

2008-(BO1)-GJX-1702-BOM

Anil Ramchandra Hariname, Applicant

Vs.

Smt. Rohini W/o. Anil Hariname, Respondent. (Vice Versa).

Court :

Decided On :

June 04, 2008

Judge(s) :

R P Sondurbaldota, Ranjana Desai

Judgment :

ANIL RAMCHANDRA HARINAME, APPLICANT v. SMT. ROHINI W/O. ANIL HARINAME, RESPONDENT. (VICE VERSA).

Civil Application No. 58, 93 of 2008 in Family Court Appeal No. 29, 49 of 2008 in M.J. Petition No. A-174 of 2000, decided on June 4, 2008.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Counsel : Shri Sanjeev A. Sawant - Appellants.

Shri Vivek Kantawala - Respondents.

JUDGMENT (PER : SMT. R. P. SONDURBALDOTA, J.) :-

The above two Civil Applications are being disposed by this common order. The First Civil Application i.e. Civil Application No. 58 of 2008 is taken out by the Husband, who is the respondent in the original matrimonial proceedings and Civil Application No. 93 of 2008 is taken out by the Wife who is the petitioner in the original proceedings. The wife is hereinafter referred to as "the petitioner" for the sake of convenience and the Husband as "the respondent".

The petitioner and the respondent got married in the year 1987. There are two issues born from the

wedlock, a son by name Ankit and a Daughter, by name Anushree. The daughter is a visually impaired child. She is genetically blind and has no vision. The petitioner filed M.J. Petition No. A-174 of 2000 seeking judicial separation on the grounds of cruelty and desertion. The respondent filed counterclaim for divorce on the ground of cruelty. Later both arrived at a negotiated settlement and filed Consent Terms on two occasions before the Trial Court. They mutually agreed upon the divorce and custody of the children, agreeing that the children will stay with the mother. They however could not agree upon the amount of maintenance that the respondent needs to pay to the petitioner and the children. Therefore, the question of maintenance came to be decided by the Trial Court by its judgment and order dated 26.12.2007. The Trial Court ordered that the respondent should pay Rs. 10,000/- per month as maintenance to the petitioner, Rs. 10,000/- per month to the son and Rs. 15,000/- per month to the daughter. It made the order effective not from the date of the original application but from 1.5.2007 reasoning that the hearing of the application was delayed on account of the several applications filed by the petitioner to the Family Court and to the higher court.

The above order of the Family Court has been assailed by the respondent by filing Family Court Appeal No. 29 of 2008 seeking to set aside the same, whereas, the petitioner has filed Family Court Appeal No. 49 of 2008 requesting inter alia for enhancement of the amount of maintenance awarded to her and the children. The respondent has taken out Civil Application No. 58 of 2008 praying for stay of the operation of the impugned order. The petitioner has taken out Civil Application No. 93 of 2008 praying that the amount of maintenance awarded to her be increased from Rs. 10,000/- to Rs. 80,000/-, that to the son be increased from Rs. 10,000/- to Rs. 25,000/- and that awarded to the daughter be increased from Rs. 15,000/- to Rs. 30,000/-. In addition, she seeks directions to the respondent to hand over possession of Flat No. 175, Building No. 8-D, Saidham, New D.N. Nagar, Andheri (West). In the alternative, she seeks direction to the respondent to purchase another Flat of similar area in the similar locality for the residence of herself and the children.

We have heard both the sides extensively. There were also sincere efforts made by everybody to bring about settlement between the parties on the question of maintenance. The attempts having failed, we have proceeded to dispose off the Civil Applications by a reasoned order. The question arising for consideration in the two civil applications is whether, on a prima facie view, the quantum of maintenance awarded by the Trial Court is reasonable.

The respondent is working with Air India as a Flight man. The Learned Trial Judge mentioned in the impugned order that admittedly the income of the respondent from his salary and flying allowance is Rs. 10 lacs per annum. In addition, to this he receives several allowances, when he flies out of country. The Learned Trial Judge then refers to the evidence of witness, one Mr. Victor J. Almeida working with Pay and Account Section of Finance Department of Air India, examined by the petitioner in order

to establish earnings of the respondent. The witness deposed that the additional income of the husband for the year 2006-07 was \$ 28,161 (American dollars) and Rs. 37,068/-, the total of which comes approximately to Rs. 11,50,000/-. The respondent had declined to cross-examine this witness. Consequently, his evidence stood unchallenged and undisputed. The appellant spends 20 to 22 days in a month on flights abroad. Taking into consideration this income of the respondent, the Learned Trial Judge fixed the maintenance to be received by the petitioner at Rs. 10,000/- per month, that for the son at Rs. 10,000/- and that for the daughter at Rs. 15,000/-.

The petitioner contends that the income of the respondent is much higher than that taken into consideration by the learned Trial Judge. She claims to have filed an additional affidavit stating that the flying allowances received by the respondent are to the tune of more than Rs. 1,60,000/- per month. She contends that the respondent is having investment by way of shares in various companies. He owns a luxurious flat bearing Flat No. 2170-B on 21st Floor of Gokuldharm Building situated at Kandivali (West). He also owns four commercial shops and one luxurious flat at Gandhinagar, Takali Road, Nashik. With this income, the petitioner seeks to justify her claim for enhancement of the maintenance amount as referred to in paragraph - 3 above.

Before us the respondent does not dispute his legal liability to pay maintenance to the petitioner and the children. His contest is to the quantum alone. According to him, the interim maintenance of Rs. 10,000/- per month (for all the three) awarded by the Trial Court during pendency of trial is reasonable.

Mr. Kantawala, learned Counsel for the respondent pointed out that the petitioner herself had been working as an Air Hostess with Air India during the period 1976-1991, on the salary within the range of Rs. 12,000/- to Rs. 15,000/- per month. In addition, she received a cash allowance depending upon the hours of flying clocked by her. On her retirement, the petitioner received fixed allowance of Rs. 1,80,000/- for the loss of job. He further submits that the petitioner has income from other sources as well i.e. income from the landed property. She is the owner of a flat at Nallasopara consisting of 2 Bedrooms, Kitchen and a Living Room, Flat at Nerul, Navi Mumbai consisting of 1 Bedroom, Kitchen and a Living Room, and a share in the agricultural land owned by her father and the agricultural land owned by her mother. The respondent had not led any positive evidence on the income of the petitioner. He has remained content in cross-examining the petitioner.

From the evidence of the petitioner, it is seen that the Flat at Nallasopara does not actually fetch any income. But, as observed by the learned Trial Judge, it is possible to earn Rs. 1,000/- to Rs. 2,000/- per month from the said property. As regards, the other Flat, the same has been in occupation of the brother of the petitioner and it is her case that the Flat actually belongs to her brother and she is only a

Benami owner. Though, the petitioner has not examined her brother, the flat being in occupation of her brother, does not fetch any income. As regards, other agricultural properties, the learned Trial Judge based upon the evidence of the 7/12 Extract, has observed that the total area of the lands is 4 Acres and 8 R. The one-sixth share of the petitioner therein would come to about 0.81 R. The crop grown from the agricultural land is not any cash crop but of Bajra and Jowar which means that, there would hardly be any income from the agricultural land for the petitioner.

The petitioner resigned from service in the year 1991. Sometime prior thereto, it was discovered that she was suffering from breast cancer. She has since undergone an operation. According to her, she is presently taking post operational treatment. It is obvious that the petitioner requires to spend much more money on herself than a normal person would require to do. She is also bearing the responsibility of bringing up both the children, one of whom is a visually impaired child. As per the evidence, Son Aniket is attending eleventh standard, and the expenditure of his education alone is Rs. 11,500/- per year. Daughter, Anushree requires a special training in Braille system. She is also taking treatment from Dr. Natrajan for her vision. The petitioner is required to employ a special attendant for the daughter. Mr. Sawant, the Learned Counsel for the petitioner submits that the income of the petitioner from service stopped in the year 1991. Whatever savings she might have made got consumed in her own and child's medical treatment. Therefore, according to him, this is a fit case for enhancing the quantum of maintenance at the interim stage.

Taking into consideration, the established income of the respondent of approximately Rs. 25 lacs per year, in our opinion, the maintenance awarded by the Learned Trial Judge of Rs. 35,000/- for all the three, on a prima facie view, is extremely reasonable. The total amount that the respondent will have to pay per year to the petitioner and the children would be of Rs. 4,20,000/- i.e. less than one-sixth of his yearly income. The petitioner has an added and exceptional need of medical expenses of herself and her daughter to maintaining a certain standard of living. The petitioner has taken out Civil Application for enhancement of the amount to the extent as referred to at paragraph 3 above. These being the main reliefs sought by her in the Appeal proceedings, we are not inclined to grant the same at the interim stage. Also there is no case made out to increase the maintenance amount to the extent claimed, at this stage. Needless to say, the petitioner is at liberty to move this court for enhancement of maintenance in the event of any change in the circumstances. Thus, in our opinion, there is no need to disturb the order of the Learned Trial Judge either way at the interim stage. The respondent, therefore needs to comply with the same within a period of four weeks.

Mr. Kantawala made a feeble attempt to submit that the trial court erred in granting maintenance to the petitioner without there being any prayer in the petition for grant of permanent maintenance. This needs to be only stated to be rejected. Hence, the following order.

(i) Civil Application No. 58 of 2008 is dismissed.

(ii) Civil Application No. 93 of 2008 is dismissed.

(iii) In the facts and circumstances of the case, parties to bear their own costs.

