

May 6, 2024
Sl. No.A 16
Court No.19
s.biswas

CO 2821 of 2023

Avishek Sen
vs.
Sreeparna De

Mr. Debangana Bhattacharjee
Mr. Arnab Dutta
Ms. Swarnali Saha

... for the petitioner

Mr. Avirup Chatterjee
Mr. Rishav Das

... for the opposite party

1. The revisional application arises out of an order dated June 23, 2023 passed by the learned Additional District Judge, 1st Court, Serampore in Misc. Case No.43 of 2021. The petitioner is the husband.
2. The misc. case is an application under Section 24 of the Hindu Marriage Act and was filed in connection Matrimonial Suit No.252 of 2021. The suit for divorce was filed by the petitioner. The contention of the petitioner is that the learned court had awarded an excessive amount as maintenance pendente lite. The petitioner is a lecturer/assistant professor in a government college and his net pay is around Rs.80,000/-, after deduction of income tax and professional tax, etc.
3. It is submitted that the wife was pursuing her Ph.D and was enjoying a stipend. Thus, the amount of Rs.20,000/- as maintenance pendente lite was excessive.

4. The wife contends that she does not have any income of her own. She had been preparing for the entrance examination to enrol herself for Ph.D. She does not any stipend. She had passed her M.Sc. from IGNOU. That the husband was earning around Rs.95,000/- per month. Apart from additional expenses, she had to incur other expenses in order to maintain a reasonable standard of living.
5. By the order impugned, the learned court held that the records revealed that the gross salary of the husband was Rs.89,625/- and after deduction of income tax, professional tax, etc., the take home salary was around Rs.80,985/-. The wife did not have any income of her own. The husband had not been able to prove that the wife was earning. In the objection, the contention that the wife was pursuing her Ph.D., was stated to be totally frivolous. Although the husband had contended that the wife was earning Rs.30,000/- from private tuition, the learned court specifically observed that the wife's income could not be proved.
6. Under such circumstances, the court awarded Rs.20,000/- per month as maintenance pendente lite from the date of the application, to be paid within 7th day of each succeeding month. Towards arrears, instalments of Rs.5000/- per

month was directed to be paid along with current maintenance, till the entire arrears were liquidated.

7. Having considered the submissions of the parties, this court finds that the learned court had perused the affidavit of assets. The petitioner's income was correctly recorded by the court. The fact that the husband could not prove the wife's income, is also available from the findings of the learned court. Merely because the wife had the potential to earn or was well qualified, the same cannot be a deterrent towards awarding reasonable maintenance to the wife. An Assistant professor of a government college has a particular standard of living and his wife is entitled to live in the same standard.
8. In the matter of ***Rajnish v. Neha and Ors.*** reported in ***(2021) 2 SCC 324***, it has been held that even if the wife was well educated and capable of earning money, that should not be a ground for reducing the quantum of maintenance. The relevant paragraphs are set out below:-

“62. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

63. In *Shailja & Anr. v Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home.⁴⁰ Sustenance does not mean, and cannot be allowed to mean mere survival.

64. In *Sunita Kachwaha & Ors. v Anil Kachwaha* the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

65. The Bombay High Court in *Sanjay Damodar Kale v Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

66. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a *Chander Prakash Bodhraj v. Shila Rani Chander Prakash*. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.”

9. The Hon'ble Apex Court in *Rajnish* (supra), discussed the criteria for determining quantum of maintenance. The relevant paragraphs are as follows:-

“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

79. In *Manish Jain v. Akanksha Jain* [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial

position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was

accustomed to in her matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

10. While discussing a decision of the Delhi High Court, the Apex Court also approved certain factors to be relevant. Such finding of the Apex Court is at paragraph 57 of the judgment.
- The factors to be taken into consideration while awarding maintenance are as follows:-

“(v) The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde* laid down the following factors to be considered for determining maintenance :

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant’s liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act. 17.

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

11. Without any error on the factual findings of the learned court, this court is not inclined to pass any order by reducing the amount awarded. However, it is also pertinent to mention that court have laid down the parameters to be followed while fixing the quantum of maintenance pendente lite, namely, standard of living of the parties, income of the parties, liabilities of the parties, monthly expenses of the spouse towards rent, food, clothing, medical expenses and other miscellaneous expenses.

12. Thus, considering the price index and the inflation rate, the finding of the learned court Rs.20,000/- would be a reasonable amount is not purchase. It also appears that the father of the petitioner/husband is a pensioner. Under such circumstances, I do not find any reason to interfere with the order impugned. The contention of the petitioner that the parties are having talks of settlement, is not relevant for determination of the correctness of the order

impugned. However, the parties are open to settle their disputes in accordance with law.

13. The revisional applications stands disposed of accordingly.

14. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)