

# Kulbhushan Kumar vs Raj Kumari & Anr on 20 October, 1970

**Equivalent citations: 1971 AIR 234, 1971 SCR (2) 672**

**Author: G.K. Mitter**

**Bench: G.K. Mitter, A.N. Ray**

PETITIONER:  
KULBHUSHAN KUMAR

Vs.

RESPONDENT:  
RAJ KUMARI & ANR.

DATE OF JUDGMENT:  
20/10/1970

BENCH:  
MITTER, G.K.  
BENCH:  
MITTER, G.K.  
RAY, A.N.

CITATION:  
1971 AIR 234                      1971 SCR (2) 672  
1970 SCC (3) 129

ACT:  
Hindu Adoptions and Maintenance Act (78 of 1956),  
s. 23 (2) --Amounts received by wife Monthly from, father-If  
could be taken into account in determining maintenance-  
Husband's 'free income', how determined-Amount of  
maintenance and date from which payable.

**HEADNOTE:**

The appellant and the respondent were married in May 1945. Sometime after the marriage the husband did not want the wife to live with him, and there was complete estrangement between them. A daughter was born to them in August 1946. In 1951, the respondent sent a registered letter claiming maintenance, for herself and the daughter, and in 1954, she filed the suit for maintenance.

The High Court in appeal, fixed the maintenance payable to the respondent, under s. 23(2) of the Hindu Adoptions and Maintenance Act, 1956, at Rs. 250 subject to a limit of 25% per mensem of the income as determined by the income-tax

authorities, and Rs. 150 as the maintenance of the daughter. The High Court, in doing so, took into account the facts that the appellant was a Reader in Medicine receiving a salary of about Rs. 700 and more than Rs. 250 per mensem by way of private practice. The date of the institution of the suit was fixed by the High Court as terminus a quo for the payment of the maintenance to the respondent.

In appeal to this Court on the question of maintenance payable to the wife.

HELD : (1) Even if the wife received some amounts from her father regularly it was only a bounty and not her income. Therefore it could not be taken into account under s. 23(2)(d) of the Act in determining the amount of maintenance. [678 A-B]

(2) There was no evidence of her inheriting any property of her father on his death. [678 C]

(3) The amount payable by way of maintenance depends on the facts of each case and the Judicial Committee, in *Mt. Ekradeshwari v. Homeshwar*, did not lay down any principle relating to the proportion of the husband's 'free income' which would be payable as maintenance to the wife. [679 F-G]

In the circumstances of this case, no exception could be taken to the amount fixed by the High Court as well as the date from which the maintenance would be claimable. In determining the limit at 25% of the 'free income' of the appellant, amounts payable towards income tax, compulsory provident fund, and expenses for maintaining the car for professional purposes as allowed by the income tax authorities, should be allowed as deductions from the husband's total income. [680 A-C, F-G]

*Mt. Ekradeshwari v. Homeshwar*, A.I.R. 1929 P.C. 128 applied.

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#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION :** Civil Appeals Nos. 2564 and 2589 of 1966.

Appeals from the judgments and decrees dated March 10, 1965 of the Allahabad High Court, Lucknow Bench in First Civil Appeals Nos. 5 and 6 of 1958, respectively. G. N. Dikshit and B. Datta, for the appellant (in both the appeals).

C. B. Agarwala, Uma Mehta, S. K. Bagga and S. Bagga, for the respondent (in both the appeals).

The Judgment of the Court was delivered by Mitter, J. These two appeals are from two judgments and decrees of the High Court of Allahabad granting maintenance to the wife and daughter of the common appellant in both the appeals.

Counsel for the appellant did not contest the right of the respondents to claim maintenance. His argument was directed only against the quantum fixed in both the cases on the ground that the principles laid down in s. 23 (2) of the Hindu Adoptions and Maintenance Act, 1956 had not been followed by the High Court. The Act had come into force before the date of the trial court's judgment on the 1st June 1957 and it is the common case of the parties that the Act governs the rights of the parties herein. The relevant portion of s. 23 runs as follows :-

" ( 1 ) It shall be in the discretion of the court to determine whether any, and if so, what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, as far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately ; whether the claimant-is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's, own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

As it was contended on behalf of the appellant that practically all the provisions of the sub-clauses of sub-s. (2) were disregarded by the High Court, it is necessary to state a few facts about the married life of the appellant, his income out of which maintenance is to be directed, the pecuniary conditions of himself and of his wife and whether the wife has any other income or property which had to be taken into consideration.

The marriage of the appellant with the respondent in the first appeal took place in May 1945 at Gujranwala now in Pakistan. The father-in-law of the appellant 'who was examined as a witness in the maintenance suit filed by the respondent gave evidence to the effect that he had worked as an agent of the Standard Vacuum Oil Company with agencies at Gujranwala and neighboring districts and that his annual income at the date of the marriage of the respondent was about Rs. 40,000/- out of which he had to pay Rs. 13,000/- by way of income-tax. Further, after the partition of India he came to Dehra Dun and took up his abode at Premonitory Refugee Camp but could not engage himself actively in business on account of illness and old age but had become a partner with others in a business of ice and rice mill in which he had a Rs. 0-2-6 share; he had never seen the accounts of the business and was content to accept whatever was given to him by his partners which varied between Rs. 50/- and Rs. 200/- per month. He had to leave all his property in Pakistan and had not received any compensation in lieu thereof at the date when he was examined in court in March 1956.

There is some dispute about the period during which the parties in the first appeal had lived together as man and wife. According to the husband the period had come to an end in March 1946 while according to the wife it had lasted up to December 1946. Admittedly, a daughter, the respondent in the second appeal, was born out of the wedlock on August 4, 1946. The wife sent a lawyer's notice claiming maintenance on July 28, 1951 and filed a suit for the purpose adding a claim to ornaments which according to her were left with the husband. The lawyer's notice states that the news of the birth of the daughter had been conveyed to the parents by his father-in-law by registered post but the latter had refused to accept it, that the wife had been sent by the appellant to Gujranwala for the confinement in 1946 and all her stridhana jewellery, silk clothes etc. had been left behind with the appellant at Lucknow. On the basis that the appellant was receiving Rs. 560/- per month as salary from Government and was earning Rs. 800/- per month by way of private practice: besides income from agricultural lands, the wife's claim to maintenance was laid at the rate of half the earnings of the husband inclusive of the maintenance of the minor girl who had to be educated and brought up according to the husband's status in life.

The suit for maintenance was actually filed on April 27, 1954 by the wife claiming besides the value of the ornaments a decree for arrears of maintenance amounting to Rs. 21,600/ and future maintenance at the rate of Rs. 600/- per month. The claim made in the daughter's suit filed on April 5, 1955 was at the rate of Rs. 150/- per month. The trial court decreed the two suits awarding maintenance to the wife at Rs. 100/- per month as from the date of the decree i.e. 1st June, 1957 and at the rate of Rs. 25/- per month for the daughter negating the claim to the value of the ornaments.

The High Court allowed the claim of the wife to a monthly maintenance of Rs. 250/- from the date of the institution of the suit subject to a limit i.e. that the husband would not be liable at any time to pay more than 25% of the total income as accepted by the income-tax authorities by way of maintenance. With regard to the daughter, the High Court fixed the amount of maintenance at Rs. 150/- per month subject to a similar limit as in the case of the wife, the quantum being directed not to exceed 15% of the average monthly income of the father.

The relevant facts as they emerge from the oral and documentary evidence adduced by the parties so far as the same have a bearing on the factors mentioned in sub-cl. (a) to (d) of s. 23 (2) besides the above may be stated briefly. We have already noted that the father of the wife was a fairly well-to-do person at the time when the marriage had taken place. There was however a serious reversal of his fortunes after the partition of the country. According to him no talk of any dowry had taken place between the parties- before the marriage of his daughter. The appellant who had qualified himself in medicine had gone to Gujranwala from Lucknow for the marriage. The appellant's mother had seen the respondent several times before the nuptials. His daughter had accompanied the appellant to Lahore immediately after the marriage but had come back from there within 10 to 15 days.

The respondent's evidence was that except for very brief periods from October 1945 to March 1946 she had scarcely lived with her husband who was working in a medical college at Lucknow starting on a salary of Rs. 280/- per month. Her evidence was that she was not well received in her husband's family because her mother-in-law was disappointed with the dowry brought by her.

From the oral and documentary evidence it appears that the husband was never anxious to have the company of the wife and her attempts to make the married life a normal one by going to Lucknow three times did not have the desired effect. The husband used to write to her but stopped doing so some two months after the birth of her daughter in August, 1946. She had written a number of letters to her husband from 1946 to 1949 without receiving any reply. On the last occasion when she had gone to the husband at Lucknow the latter was absent from home for four days and she could not find out whether he 'was attending his college during that time. The husband had met her at Lucknow when she went there with her daughter but made himself scarce after the first day. The husband's evidence shows clearly that he was disillusioned about the wife immediately after the marriage inasmuch as he found the wife to be a girl of little education whereas he had been given to understand that she had taken a master's degree in arts. He had however tried to reconcile himself with his lot. His statement even in examination-in-chief does not show that he was at any time anxious to receive his wife or to keep her with him. He had kept up correspondence with her till August 1946 when he received a registered letter intimating him of the birth of his daughter. For live years thereafter from the time of the partition of the country, he had no news of his wife and child. In 1951 he received the lawyer's notice. At the time of his marriage he was a resident medical officer drawing a fixed salary of Rs. 280/- p.m. with free quarters. He became a lecturer in medicine in December 1945 on a salary of Rs. 280/- with prospects of increment up to Rs. 400/-. In 1953 he became a Reader in medicine on a scale of Rs. 500-30-800. His salary at the time of his ,giving evidence in court was Rs. 620/- plus 10% by way of dearness allowance. He also had some private practice which came to no more than Rs. 25,000 to Rs. 30,000/- during the entire period from 1945 to 1957. His bank balance had never crossed the limit of Rs. 2,000/-. He had no other assets except a piece of land in Ambala given by way of compensation for lands owned in Pakistan. He had purchased a car for Rs. 10,000./and his monthly expenses for the upkeep of it including the chauffeur's pay was Rs. 70/- p.m. He had no idea of the financial status of his father-in-law.

A few letters which passed between the husband and the wife and exhibited in this case show that from May 1945 to