

**CASE DETAILS**

MANMOHAN GOPAL

v.

THE STATE OF CHHATTISGARH & ANR.

(Miscellaneous Application Nos.858-859 of 2021)

In

(Criminal Appeal No(s). 85-86 of 2021)

OCTOBER 20, 2023

**[S. RAVINDRA BHAT AND ARAVIND KUMAR, JJ.]**

**HEADNOTES**

**Issue for consideration:** Applications filed by the daughter-in-law (original complainant and R-2) for recovery of both arrears of maintenance and monthly maintenance.

**Constitution of India – Art. 142 – There has been a persistent defiance by husband, and the petitioner-father-in-law, who have, through one pretext or another stalled compliance with the orders of the Supreme Court – Husband has abandoned wife and virtually fled to Australia – Documents reveal that considerable amounts of money were remitted to husband, over a period of time – It is the responsibility of Petitioner-father-in-law and husband who are held liable to fulfil the payment of entire sum – Directions issued:**

**Held:** (1). Six contiguous shops bearing municipal numbers 26, 27, 28, 29, 30, 31 shall be put to sale by the Registrar of the Delhi High Court, who shall ensure that the best prices are realized – The amounts realized from the sale shall be deposited in a fixed deposit receipt, initially for six months, and its interest, disbursed to the second respondent/applicant – In the event of no sale, the attachment of property shall continue in favour of the applicant; (2). The attachment of rents of M/s Fitness Factory Gym & Spa on the First Floor shall be continued, till the petitioner, and his son, pay the amount constituting the balance between the amount realized by direction (1) and Rs. 1.25 crores; (3). In the eventuality the directions in (2) are not complied within one year, the Registrar is directed to take steps, and

within three months, and seek option from the applicant regarding whether she would wish the transfer of title to the said premises in her name, or its sale – In the event she opts for the transfer, the Registrar Delhi High Court, is directed to take all necessary steps to execute a conveyance deed (under the present directions) to that effect, the sale shall be registered by the concerned authorities, and the applicant shall be handed over symbolic possession; (4). In the event the applicant does not seek conveyance, the Registrar shall take all necessary steps to auction the said property (on the first floor described in (2) above, within 18 months from today; (5). All amounts realized in the process of compliance with directions (1) and (4) above shall be paid to the applicant – Decree shall be drawn to the above effect – Decree shall also reflect total amount due and payable to the applicant in lieu of which sale of shops are hereby ordered. [Para 18]

#### **LIST OF CITATIONS AND OTHER REFERENCES**

*Subrata Roy Sahara V. Union of India and Others* [2014] 12 SCR 573; *Delhi Development Authority V. Skipper Construction Company (P) Ltd* [1996] 2 Suppl. SCR 295; *Chenga Reddy v. State of A.P.* (1996) 10 SCC 193 : [1996] 3 Suppl. SCR 479 – relied on.

#### **OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

**CRIMINAL APPELLATE JURISDICTION:** Miscellaneous Application Nos. 858-859 of 2021 in Criminal Appeal Nos. 85-86 of 2021.

From the Judgment and Order dated 28.01.2021 in Crl. A. Nos.85 and 86 of 2021 of the Supreme Court of India.

#### **Appearances:**

Hargovind Jha, Rameshwar Prasad Goyal, Advs. for the Appellant.

Ms. Praveena Gautam (AC), Mahesh Kumar, Shivam Sharma, Sunit Kumar Toppo, Ms. Devika Khanna, Mrs. V.D. Khanna for M/s. VMZ Chambers, Ms. Jaspreet Gogia, Ms. Varnika Gupta, Karanvir Gogia, Lzafeer Ahmad B. F., Ravi P. Wadhwani, Pawan Shukla, Ms. Akankshi Tyagi, Shiv Ram Sharma, Ms. Seema Gupta, Vishwaditya Sharma, Advs. for the Respondents.

**JUDGMENT / ORDER OF THE SUPREME COURT**

**JUDGMENT**

**S. RAVINDRA BHAT, J.**

1. With consent, heard the counsel for parties. The present miscellaneous application has been filed in one disposed of criminal appeal<sup>1</sup> in which this court granted bail to the mother-in-law and father-in-law (Petitioners herein) of the Respondent No.2 herein (hereafter “R2” or “applicant” interchangeably) for offences under 420, 406, 468, 34, 120B of IPC.

2. The present applications are filed by the daughter in law (original complainant and R2) for recovery of both arrears of maintenance and monthly maintenance of ₹1,27,500. She is seeking from this court to direct to the family court of Bilaspur to decide the petition under Section 125(3) of CrPC within 6 months on the father-in-law and mother-in-law (now deceased) on the ground that she lives with her widowed mother, on whom she is dependent for expenses, including litigation expenses.

3. The factual background of the case is that Petitioner’s son, Mr. Varun Gopal got married to R2 sometime in the year 2012-13. At the relevant time, Varun Gopal was employed in Australia. Within two years of marriage, the matrimonial relationship deteriorated leading to various legal proceedings. In response to the criminal charges pressed by R2, Varun Gopal filed anticipatory bail application, but relief was denied to him. Since then, Varun Gopal has not participated in the criminal proceedings or in the maintenance proceedings. The present petitioners also sought anticipatory bail to which orders were passed by this Court directing them to deposit Rs.40 lakhs towards arrears of maintenance. The money having been not deposited, the anticipatory bail was not granted and they were arrested. After 10 months in custody, this court by order dated 12.07.2019 directed their release on bail.

4. In addition to criminal charges, R2 also filed a maintenance<sup>2</sup> claim in the Family Court, Bilaspur. By order dated 9.11.2016, the Trial Court

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1 Crl. A. No.s 85-86/2021.

2 vide MJC No. 14/2016

granted interim maintenance in sum of ₹ 1 Lakh per month. Subsequently, the husband filed criminal revision petition<sup>3</sup> seeking setting aside of ex-parte interim maintenance order which got dismissed in default whereas R-2 also filed criminal revision petition<sup>4</sup> seeking an enhancement and by order dated 7.4.2021, it was enhanced to ₹1,27,500.

5. According to the applicant, Varun Gopal is the sole heir of the petitioner and stands to inherit 11 shops in ancestral property, which the Petitioner got on the basis of Decree dated 29.5.1959. Further, Mr. Varun Gopal is settled in Australia where he obtained an ex-parte divorce decree dated 21.12.2017, by the family court of Australia. R2 has filed a suit for cancellation of divorce on 8.11.2021<sup>5</sup> in the family court of Bilaspur, which is pending disposal. In the meantime, husband has remarried and now has two kids from his second marriage.

6. Previously, this court by order dated 02.09.2021, observed the following *"It is accepted by Mr. Hargovind Jha, learned Advocate for Manmohan Gopal that those 11 shops which had fallen to the share of Manmohan Gopal by virtue of decree passed in the year 1959 continue to be under his control and the proprietary interest has not been transferred or parted with. He also accepts that Varun Gopal being son of Manmohan Gopal and coparcener, would have interest in said 11 shops. As a matter of fact, Mr. Hargovind Jha, learned Advocate went to the extent of submitting that his client would consent to the appointment of receiver to the extent of the interest of Varun Gopal in those properties."* and had directed to attach 11 shops on the consent given by petitioner/father-in-law which is reproduced in verbatim as below-

*"(a). Those 11 shops, the details of which are available in decree passed in the year 1959 are hereby attached.*

*(b) It shall be open to the Executing Court to consider whether said shops need to be sold or dealt with in any other manner so as to ensure payment of all the arrears of maintenance to Shilpi Shrivastava.*

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3 CR. R. No. 90/2017

4 CR. R. No. 1102/2019

5 Bearing case No. 139/2022

*(c) Till such exercise is undertaken, all the rentals and other incomes from said shops shall be credited to a separate account to be maintained under the direction and control of the Executing Court. From and out of the sum so received, the Executing Court shall be at liberty to make over such sums towards maintenance to Shilpi Shrivastava, as it deems appropriate. (d) If any or all shops are required to be sold, the Executing Court shall maintain accounts and revert back to this Court at the earliest.”*

Submissions on behalf of applicant

7. Ms. Jaspreet Gogia, learned Amicus Curiae on behalf of R2 submitted that the said 11 shops have gone through three unsuccessful auction sale as the shops were occupied by tenants. As per R2, the current outstanding arrears of maintenance amounts to ₹1.25 Cr. Approx. (as of the order dated 02.09.21) and further asserts that all available modes for the execution of her maintenance order have been exhausted. The father-in-law was in prison for 10 months, and the auction of property also failed. Given this situation, R2 is seeking transfer of ownership of the said shops in her name as a means to settle her outstanding maintenance arrears and future maintenance as well. To be specific, R2 is seeking ownership of the Shop namely M/s Fitness Factory Gym & Spa on the First Floor and some shops on the Ground Floor which are fetching the maximum rent. She submits to this court to note that if the due arrears i.e., ₹1.25 Crores would have been paid, R-2 will get ₹60,000/- to ₹65,000/- per month as an interest and the rent of the First Floor Gym is around ₹55,000/-. It was further submitted that some shops fall under the Delhi Rent Control Act and they fetch rental of less than ₹3,500/- per month and R-2 will never be in a position to get those vacated as the Petitioner has taken *pagdi*<sup>6</sup> of those shops. It was also shown that the Executing Court has attached the rent of ₹15,000/- from the mobile tower installed on the roof top of the second floor of the same building<sup>7</sup>.

8. Additionally, the Petitioner has already consented for attachment of the shops to the extent of the husband's share (i.e., his son's share) in

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<sup>6</sup> Pagdi system is a renting arrangement wherein the tenant is also the co-owner of the property, and has both subletting and selling rights.

<sup>7</sup> as per Order dated 2.9.2021

the order dated 02.09.2021, which was never objected. Thereafter, the Petitioner also never raised any objection to the attachment of Fitness Factory Gym before the Executing Court (Bilaspur). Thereafter, for the first time, the Petitioner objected to the said attachment by getting two frivolous applications filed through his relative/ tenant Mr. Amitabh Srivastava<sup>8</sup> which was disposed of<sup>9</sup> without giving any relief. The second I.A.<sup>10</sup> filed by Mr. Amitabh Srivastava was dismissed as withdrawn<sup>11</sup> and the application filed by Mr. Amitabh Srivastava before the Executing Court (Tis Hazari Court) was dismissed.<sup>12</sup>

9. The counsel has submitted a copy of Site Plan of the 11 Shops drawn by Govt. approved Draftsman. Counsel further submitted the details of bank accounts which have been produced on the directions of this Court<sup>13</sup>, and claimed that the Petitioner was having 3-4 crores in his account but they have given false information in their Affidavits about them having no money. Furthermore, counsel also submitted that the matrimonial house was sold by the Petitioner for around ₹2 Crores in June, 2018.

10. It was also submitted that mother-in-law was signatory to the Memorandum dated 22.10.2018, before the Mediation Centre of the Supreme Court, which recorded that the parties had settled their case and an amount of ₹1.29 Crore was to be made over to R2 for the same. However, no money was paid to R2.

11. Finally, R2 asked this court to invoke its power under Article 142 of the Constitution as she approached this court in 2018 where firstly the Petitioner and his deceased wife had enjoyed the fruits of anticipatory bail by giving an undertaking of making the payment of due arrears of around ₹40 lakhs at that point of time. But despite several assurances to this Court, the same was not paid. R-2 also filed Contempt Petition<sup>14</sup> where this Court took the cognizance but petitioners did not make the payment and chose to

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8 I.A. No. 72797 of 2021

9 vide order 29.09.2022

10 No. 169380 of 2022

11 vide order dated 29.11.2022

12 Order dated 4.5.2022 passed by Addl. Principal Judge, Tis Hazari Court, Delhi

13 vide Orders dated 17.3.2023, 27.3.2023

14 (C) No. 2204 of 2018 in SLP (Crl.) No. 3727 of 2018

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go to jail; even as per Order dated 13.12.2018, this Court referred the matter to the Executing Court but nothing material could be done as the Petitioners were not appearing before the Executing Court and again in the regular bail matter<sup>15</sup>, this court granted them regular bail. Hence, even after so many rounds of litigation, and after 5 years, R2 is still remediless.

*Submissions on behalf of Petitioner*

12. Mr. Hargovind Jha, learned counsel appearing for petitioner submitted that R2 obtained the maintenance order only against her husband which can be recovered from the husband or from his assets. The Petitioner is not personally liable to R2 when her husband is alive. There is no law which can directly hold father-in-law to provide maintenance to the wife.

13. The petitioner further contended that the marriage between R2 and his son was dissolved by the divorce decree passed by the court in Australia and therefore, parents-in-law are not liable in this case. In fact, the petition filed by R2 against petitioner is not maintainable under Section 19<sup>16</sup> of Hindu Marriage Act, 1955 (hereafter HMA) as it is not applicable in the present case. The prayer asked is in violation of Section 25<sup>17</sup> of HMA;

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15 SLP (Crl.) No. 3876-77 of 2020

16 **19. Maintenance of widowed daughter-in-law.**—

(1)A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law: Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance—

(a) from the estate of her husband or her father or mother, or  
(b)from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.

17 **25. Permanent alimony and maintenance.**

(1)Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

R-2 has not yet accepted the decree granted in favour of husband by the foreign court and has instead challenged the decree, therefore, cannot seek permanent alimony.

14. Furthermore, the memorandum<sup>18</sup> was signed by his wife who is now deceased and so, it cannot be enforced against him. In its replies filed, the petitioner denied having coparcenary interest of his son on properties as well as receiving ₹2 Crores as sale consideration for the matrimonial house.

15. Petitioner further submitted<sup>19</sup> to settle the matter stating that he is ready to offer ₹75 Lacs in addition to 22 Lacs as one time full and final lump sum amount towards her entire claim of past, present and future, subject to the condition that all cases either criminal or civil or execution against the petitioner are withdrawn or brushed aside.

#### *Findings and Conclusions*

16. The past history of this case, and the orders of this court have demonstrated the utter obduracy of Varun Gopal, who abandoned the wife, and virtually fled to Australia. The documents placed on record of this court, including the affidavits filed by the petitioner, and the bank account statements, reveal that considerable amounts of money were remitted to Varun Gopal, over a period of time.

17. The previous judgments of this court, reported as *Subrata Roy Sahara*<sup>20</sup>, *Skipper Construction*<sup>21</sup>, etc. have held that the court is not powerless, but can issue appropriate directions, and even decrees, for

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(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

18 Dated 22.10.2018.

19 in Note dated 6.9.23.

20 [2014] 12 S.C.R. 573

21 1996 (2) Suppl. SCR 295

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doing complete justice between the parties. In *Skipper Construction*, it was observed

*"16. In other words, the power under Article 142 is meant to supplement the existing legal framework — to do complete justice between the parties — and not to supplant it. It is conceived to meet situations which cannot be effectively and appropriately tackled by the existing provisions of law. As a matter of fact, we think it advisable to leave this power undefined and uncatalogued so that it remains elastic enough to be moulded to suit the given situation. The very fact that this power is conferred only upon this Court, and on no one else, is itself an assurance that it will be used with due restraint and circumspection, keeping in view the ultimate object of doing complete justice between the parties..."*

In *Chenga Reddy v. State of A. P*<sup>22</sup>, it was observed

*"56. A court of equity must so act, within the permissible limits so as to prevent injustice. "Equity is not past the age of child-bearing" and an effort to do justice between the parties is a compulsion of judicial conscience. Courts can and should strive to evolve an appropriate remedy, in the facts and circumstances of a given case, so as to further the cause of justice, within the available range and forging new tools for the said purpose, if necessary to chisel hard edges of the law. In our opinion in the established facts and circumstances of these cases, it would be appropriate with a view to do complete justice between the parties, in exercise of our jurisdiction under Article 142 of the Constitution of India..."*

18. The present case – as discussed earlier, has displayed persistent defiant conduct by Varun Gopal, and the petitioner, Mohan Gopal, who have, through one pretext or another stalled compliance with the orders of this court. It is the responsibility of Petitioner and Varun Gopal who are held liable to fulfil the payment of entire sum. In these circumstances, it is hereby directed that:

(1) Six contiguous shops bearing municipal numbers 26, 27, 28, 29, 30, 31 shall be put to sale by the Registrar of the Delhi High Court, who shall ensure that the best prices are realized. The amounts realized from the sale shall be deposited in a fixed deposit receipt, initially for six months, and its interest, disbursed to the second respondent/applicant. In the event of no sale, the attachment of property shall continue in favour of the applicant.

(2) The attachment of rents of M/s Fitness Factory Gym & Spa on the First Floor shall be continued, till the petitioner, and his son, Varun Gopal, pay the amount constituting the balance between the amount realized by direction (1) and Rs. 1.25 crores.

(3) In the eventuality the directions in (2) are not complied within one year, the Registrar is directed to take steps, and within three months, and seek option from the applicant regarding whether she would wish the transfer of title to the said premises in her name, or its sale. In the event she opts for the transfer, the Registrar Delhi High Court, is directed to take all necessary steps to execute a conveyance deed (under the present directions) to that effect, the sale shall be registered by the concerned authorities, and the applicant shall be handed over symbolic possession.

(4) In the event the applicant does not seek conveyance, the Registrar shall take all necessary steps to auction the said property (on the first floor described in (2) above, within 18 months from today.

(5) All amounts realized in the process of compliance with directions (1) and (4) above shall be paid to the applicant. Decree shall be drawn to the above effect. Decree shall also reflect total amount due and payable to the applicant in lieu of which sale of shops are hereby ordered.

19. This court expresses its gratitude to Amicus Ms. Jaspreet Gogia for her valuable contribution and efforts. The applications are disposed of in the above terms.