

VIKAS CHANDER
2019.01.29 12:10

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA no.4912 of 2010 (O&M)

Date of Decision: 16.01.2019

Nar Singh

...Petitioner

Vs.

Chander Kanta @ Santosh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Snehbaz Thind, Advocate, for
Mr. Karan Pathak, Advocate, for the appellant.

Mr. Arun Gupta, Advocate
for Mr. N.D. Achint, Advocate, for the respondent.

Amol Rattan Singh, J (Oral)

1. By this second appeal, the appellant (defendant in a suit filed by the respondent herein who is his wife), has challenged the judgments and decrees of the Courts below, whereby as per the decree of the first appellate court, the appellant has been ordered to pay Rs.4500/- per month as maintenance to the respondent-plaintiff, Chander Kanta, with effect from 16.03.2001, the trial court earlier having decreed the suit for an amount of Rs.5,000/- as maintenance.

Further, having held the respondent-plaintiff to be in *forma pauperis*, the court fee of Rs.17500/- was ordered to be recovered from the appellant-defendant.

(That part of the judgment issued by the learned trial court has been maintained by the first appellate court).

2. The facts of the case are that the plaintiff, Chander Kanta (respondent before this Court) had filed a suit *in forma pauperis* seeking a decree for recovery of Rs.2,52,000/- as arrears of maintenance for the preceding three years, along with future maintenance @ Rs.7000/- per month. She averred that she had been married to the defendant-appellant, as per Hindu rites and ceremonies, on 23.11.1985, though no issue was born out of the wedlock. He was stated to be working as a bank officer in the Central Bank of India. The plaintiffs' parents are stated to have given sufficient dowry at the time of the marriage, including gold and silver jewellery. The defendant appellants' family members were however stated to be not satisfied with that and ill-treated the plaintiff-respondent, for bringing insufficient dowry. On 05.05.1986, at the time of the marriage of the sister of the appellant-defendant, the appellants' father is alleged to have raised a demand of Rs.20,000/- cash and other articles from the plaintiffs' father, who expressed his helplessness, upon which the father of the defendant got annoyed and threatened him with dire consequences. The plaintiffs' father, under that threat is said to have given Rs.20,000/- cash to the appellants' father (as alleged). The desire of the defendants' father was still not satisfied, however, and it was stated that he again demanded a scooter, upon refusal of which by the plaintiffs' father, the plaintiff was stated to have been mercilessly beaten up by the appellant and his mother, who, it is stated, also poured kerosene oil upon her to burn her.

The plaintiff is stated to have tolerated all this with the hope

that things would become normal, but as further alleged, in June 1988, the appellant and his mother gave merciless beatings to her and raised a demand of Rs.30,000/- from her father, for construction of a house and brought the plaintiff to Gurgaon.

On refusal by the plaintiffs' father, the plaintiff was left with him at Gurgaon. A panchayat was also stated to have been convened in the village police post on 23.10.1988, where the appellant is said to have assured that he would bring his wife back. Upon him not honouring his promise, the plaintiffs' father made a complaint on 07.07.1989 to the Police Commissioner Crime (Women), Police Head Quarters, Delhi, against the appellant, his parents and family members.

Thereafter a compromise is stated to have taken place between the parties and the appellant brought back his wife to his home and assured that he would keep her with due respect.

On 09.07.1990, the appellant however is said to have again left the plaintiff at her parental home at Gurgaon, and asked her to bring Rs.30,000/- for construction of his house and upon refusal by the plaintiffs' father to pay the sum, he left the plaintiff at Gurgaon.

Thereafter he never brought back her to his home and since then the plaintiff is living with her parents at Gurgaon. All the dowry articles are also alleged to have been retained by the defendant. The respondent-plaintiff is stated to have lodged a criminal complaint under Section 498A IPC against the appellant, upon which FIR no.305 dated

22.12.1990 was registered at Police Station Jatusana, District Rewari.

3. The respondent-plaintiff is also stated to have filed a petition under Section 125 Cr.P.C, with Rs.500/- per month awarded to her in execution proceeding. However, to recover the said amount from the defendant, she had to engage a counsel every year (as contended). Hence, she filed a suit seeking a maintenance of Rs.7,000/- per month from the appellant, who, it is stated, is earning Rs.17,000/- per month.

The appellant opposed the suit and filed a written statement, denying the pleadings of the plaintiff, also stating that he was earning Rs.6000-7000/- per month.

The respondent-plaintiff filed a replication to the written statement, with the following issues thereafter framed by the learned trial court on 27.11.2002:-

- “1.Whether the plaintiff is entitled to a decree for recovery of Rs.2,52,000/- with interest as arrears of maintenance on grounds as alleged in the plaint?OPP
- 2.Whether the defendant is liable to pay future maintenance at the rate of Rs.7000/- per month to the plaintiff? OPP
- 3.Whether the suit is not maintainable in the present form?OPD
- 4.Whether the plaintiff is not an indigent person?OPR
- 5.Whether the suit has not been properly valued for the purpose of court fees and jurisdiction?OPR
- 6.Relief.”

The respondent-plaintiff examined herself as PW1 and one Amar Singh as PW-2 and brought on record some documents.

The appellant-defendant examined himself as DW-1, with defendants evidence closed by an order of the court on 19.05.2006.

4. After having considered the pleadings, arguments and evidence on record, the learned trial court decreed the suit in part, in favour of the plaintiff, and granted Rs.5000/- per month as maintenance from the defendant, w.e.f. 16.03.2001. However, recovery of Rs.2,52,000/- as arrears of maintenance was not granted to the plaintiff; further, and he having been held to be '*in forma pauperis*', the court fee of Rs.17500/- was ordered to be recovered from the appellant-defendant.

The learned trial court recorded a finding that it was admitted that the appellant-defendant was working as a Clerk in a bank, with no satisfactory explanation coming as to why he does not want to keep his wife with him. The contention of the present appellant that his in-laws wished that he should reside with them at their home as a '*Ghar Jamai*', was also not accepted, there being no evidence to support such a self-serving statement.

As regards the quantum of maintenance to be paid, that Court found that the appellant had claimed in his written statement that his salary was only Rs.12,600/- per month and that he was paying loans etc., with his net salary therefore being Rs.6,000/- per month. However, with the salary certificate not placed on record, it was accepted by that Court that he could be carrying home only Rs.6,000/- as a net salary only if he was "voluntarily making higher deductions from such salary".

Consequently, with his salary certificate deliberately not filed by him, judicial notice was taken that the pay of a Clerk in a Nationalized

Bank is much higher than Rs.12,500/- and therefore, his actual pay was taken to be between Rs.20,000/- to Rs.22,000/- per month.

The contention that he had to look after his old parents was not found to be a ground to reduce the maintenance, because a finding was recorded that he had three brothers all of whom were living separately and as such the contention that the burden of maintaining their parents would fall only upon him, was not found to be acceptable, with his sisters also found to be married.

In any case, he was held bound to maintain his wife even had she been living with him (and if his parents were also living with him).

The allegation that the respondent-plaintiff was earning Rs.9,000/- per month was also not found to be substantiated by any evidence, and therefore, simply because she may have been working somewhere to make ends meet, was held to be no ground to deny her maintenance.

Hence, having held his income to be about Rs.20,000/- per month, the trial court awarded Rs.5,000/- per month as maintenance to the respondent.

5. On the issue of Rs.2,52,000/- being payable to the wife by way of arrears of maintenance, the learned trial court held that no such provision was brought to its notice by which such arrears could be granted and consequently, that prayer of the plaintiff was declined.

6. The said judgment and decree of the learned trial court having

challenged by the appellant before the learned first appellate court, that Court also rejected all contentions raised before it by him, including that he had been acquitted in the criminal proceedings instituted under Section 498A IPC, and therefore, he was not bound to pay maintenance.

It is to be noticed here that no appeal having been filed by the respondent-plaintiff against denial of Rs.2,52,000/- as arrears of maintenance, naturally that issue was not gone into by the first appellate court, which, agreeing with the entire reasoning given by the trial court, still reduced the maintenance amount to Rs.4500/- per month from Rs.5,000/- as granted by the trial court, in view of the fact that Rs.500/- per month was being paid by the appellant to the respondent-plaintiff pursuant to proceedings instituted by her under Section 125 Cr.P.C.

With the aforesaid modification, that appeal filed by the present appellant was dismissed by the first appellate court.

7. Not satisfied with the orders of the Courts below, the defendant has filed this appeal.

8. On the last date of hearing, learned counsel for the parties had been asked to show from the record of the learned courts below, Ex.PX, which is a salary certificate issued to the appellant by his employer, i.e. the Central Bank of India, which he led by way of additional evidence before the first appellate court.

Today, a perusal of the said certificate shows that in April 2006, he was drawing a gross salary of Rs.21,089.30 p. per month, with a

net salary of Rs.14,418.30 p., deductions having been made from the gross salary towards provident fund, housing loan, festival loan and a society provident fund.

It is to be noticed here that thereafter, for the months of April 2008 to August 2008, despite the basic salary and allowances etc. remaining essentially the same, strangely, the net salary is shown to be ranging from between Rs.11461/- to Rs.9100/- for those 5 months, after which the net salary for the month of September 2008 is shown to be Rs.14680.68 p.

9. Even upon query by this Court, learned counsel for the appellant has not been able to explain as to why the salary for the five months between April 2008 and August 2008 decreased rather than increasing; and further, he has not been able to give any cogent reason as to why the amount of Rs.4500/- per month ordered to be paid as maintenance by the learned first appellate court, even from the net salary of Rs.14680.68 pc. (as in September 2008), is in any way excessive.

It is to be further noticed here that his contribution to the society provident fund increased from Rs.4510/- to Rs.6110/-, w.e.f. June 2006 itself.

Obviously, the appellant subscribed to the provident fund to such a large extent, even while denying the respondent-plaintiff her basic right of maintenance, which is due to her, being his wife.

Learned counsel for the appellant submits that the appellant also having to maintain his parents and sister, even an amount of Rs.4500/-

per month awarded as maintenance, is highly excessive.

10. Having considered the aforesaid argument, that argument is rejected because as regards any sister, the learned trial court recorded a finding that his all sisters were married and the first appellate court recorded a finding that no evidence to the contrary had been led. In any case, even if it is to be presumed for some reason that the appellant has his parents and (allegedly) a sister to also look after, that does not absolve him of his pious duty to maintain his wife, who as per the findings of the courts below, has been actually deserted by him, with his contention that it was she who had deserted him under the influence of her father (who wanted the appellant to remain as a *Ghar Jamai*), having been an allegation wholly substantiated by any form of evidence led by the appellant.

This Court also finds it difficult to believe that contention, because with the appellant admittedly working in a bank, it would be unlikely that his father-in-law would force him to come and live as a *Ghar Jamai*, with his place of posting naturally being a different place. Obviously, if he were to continue to live as a *Ghar Jamai* all his life, it would mean giving up his job and consequently his salary, which no father-in-law would want.

Further, in any case, no other evidence except the appellants' own statement to that effect, was led.

11. Admittedly, the marriage of the appellant with the respondent was never denied, with a petition earlier filed by him seeking divorce

having been dismissed on 09.10.1992, as recorded in the judgments of the learned courts below.

The suit filed by the respondent-wife seeking to restrain the appellant from entering into another marriage was withdrawn by her, upon the statement of the appellant in Court that he never wanted to marry again.

It is also to be noticed that the suit in the present *lis* having been instituted on 09.05.2001, maintenance has been granted by the learned courts below only w.e.f. 16.03.2001 and not prior to that, with her prayer for recovery of a sum of Rs.252000/-, as arrears of maintenance, having been specifically declined, as already noticed, that not having been challenged by her way of any appeal brought to the notice of this Court.

12. Consequently, without prejudice to the right of the respondent herein in any appeal that she may have (possibly) filed seeking enhancement of maintainable (if so filed), finding no merit in this appeal, it is dismissed.

Naturally, if any such appeal has been filed by the respondent, that would be decided wholly on its own merits.

16.01.2019
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(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes