

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.2868 of 2019 (O & M)
Date of Decision: *November 17, 2020*

Ramesh Kumar

..... PETITIONER(S)

VERSUS

Sunita

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

. . .

PRESENT: - Mr. Ranjit Saini, Advocate, for the appellant.

 Mr. Abhinav Sood, Advocate, for the respondent.

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Sant Parkash, J

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

The instant appeal has been preferred by the appellant – husband against judgment dated 29.03.2019 passed by the Principal District Judge, Family Court, Hisar, whereby in a petition filed by respondent – wife under the Hindu Adoption and Maintenance Act, 1956 (for short, ‘1956 Act’), the amount of maintenance already granted vide judgment & decree dated 28.02.2007, to the tune of ₹ 3,200/- per month has been enhanced to ₹ 16,000/- per month.

Brief facts of the case are that respondent being legally wedded wife of appellant filed a suit under the provisions of the aforesaid Act, which was allowed vide judgment & decree dated 28.02.2007 passed by the Additional Civil Judge (Senior Division), Hansi and ₹ 3,200/- per month was awarded to her as maintenance.

Aggrieved by the aforesaid judgment, respondent approached the Court of Principal District Judge, Family Court, Hisar, claiming enhancement of maintenance taking pleas that she was unemployed; she had no source of income and movable or immovable property, whereas appellant was working as Sanskrit Teacher in Government High School, Jagan, Tehsil and District Hisar, and was getting ₹ 70,000/- per month. Besides this, appellant has 10 acres of agricultural land alongwith movable and immovable property, and thus, his annual income was not less than ₹ 6 lac.

Appellant contested the petition filed by the respondent by filing reply and took the plea that respondent was bound by her own admission made at the time of passing judgment & decree dated 28.02.2007 whereby the amount of maintenance awarded to her was fixed as ₹ 3,200/- per month during her life time, where-against, both husband and wife filed separate appeals before the District Judge, Hisar which were decided vide a common judgment dated 06.12.2007 without enhancing the amount of compensation awarded in the aforesaid order of the trial court.

After hearing learned counsel for the parties and appreciating the record, the Principal District Judge, Family Court, Hisar, vide impugned judgment dated 29.03.2019 enhanced the amount of maintenance from ₹ 3,200/- per month to ₹ 16,000/- per month.

Learned counsel for the appellant has contended that the impugned judgment is wholly illegal, unjust and unsustainable in the eyes of law. Marriage of the appellant with the respondent was dissolved by judgment & decree dated 20.01.2010 which was confirmed upto the Supreme Court in the year 2012 itself. Therefore, respondent could not have filed the petition under Section 18 of the Act against the former husband to claim maintenance. Further, he has other liabilities of his son and ailing mother who are fully dependent upon him and has not got sufficient means to meet out of these liabilities. Therefore, respondent was not entitled to any enhancement in the maintenance allowance.

Per contra, learned counsel for the respondent has argued that the impugned judgment does not suffer from any illegality and is absolutely in consonance with the settled canons of law. Each and every aspect of the case has been thoroughly gone into by the lower court before passing the impugned judgment. The instant appeal filed by the appellant deserves to be dismissed.

We have heard learned counsel for the parties and gone through the record.

It is not in dispute that marriage of appellant and respondent has already been dissolved by a decree of divorce dated 20.01.2020 on the ground of desertion and cruelty which has been upheld upto the Supreme Court. Since the respondent is a divorced wife, she would be entitled to claim maintenance under Section 125 Cr.P.C. and provisions of the 1956 Act would not be available to her. Section 18(1) of the 1956 Act entitles a Hindu wife to claim maintenance from her husband during her lifetime. Sub-section (2) of Section 18 grants her the right to live separately, without

forfeiting her claim to maintenance, if he is guilty of any of the misbehaviours enumerated therein or on account of his being in one of the objectionable conditions as mentioned therein. So, while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. In the case in hand, respondent is a divorcee, that too on the ground of desertion and cruelty and does not fall within the definition of “wife”.

The question akin to the instant appeal has been answered by the Supreme Court in **Chand Dhawan (Smt) vs. Jawaharlal Dhawan, (1993) 3 Supreme Court Cases 406**, wherein after considering various judgments, the following has been observed:-

“23. The preamble to the Hindu Marriage Act suggests that it is an Act to amend and codify the law relating to marriage among Hindus. Though it speaks only of the law relating to marriage, yet the Act itself lays down rules relating to the solemnization and requirements of a valid Hindu marriage as well as restitution of conjugal rights, judicial separation, nullity of marriage, divorce, legitimacy of children and other allied matters. Where the statute expressly codifies the law, the Court as a general rule, is not at liberty to go outside the law so created, just on the basis that before its enactment another law prevailed. Now the other law in the context which prevailed prior to that was the unmodified Hindu law on the subject. Prior to the year 1955 or 1956 maintenance could be claimed by a Hindu wife through Court intervention and with the aid of the case-law developed. Now with effect from December 21, 1956, the Hindu Adoptions and Maintenance Act is in force and that too in a codified form. Its preamble too suggests that it is an Act to amend and codify the law relating to adoptions and maintenance among Hindus. Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her lifetime. Sub-section (2) of Section 18 grants her the right to live separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviours enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. On the other hand, under the Hindu Marriage Act, in

contrast, her claim for maintenance *pendente lite* is durated on the pendency of a litigation of the kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity of divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the Court does so by passing a decree for or against her. On or at the time of the happening of that event the Court being *seisin* of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the Court retains the jurisdiction at subsequent stages to fulfil this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The Court further retains the power to change or alter the order in view of the changed circumstances. Thus the whole exercise is within the gambit of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the Court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial Court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionising the law applicable to Hindus.

24. Section 41 of the Evidence Act *inter alia* provides that a final judgment, order or decree of a competent Court in the exercise of matrimonial jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to such character, is relevant. And that such judgment, order or decree is conclusive proof as to the conferral, accrual, or taking away of such legal character from a point of time as declared by the Court. Such judgments are known as judgments in *rem*, binding the whole world. But the judgment of that kind must have done something positive, onwards. This provision is indicative of the quality of matrimonial jurisdiction.

25. We have thus, in this light, no hesitation in coming to the view that when by Court intervention under the Hindu Marriage Act, affectation or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that Court, to be altered or modified as future situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification under Section 18(1) of the Hindu Adoptions and Maintenance Act. The Court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance.

26. Relief to the wife may also be due under Section 125 of the Criminal Procedure Code whereunder an order of maintenance can be granted after contest, and an order of interim maintenance can be made at the outset, without much contest. This provision however has two peculiar features –

- (i) the provision applies to all and not only to Hindus; and
- (ii) maintenance allowance cannot exceed a sum of Rs. 500 per mensem.

But this is a measure in the alternative to provide for destitute wives.

27. This Court has ruled that if the language used in a statute can be construed widely so as to salvage the remedial intendment, the Court must adopt it. Of course, if the language of a statute does not admit of the construction sought, wishful thinking is no substitute, and then, not the Court but the legislature is to blame for enacting a damp squib statute. These are the observations of V.R. Krishna Iyer, J. in *Carew and Co. Ltd. v. Union of India*, (1975)2 SCC 791, 803-04. Towards interpreting statutes, the Court must endeavour to see its legislative intendment. Where the language is ambiguous or capable of more than one meaning, the Court must sympathetically and imaginatively discover the true purpose and object of the provision by filling gaps, clearing doubts, and mitigating hardships, harshness or unfair consequences. See *Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi*, (1981)4 SCC 660 (Paras 14

to 16). These principles were pressed into service by learned counsel for the appellant contending that if the claim of the wife for maintenance was otherwise justified on fact and law, the procedures and the fora should not stand in her way and let her cash on her claim overruling all objections. It was asserted that the Amritsar Court had jurisdiction to grant relief, as asked for, because once upon a time it was *seisin* of the petition for dissolution of marriage by mutual consent, though such petition was withdrawn.

28. On the afore-analysis and distinction drawn between the fora and perceptives, it is difficult to come to the view that a claim which is ancillary or incidental in a matrimonial Court under the Hindu Marriage Act could be tried as an original claim in that Court; a claim which may for the moment be assumed as valid, otherwise agitable in the civil Court under the Hindu Adoptions and Maintenance Act, 1956. As said before, these two enactments keeping apart, the remaining two, i.e., Hindu Succession Act, 1956 and Hindu Minority and Guardianship Act, 1956 are a package of enactments, being part of one sociolegal scheme applicable to Hindus. **When distinctive claims are covered distinctly under two different statutes and agitable in the Courts conceived of thereunder, it is difficult to sustain the plea that when a claim is otherwise valid, choosing of one forum or the other should be of no consequence. These are not mere procedural technicalities or irregularities, as termed by one line of reasoning by some of the High Courts. These are matters which go to the root of the jurisdiction. The matrimonial Court, a Court of special jurisdiction, is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree, which implies that unless it goes onwards, moves or leads through, to affect or disrupt the marital status between the parties. By rejecting a claim, the matrimonial Court does make an appealable decree in terms of Section 28, but that neither affects nor disrupts the marriage. It certainly does not pass a decree in terms of section 25 for its decision has not moved or done anything towards, or led through, to disturb the marriage, or to confer or take away any legal character or status. Like a surgeon, the matrimonial Court, if operating, assumes the obligation of the post operatives, and when not, leaves the patient to the physician.**

29. On the afore-analysis we have been led to the conclusion that the step of the wife to move the Court of Additional District Judge, Amritsar for grant of maintenance under Section 25 of the Hindu

Marriage Act was ill-advised. The judgment of the High Court under appeal could be no other than the one that it was in the present state of law and the facts and circumstances. It is still open to the wife to stake her claim to maintenance in other fora. The judgments of the High Courts earlier quoted, and others which have been left out, which are not in line with our view are overruled. The earlier and predominant view was the correct one and the later an aberration; something unfortunate from the precedential point of view. The appeals thus inevitably have to and are hereby dismissed, but without any order as to costs.” [Emphasis supplied]

In the light of aforesaid discussion, we hold that the impugned order dated 29.03.2019 is not sustainable in the eyes of law and therefore is set aside. Consequently, the present appeal is allowed. However, it would be open for the respondent to stake her claim to maintenance by availing alternative remedy, if any.

CM Nos.9903-CII of 2019 and 9861-CII of 2020

Since the main appeal itself has been decided, the instant applications are dismissed as having been rendered infructuous.

**(Jaswant Singh)
Judge**

**(Sant Parkash)
Judge**

November 17, 2020

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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No