

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.18 of 2016

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Smt. Vinita Kumari @ Bibha Kumari @ Bibha Kumari, W/O Sri Satish
Kumar Jha, D/O Sri Hari Kumar Thakur, Resident of Village – Narayan Pati,
Post and P.S.- Rajnagar, Dist. Madhubani

... .. Appellant/s

Versus

Gyanesh Kumar, S/o Virendar Kumar Mishra, Resident of Village-Sarouni,
P.S.- Bihariganj, Dist. Madhepura, A/P Resident of – 22 PAV Complex,
Boring Canal Road, P.S. Shri Krisnapuri, Patna 1.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Raj Kishore Pd. Singh
Mrs. Mira Kumari, Advocates

For the Respondent/s : Mr. A.K. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

Heard learned counsel for the appellant and learned
counsel for the respondent.

I.A. No. 173 of 2016

The above mentioned Interlocutory Application was filed for



condonation of delay of 205 days in filing the present appeal.

Notices vide order dated 6.11.2017 were issued to the sole respondent by registered post as well as ordinary process and thereafter fresh notices were also issued vide order dated 23.2.2018. On appearance of the respondent, vide order dated 04.05.2018, the delay in filing the present appeal was condoned.

M.A. No. 18 of 2016

The present Miscellaneous Appeal is directed against the judgment and decree dated 30.3.2015 and 31.3.2015, respectively, passed in Matrimonial Case No. 351 of 2002 by the learned Additional Principal Judge, Family Court, Patna, whereby on the basis of a composite order, the issue of maintenance pendente-lite under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) and the issue of permanent alimony and maintenance under Section 25 of the Act has been decided whereby the appellant has been granted Rs.3000/- per month maintenance pendente lite from the date of filing of the petition under Section 24 of the Act, i.e. from 19.12.2003 till 23.01.2004, the date of judgment in matrimonial case. The appellant has been granted permanent alimony at the rate of Rs.3000/- per month till 11.07.2007, since the appellant performed second marriage on 12.07.2007. Hence, altogether Rs.1,28,400/- maintenance has



been granted on both counts. The respondent has further been directed to make payment of Rs.10,000/- to the appellant as cost of litigation.

The factual matrix of the case is that the marriage between the appellant and the respondent on 13.5.2002 is admitted. Subsequent to the marriage, the appellant claimed to have been tortured by the in-laws for non-fulfillment of further dowry demand. Consequently, a criminal case with accusation under Section 498A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act was filed by the appellant against the respondent. Subsequent thereto, the respondent filed a Matrimonial Case No. 351 of 2002 under Section 9 of the Act for the restitution of conjugal rights. During the pendency of the said matrimonial case, the appellant filed a petition on 19.12.2003 under Section 24 of the Act for grant of maintenance pendente lite and litigation cost. The appellant had also earlier filed a rejoinder-cum-counter claim seeking decree of divorce, permanent alimony and for return of ornaments and cash amount of Rs.8,10,000/-. On 20.12.2004, the husband respondent filed a petition giving consent for dissolution of marriage and consequently, the learned Additional Principal Judge, Family Court vide order dated 24.1.2004 dissolved the marriage subsisting between the appellant



and the respondent in terms of Section 23(A) of the Act and accordingly passed a decree of divorce dated 24.1.2004/31.1.2004. However, with regard to the claim of the appellant for recovery of money and other claim and permanent alimony, the suit was allowed to proceed.

The appellant filed separate petition under Section 25 of the Act claiming the maintenance of Rs.15,000/- per month as alimony from the date of divorce, i.e. 24.1.2004. The respondent filed a written statement on 29.7.2004 taking a plea that with the grant of decree of divorce, the petition under Section 24 of the Act has become infructuous. Moreover, the appellant herself prayed for divorce in a case filed by the respondent for restitution of conjugal rights, hence, the appellant has lost the right of any alimony. During the pendency of the issue of permanent alimony, the appellant filed a petition on 15.3.2010 that she married another person on 12.7.2007 and is leading a peaceful conjugal life with the said person.

The appellant examined two witnesses in support of her claim – one, D.W. 1 the respondent herself and D.W. 2 Hai Kumar Thakur whereas the respondent examined four witnesses, namely, P.W. 1 Ganesh Kumar, the respondent himself, P.W. 2 Baij Nath Prasad, P.W. 3 Amresh Jha Amar and P.W. 4 Tanwee Akhtar. The



evidence of P.W. 4 has been expunged vide order dated 18.7.2011. In support of his claim, the respondent also produced photo copy of the income tax return which are marked as Ext. X, XII/2 and X/3 to X/6 whereas the agreement for sale is marked as Exht. Z. The learned Additional Principal Judge, Family Court framed the following issues:

“1.Is the case as framed maintainable ?

2.Has the respondent valid cause of action for the case?

3.Whether the respondent is entitled for maintenance of pendente-lite period

4.Whether the respondent is entitled for permanent alimony U/S 25 of Hindu Marriage Act,1955?”

The issue Nos. 3 and 4 with regard to the maintenance pendente-lite and the permanent alimony have been taken together and the learned Court below came to a finding that the application under Section 24 of the Act was filed on 19.12.2003 but no order was passed by the learned Court below on the said petition. The marriage was dissolved vide judgment dated 24.1.2004 under Section 23(A) of the Act. Usually the petition under Section 24 of the Act is disposed of within 60 days of its filing, however, the provisions under Section 24 of the Act does



not prohibit any decision with regard to the maintenance pendente-lite, being passed after dissolution of marriage. After assessing the income of both sides the learned Court below came to a definite finding that the appellant is entitled for maintenance pendente-lite under Section 24 of the Act from 19.12.2003, the date of filing of the petition till 23.1.2004, since the marriage of the appellant and the respondent was dissolved on 24.1.2004. The Court below has also come to a finding that vide petition dated 10.7.2004, the appellant only claimed a permanent alimony of Rs.15000/- per month from the date of divorce, i.e. 24.1.2004. Though earlier in the main petition the appellant had prayed for a direction to the respondent for return of the cash, ornaments, other movable worth Rs.8,10,000/-, but in the petition filed on 10.7.2004 under Section 25 of the Act the appellant did not claim anything except permanent alimony of Rs.15000/- per month till other issues were decided. Moreover, D.W. 2 Hari Kumar Thakur also did not, in his deposition, say anything with regard to the claim of cash, movable and other articles to have been given at the time of marriage, hence the issue was not considered. The Court came to a conclusion that the appellant is entitled for total maintenance till 11.7.2007, since she filed a petition on 15.3.2010 to the effect that she performed marriage with other person on



12.7.2007.

Considering the annual income tax return filed by the respondent for the year 2000-01 for Rs.99,365 and for the years 2001-02 for Rs.89,250/-, the learned Court below directed for making payment of maintenance pendente-lite and permanent alimony @ Rs.3000/- per month and granted the same from 19.12.2003, the date of filing of the application, till 11.7.2007, total amounting to Rs.1,28,400/- and further directed to pay Rs.10000/-, a lumpsum amount as cost of litigation. The said order is under challenge in the present Miscellaneous Appeal.

Learned counsel for the appellant submits that the benefit of interim maintenance under Section 24 of the Act has been extended till performance of second marriage i.e. 11.7.2007 which is illegal. The appellant is entitled to get the interim maintenance till 30th March, 2015, the date the impugned order was passed because the main matrimonial case was virtually allowed to proceed. It is also contended that the amount of maintenance pendente-lite and permanent alimony is not adequate.

Learned counsel for the respondent, however, submits that by composite order both the interim maintenance under Section 24 of the Act and permanent alimony under Section 25 of the Act has



been allowed and the quantum of both the maintenance pendente-lite and permanent alimony is same i.e. Rs.3000/- per month, then it makes no difference since same amount per month has been calculated from the date of filing of the petition for the maintenance pendente-lite i.e. from 19.12.2003 till passing of the decree i.e. 23.1.2004 and from the date of passing of the decree till performance of second marriage i.e. from 24.1.2004 to 11.7.2007 since the appellant performed second marriage on 12.07.2007.

So far as income of the respondent is concerned, no documentary proof with regard to his income has been produced by the appellant, whereas considering the income tax return filed by the respondent, the order for maintenance pendente-lite and permanent alimony has been passed.

Considering the rival submissions of learned counsels for the parties, this is not in dispute that under Section 24 of the Act, maintenance pendente-lite and expenses of proceedings are claimed during the pendency of the matrimonial proceeding as Section 24 of the Act mandates that on the application of the wife or the husband, the Court may direct the respondent to pay the petitioner the expenses of the proceeding and monthly during the proceeding such sum as, having regard to the petitioner's own



income and the income of the respondent and such application has to be decided preferably within a period of sixty days from the date of service of notice on the wife or the husband. It is true that the application under Section 24 of the act ought to have been decided by the learned Court below before passing the decree of dissolution of marriage, but Section 24 of the Act does not prohibit the decision on the issue of maintenance pendente-lite and expenses after passing of the judgment in matrimonial case.

In the present case, the application was not disposed of by the learned Court but it allowed the proceeding to continue for deciding the issue and hence this Court does not find any illegality in the impugned order whereby, both, maintenance pendente-lite under Section 24 and permanent alimony under Section 25 of the Act have been decided together.

So far as the issue of maintenance pendente-lie is concerned, in Paragraph 10 of the impugned judgment, the learned Court below has rightly decided that the appellant is entitled to get maintenance pendete-lite from the date of filing petition under Section 24 of the Act, i.e. from 19.12.2003 till 23.1.2004, the date of passing of the decree of divorce. Part of paragraph 10 of the impugned judgment reads as follows:

“In the aforesaid circumstances the respondent is entitled to



get maintenance pendente-lite from the date of filing petition U/S 24 of Hindu Marriage Act i.e. on 19.12.2003 till 23.01.2004 before passing the decree of divorce.”

However, there is no separate specific finding with regard to the period of permanent alimony. Hence, the same needs to be clarified and the judgment needs to be modified to that extent.

In last portion of paragraph 12 of the impugned judgment, the Court has held that the appellant is entitled for maintenance from 19.12.2003 the date of filing of the petition under Section 24 of the Act till 11.7.2007 before she performed second marriage with the other person and similar is the view expressed in paragraph 15 of the impugned judgment. Part of paragraph 12 and paragraph 15 of the impugned judgment read as follows:

12 “From perusal of the aforesaid fact and circumstances, the respondent is entitled for maintenance from petitioner Gyanesh Kumar-divorcee husband from 19.12.2003, the date of filing a petition U/S of Hindu Marriage Act 1955 till 11.07.2007 before performed remarriage with other person.”

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15 Keeping in view, the aforesaid facts and circumstances, it would be proper to direct the



petitioner to pay Rs.3,000/- per month to the respondent from 19.12.2003 to 11.07.2007, total 42 months 24 days. It comes Rs.1,28,400/- only.”

The above finding has been recorded since the Court came to a conclusion that the quantum of maintenance pendente-lite and permanent alimony is one and the same, i.e. Rs.3000/- per month and that is why total period has been calculated. This Court, however, is clarifying the finding recorded by the learned Court below to the effect that the appellant is entitled for interim maintenance from the date of filing of the petition i.e. 19.12.2003 till the dissolution of marriage i.e. 23.1.2004 and after that since the appellant has admitted that she performed marriage with other person, she is entitled for permanent alimony from a decree of divorce a day prior to second marriage of the appellant, i.e. from 24.1.2004 to 11.7.2007.

Hence, the quantum of total maintenance amount of Rs.1,28,400/- and the cost of litigation of Rs.10,000/- are concerned, it requires no interference. So far as the claim of the appellant for increasing the quantum of maintenance amount is concerned, since no documentary proof has been brought on record disputing the assessment of income of the parties by the learned Court below, we are not inclined to consider the increase of the same.



Accordingly, this Court is not inclined to interfere with the judgment impugned except the above modification.

This Misc. Appeal is accordingly disposed of with modification of the judgment and decree as indicated above.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

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Transmission Date	

