



RSA-6317-2018 (O&M)

1

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

106

RSA-6317-2018 (O&M)

Decided on: 02.09.2024

SAHIB SINGH

...APPELLANT

Versus

HARBANS KAUR

...RESPONDENT

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate
for the appellant.

RITU TAGORE, J.

1. Appellant-defendant is the husband of respondent-plaintiff, who failed to defend his case before the learned Courts below, preferred this regular second appeal against the judgment and decree dated 12.12.2017 passed by learned Additional District Judge, Mansa, dismissing his appeal, preferred against the judgment and decree dated 25.09.2015 passed by Civil Judge (Sr. Division), Mansa, decreeing the suit of the respondent-plaintiff for maintenance, filed under Hindu Adoption and Maintenance Act, 1956 (for short 'the HAMA').

2. For the sake of convenience, the parties to the *lis* hereinafter shall be referred to as per their original status before the learned trial Court.



3. In brief, the facts of the case are that the plaintiff-Harbans Kaur, as an indigent person, instituted a suit under the HAMA against the defendant seeking maintenance for the amount of Rs.3,000/- per month and further requested to create a charge upon the defendant's property, as detailed in the head note of the plaint, to secure the decree.

4. According to the plaintiff, in the year 1985, she was married to defendant, with approximately Rs.60,000/- spent on her marriage. After the marriage, parties lived and cohabited together as husband and wife in village Nangal Khurd, resulting in the birth of a male child from the wedlock. However, the plaintiff asserts that defendant failed to discharge his moral and legal obligations to maintain her and the minor child, instead refusing to maintain them and harassing her for bringing less dowry. She filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (herein after referred to as Cr.P.C) against the husband and was constrained to live separately from the defendant. Since 1989, she is living separately from the defendant and is leading a life of a destitute lady, seeking maintenance from the defendant.

5. Upon being put to notice, the defendant appeared and filed a contested written statement, challenging the *locus standi* of the plaintiff to file the suit by asserting that she left his company in the year 1989 without any reasonable cause and is living at her parental house. She is estopped by her own act and conduct to seek maintenance and suit is also barred by principle of *res-judicata*. On merits, completely denied the averments of the plaintiff and prayed for the dismissal of the suit.



6. No replication was filed by the plaintiff. Since parties were at variance, learned trial Court framed the following issues: -

- 1. Whether plaintiff is entitled to maintenance @ Rs. 3000/- per month? OPP*
- 2. Whether charge of maintenance amount needs to be created upon the share of the respondent in the suit property? OPP*
- 3. Whether suit is not maintainable? OPR*

7. In order to substantiate her case, the plaintiff-Harbans Kaur appeared as PW-1 and deposed as per the plaint. Roop Singh (PW-2), brother of the plaintiff, supported the case of the plaintiff. On the other hand, the defendant did not appear in the witness box to rebut the evidence of the plaintiff and to substantiate his version. However, learned counsel on behalf of the defendant tendered documents (Ex. D-1 and D-2) and, thereafter, closed the evidence for the defendant.

8. On appraisal of the evidence, the learned trial Court concluded that plaintiff being a legally wedded wife of the defendant, who is unable to maintain herself, is entitled to be maintained by the defendant under the law. The learned trial Court considering the status/standard of the parties, the prices of the essential commodities, the defendant's income and his ownership of the agriculture land as reflected in the revenue record (Ex.AW1/B), granted Rs.2,000/- per month as maintenance to the plaintiff to be paid by the defendant and also created a first charge on the property of the defendant to secure the maintenance amount, and accordingly decreed the suit of the plaintiff.



9. Dissatisfied by the judgment of learned trial Court, the defendant preferred First Regular Appeal. The learned First Appellate Court, on reassessment of the evidence, found no infirmity in the findings of the learned trial Court and dismissed the same.

10. Still dissatisfied with the findings of the learned Appellate Court, the defendant filed the present appeal.

11. Learned counsel for the appellant submits that the findings of the learned trial Court are unsustainable in the eyes of law; they are based on surmises and conjectures. The learned Courts below failed to appreciate that the suit of the plaintiff was barred by principle of *res judicata* as the earlier civil suit No.13 dated 05.08.1992 (Ex.D-1) filed by the plaintiff was dismissed as withdrawn vide order dated 14.09.1992 (Ex.D-2), without seeking any permission from the Court to file fresh suit on the same cause of action. Furthermore, the present suit was filed after more than 25-26 years without any justifiable cause. Therefore, it is also not maintainable on account of delay.

12. The learned counsel further submits that the learned Courts below failed to appreciate that the plaintiff left the company of the defendant and started living separately from the defendant without any reasonable excuse. It is stated that the plaintiff failed to establish any of the grounds as detailed in Section 18(2) of the HAMA, justifying her living separately from the defendant and her entitlement to seek maintenance from the defendant. The learned counsel further submits that the learned Courts below without considering the income of the parties, much less of the defendant, granted maintenance @ Rs.2,000/- per month to the plaintiff, without any basis, and



further fell in error in creating a first charge on the property of the defendant. The learned counsel thus submits that a substantial question of law has arisen as the judgment and decree of the learned Courts below suffers from apparent illegality and perversity and prayed to allow the appeal.

13. I have heard learned counsel for the appellant and have gone through the record with his valuable assistance and find no legal or factual error in the findings recorded by the learned Courts below, calling for any interference in the present appeal for the reasons recorded below.

14. Admittedly, the plaintiff is the legally wedded wife of the defendant and has a son (who may have attained majority now) from the wedlock. It is also not in dispute that the plaintiff has been living separately from the defendant since 1989, and she is residing at her parental home. The Courts below have discussed the evidence of the plaintiff (PW-1) at length and concluded that she is an illiterate lady and does not own any land or property *and has* no source of income to maintain herself, and further observed that she was not maintained by the defendant, her husband. The learned Courts below also relied upon the statement of Roop Singh (PW-2), the brother of the plaintiff a material witness, and further determined that the testimonial account of the plaintiff and her witness on material assertions remained un-rebutted on record in absence of the testimonial account of the defendant, failing to prove his assertion that the plaintiff left his company without any reasonable cause, thereby, dis-entitled her to claim maintenance under the provisions of the HAMA. Law is well settled that if a party to the suit does not appear in the witness box without any just cause, the Court may draw adverse inference against such party and whatever has been



RSA-6317-2018 (O&M)

6

pleaded by the said party may be presumed as false and whatever has been stated by opposite party as correct. In these circumstances, the learned Courts below have correctly relied upon the un-rebutted statement of the plaintiff and her witness.

15. The learned Appellate Court observed that the defendant failed to prove on record that after 1989, he ever paid any maintenance to his wife or son or complied with the order (Ex.P-2) dated 17.04.1993 passed in a petition under Section 125 Cr.P.C. directing the defendant to pay maintenance to the plaintiff and the minor child. The learned Appellate Court also noted plaintiff's assertion regarding the defendant residing with some other lady remained unchallenged, thereby constituting a valid reason for the plaintiff to leave the company of the defendant and live apart from him. There is no reason to disbelieve the testimonial account of PW-1 as no woman would lay false allegations against the character of her husband without any basis. Section 18 (2) of the HAMA provides that a Hindu wife is entitled to live separately from her husband without forfeiting her claim of maintenance if her husband has deserted her without any reasonable cause and without her consent or against her wish or has willfully neglected her. In such circumstances, the wife has a reasonable right to live separately from her husband and can claim maintenance in case her husband has treated her with cruelty. Looking at all these un-rebutted facts as proved by the plaintiff, the Courts below have rightly concluded that plaintiff is entitled to seek maintenance from the defendant.

16. Section 18 of the HAMA obligates the husband to maintain his wife during her life time, unless, the wife shown to have forfeited her claim



to maintenance as provided in sub-clause 2 of Section 18 of the HAMA. In light of the income and standard of living maintained by defendant, as testified by the plaintiff (PW-1) and her witness (PW-2), and considering that defendant also owns agriculture land as evidenced in *jamabandi* (Ex.AW1/B), the trial Court granted Rs.2,000/- per month to the plaintiff. Given the un-rebutted evidence on record and current cost of living these days, the grant of maintenance to the extent of Rs 2000/- per month does not seem to be exorbitant. The learned Appellate Court also correctly observed that withdrawal of the earlier suit by the plaintiff, does not bar the present suit under the principle of *res judicata*, as the claim of maintenance constitute a recurring cause of action, and that doctrine of latches is also inapplicable to maintenance proceedings. It is well settled that claim of maintenance can only be denied on recognized statutory grounds. The defendant-husband failed to prove that any such statutory ground, which would disqualify the plaintiff from receiving maintenance, was applicable or established on record. Therefore, the findings of the learned Courts below, when tested in the light of evidence and legal principles governing the grant of maintenance under the HAMA as claimed by plaintiff -wife, do not suffer from any illegality.

17. In the light of the above discussion, I find no infirmity or perversity in the impugned judgments, thereby, warranting any intervention by this Court. The findings are affirmed and upheld.

18. No other point urged.

19. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

RSA-6317-2018 (O&M)

8

20. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

(RITU TAGORE)
JUDGE

02.09.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No