxury car in her name and provide a house of her choice in her name in Gurgaon with CCTV camera facility. Despite the above said facilities offered, the appellant had expressed her inability to join the respondent. Along with the application, the appellant has relied upon annexure A-1, a lease agreement entered into between the Directors of M/s S.K. Golden Transport Company with Rajasthan State Industrial Development Corporation regarding Plot No. SR 149 of Industrial Area, Bhiwadi for manufacturing and industrial work to the above said Company. Annexure A-2 are the receipts issued to Janak Kaur, mother-in-law, regarding payment of tax of the different units in Municipal Corporation, Gurgaon for the year 2008. In this background, the appellant has claimed litigation expenses of Rs.1 lac and maintenance pendente lite at the rate of Rs.5 lacs per month.

The respondent has contested the application by denying the averments. It is averred in the reply that the non-applicant/ respondent is paying a sum of Rs.10000/- per month to the applicant in compliance with the interim orders passed in bail application. The amount has been enhanced to Rs.13000/- per month by Family Court, Tees Hazari, New Delhi, vide annexure R-2. Claim of appellant under Section 125 Cr.P.C. is stated to be pending before the Family Court, Tees Hazari, New Delhi on similar allegations and the respondent has also filed an application under Section 340 Cr.P.C. against her in New Delhi. The dismissal of the application has been prayed for on the ground that an attempt to play fraud with the Court has been made. The respondent has submitted that he is earning only a sum of Rs.20000/- per month **from all sources of his earning**. He has also taken up a plea that the appellant is educated having Diploma in Computers and other professional courses and is capable of earning as such she has got no right to claim maintenance.

All the averments in the application under Section 24 of the Hindu Marriage Act have been vaguely denied. So far as the offer made during the course of proceedings before the lower Court is concerned, it is pleaded in the reply that undertaking given before the Court below was simply a suggestion before the cross-examination to show that the applicant was not ready to live with the respondent and that the marriage has reached a dead end.

Counsel for the applicant- Mr. R.S. Mamli has submitted that the respondent has got income from various sources i.e. Transport business of M/s S.K. Golden Transport and M/s Guru Nanak Associates. The said Companies have got offices in different parts of the country. The respondent owns flats in different parts of Gurgaon and Punjab, as is averred in the application.

On the other hand, Mr. Piyush Khanna, counsel for the respondent has relied upon income tax returns for the assessment year 2014 to 2017 which were submitted on January 15, 2015, December 3, 2015 and August 17, 2016 indicating the gross annual income of the respondent as Rs.2,40,000/-, Rs.2,90,500/- and Rs.3,09,000/- for the assessment years 2014-15, 2015-16 and 2016-17 respectively.

We have heard learned counsel for the parties and carefully gone through the facts and circumstances of this case. The respondent has been in litigation with the applicant/ appellant since 2012 as is apparent from the record. The divorce petition had been filed by the respondent on September 27, 2012. The income tax returns for the year prior to 2014 have intentionally been withheld by the respondent. It is apparent that the respondent being vigilant regarding the right of the appellant for maintenance under various provisions of law had intentionally started showing his individual income to the tune of Rs.2 lacs to Rs.3 lacs from the financial year 2014-15. Besides this, the respondent has not denied specifically various sources of income mentioned by the applicant in the application. He has, however, submitted that from all sources he has got income of only Rs.20000/- per month. We are of the view that the respondent has made an attempt to conceal his annual income from all sources compelling this Court to decide the application for maintenance on the basis of the probabilities and circumstances apparent on the record. When the appellant had appeared as a witness in the petition for divorce filed by the respondent on the ground of cruelty, it was the case of the respondent that the applicant wife had expected sum of Rs.1 crore as divorce settlement. While grating a decree of divorce to the respondent, the lower Court has observed as follows:-

"18. As if the above evidence led by the petitioner is not enough, it may be pointed out that this is virtually a case of a dead marriage. Though the respondent has hotly contested this case she is herself not interested in living with the petitioner. She has levelled all kinds of allegations against him and has not uttered a single word to show that the parties can have a cordial relationship. In fact, when a specific query was put to her to enquire whether or not she was willing to live with him if the petitioner was not provide her with two servants, a luxury car with driver, a house of her choice and Rs.50,000/- per month, she was still not ready to live with him. In fact, she clearly stated that she would not live with him on any condition and even if he fulfilled all her demands. She further disclosed that she had agreed to settle the matter on payment of Rs.One crore to her by the petitioner. She stated that she would withdraw all the cases filed by her if the petitioner was to make such payment to her. A similar admission has also been made by her father when the same query was put to him."

The above said observations clearly indicate that the respondent has made an attempt to establish that though he was ready to provide the applicant with two servants, a luxury car with driver, a house of her choice and a sum of Rs.50000/- per month but she was still adamant not to live with him under any conditions even if he fulfilled her all demands.

Her admission in the cross-examination that she would agree to settle the matter on payment of permanent alimony Rs.1 crore which was denied by the respondent, has been taken as an adverse circumstance against her to arrive at a conclusion that the marriage had broken down.

Without expression of any opinion on the above said admission in the cross-examination, we are of the considered opinion that permanent alimony in case of divorce is a statutory right of a wife under Section 25 of the Hindu Marriage Act and it is always open to the Court to grant permanent alimony while dissolving the marriage of the parties. Pleadings of the parties apparent from the impugned judgment dated January 15, 2015 indicate that the controversy whether the applicant had been compelled to leave the matrimonial home or that she voluntarily abandoned her matrimonial house is yet to be determined but the fact remains that on the basis of his resources and wealth, a suggestion had been put to the appellant wife and her father in cross-examination that an impression was sought to be created that he was capable of providing two servants, a luxury car with driver, a house of her choice and a sum of Rs.50000/- per month but she was still not ready to live with him. There does not appear to be anything wrong in the admission of the wife when she had accepted to part company on receipt of Rs.1 crore in case it was offered to her before the year 2015, as it is a statutory right under the provisions of Section 25 of the Hindu Marriage Act. The individual may lie but the circumstances won't.

From the above said circumstances, we are of the considered opinion that the respondent has made an attempt to conceal his income with an objective to evade his liability for maintenance. The various sources mentioned in the application have not been specifically denied as such we arrive at a conclusion that respondent is rich enough and capable to provide the facilities to the appellant which were offered during her cross-examination.

The application under Section 24 of the Hindu Marriage Act is allowed on the basis of principle of reasonable estimation from the circumstances, which is permissible under law. As the applicant is maintaining the minor child and looking after his education, a sum of Rs.75000/- per month as maintenance pendente lite is assessed payable to the wife/ applicant w.e.f. the date of the application against her claim of Rs.5 lacs per month besides a sum of Rs.1 lac as litigation expenses. The sum of Rs.13000/- paid by the respondent will be adjustable against the said amount w.e.f. December 2015.

For payment of the arrears of maintenance and litigation expenses, to come up on the date fixed i.e. November 30, 2017.

(M.M.S. BEDI)
JUDGE

November 08, 2017
sanjay

(AUGUSTINE GEORGE MASIH)
JUDGE