

Banvesh Lal Malhotra vs Alka Malhotra on 28 July, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Jasmeet Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ MAT.APP.(F.C.) 15/2020

BANVESH LAL MALHOTRA

..... Appel

Through: Dr. Amit George, Mr. Amol Acharya
Mr. Rayadurgam Bharat, Mr. Piyo Harold, Ad

versus

ALKA MALHOTRA

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% 28.07.2021

1. The present appeal has been filed by the Appellant (Husband) against the Respondent (Wife) under Section 19(1) of the Family Courts Act, 1984 read with Section 28(4) of the Hindu Marriage Act, 1955 challenging the order dated 21.09.2019 wherein the application filed by the Appellant under Section 24 of the Hindu Marriage Act, 1955 was dismissed.

2. The present matter is a legal aid matter, as informed to us. We may place on record our appreciation for Dr. Amit George for having passionately and objectively argued the legal aid matter before us.

3. Briefly stating the facts giving rise to filing of the present appeal are as under:-

i. The Appellant and the Respondent got married on 17.01.1987 at MAT.APP.(F.C.) 15/2020 Signing Date:18.09.2021 23:50:07 Delhi according to Hindu rites and ceremonies. Out of the marriage, two children, namely, Ms. Mankita Malhotra and Ms. Pratishta Malhotra were born. The elder daughter, Ms. Mankita Malhotra is already married, and the younger daughter, Ms. Pratishta Malhotra is presently employed in a private company. The Appellant was a Chef in ITDC from 01.10.1981 to 10.10.2002, wherefrom he opted for Voluntary Retirement Scheme (VRS).

ii. During the period of his employment, the Appellant had booked a shop bearing Shop No. 6, Satyam Plaza Complex, Pocket - B & E, DDA Market, Dilshad Garden - 110095 for which he had paid the entire consideration amount.

iii. On 16.07.1998, the Appellant, out of natural love and affection, gifted the said property to the Respondent, vide duly registered Gift Deed dated 16.07.1998. The said shop has thereafter been leased out on rent, which is being received by the Respondent.

iv. It is stated that after his retirement, the Appellant set up an informal catering business to make his ends meet from his residence i.e. L-152B, Dilshad Garden, Delhi - 95, but the said business never took off. It is further stated that the Appellant suffers from depression and anxiety and has been undergoing treatment from 2009 at the Psychiatry Department, Institute of Human Behaviour and Allied Sciences (IHBAS).

v. It is further submitted that the Appellant is also suffering from MAT.APP.(F.C.) 15/2020 Signing Date:18.09.2021 23:50:07 several diseases on account of his old age, which is causing him acute knee pain. It has been stated and argued before us that on account of the knee pain, the Appellant is unable to work at present and unable to make any money. The Appellant is already prosecuting his petition for divorce u/s 13(1)(ia) of the Hindu Marriage Act, 1955 which is pending at the Family Court, Karkardooma Courts, Delhi. On account of having no income, the Appellant filed the application u/s 24 on 28.08.2018 seeking Rs.8000/- as maintenance from the Respondent-wife during the pendency of the H.M.A petition.

vi. After the service of the said application, the Respondent filed reply and besides denying the averments, she has categorically stated that the Appellant is doing catering business in the name and style of M/s Lal Caterers since 2014 and is earning a handsome amount of at least Rs. 50,000/- a month. It is further submitted that the Appellant is enjoying the corpus of the amounts which he got on his voluntary retirement and has not spent even a single penny on the Respondent or his children from the date of his retirement.

vii. It has further been stated that the Appellant is operating his catering business from the house (where both the Petitioner and the Respondent reside), he prepares the food in the house, also uses the groceries, other goods, items, utensils and equipment in the house without contributing even a single penny towards any of the expenses.

MAT.APP.(F.C.) 15/2020 Signing Date:18.09.2021 23:50:07 viii. The Respondent has further stated that at present, Respondent is getting Rs. 17,853/- as the rent from the shop which she spends for her day to day expenses like gas, electricity, telephone, milk, grocery, food etc. ix. That the Family Court, Shahdara District heard arguments on the said application and vide impugned order dated 21.09.2019 dismissed the application filed under Section 24 of the Appellant.

4. We have heard Learned Counsel for the Appellant and have gone through the documents.

5. The Gift Deed dated 16.07.1998 is a duly registered document which vests the Respondent with the absolute title, interest and fruits of the said property. Hence, the Respondent, having become absolute owner of the property, by virtue of the Gift Deed dated 16.07.1998, enjoys the property as her absolute property in her hands. It is neither fair nor reasonable for the Appellant to eye the said property or any rent from that property once he has made a gift out of natural love and affection and

has put the Respondent in possession of the same, merely because the parties have fallen apart later.

6. There are three medical documents that have been filed by the Appellant before us to highlight his mental depression and acute knee pain. The first two documents are OPD cards from Institute of Human Behaviour and Allied Sciences (IHBAS) pertaining to the year 2009. These two documents show that the Appellant has been through some MAT.APP.(F.C.) 15/2020 Signing Date:18.09.2021 23:50:07 psychiatric sessions. However, there are no documents after the year 2009 from IHBAS. It may be possible, that the Appellant may have had some depression and anxiety in the year 2009, but there is nothing on record to show that the said condition continued beyond the said year. Had that been so, the Appellant would have had, and would have produced before the Family Court, prescriptions, OPD cards, and medicine bills showing his mental state as well as the course of his medical treatment. In the absence of any medical document beyond 2009, we can conclude that the Appellant is not suffering from any depression and anxiety as stated.

7. As regards the acute knee pain, there is one document from Dr. Ram Manohar Lohia Hospital which talks about knee and calf pain. Again, the said document is relatable to the year April, 2018 and only prescribes some tablets. There is no mention that the knee of the Appellant is in a bad condition, requires X-rays, MRI or a replacement. There is no document after April, 2018 to show that the knee problem, if any, was continuing with the Appellant and it was so acute that it hindered the catering business of the Appellant.

8. The clincher for us are the visiting cards and the receipts showing catering business of the Appellant. These documents have been admitted by the Appellant and there is no dispute as to authenticity of the same as, in fact, it is stated that the documents are in the Appellant's own hand writing. There are visiting cards of the Appellant under the name of M/s Lal Caterers; there are promotional calendars issued by M/s Lal Caterers of the year 2017; there are documents MAT.APP.(F.C.) 15/2020 Signing Date:18.09.2021 23:50:07 evincing that the Appellant on 17.02.2019 did catering in B-Block, Dilshad Garden, Delhi and on 04.01.2019 at Vasundhara, Ghaziabad, UP. The said catering was done in January and February, 2019 i.e. after the so-called knee issue troubling the Appellant and after the so-called depressive mental state of the Appellant. Hence, we are of the view that the certificates from IHBAS and Dr. Ram Manohar Lohia Hospital were merely an eyewash and did not hinder the Appellant from doing his catering work.

9. The objective of Section 24 of Hindu Marriage Act, 1955 is not to equalise the income of spouses, but is only to see that when matrimonial proceedings are filed, either party should not suffer due to paucity of a source of income, and maintenance is granted to tie over the litigation expenses and provide for the daily needs of the spouse. (KN v. RG, 2019 SCC Online Del 7704)

10. Section 24 will also not come to the rescue of a spouse who is able-

bodied, competent and qualified to generate revenue and income, but on account of laziness or other factors, is not putting his/her skills to optimum utilisation. If despite reasonable efforts the spouse is not able to earn a livelihood, it may be a different thing. It is not the case of the Appellant before us that despite him willing and ready to do catering business, he is unable to generate work. The

case set up before us is that he is incapable of doing work on account of his old age, mental state and knee problem.

11. The objective of Section 24 of the Hindu Marriage Act, 1955 was laid MAT.APP.(F.C.) 15/2020 Signing Date:18.09.2021 23:50:07 down by the Madhya Pradesh High Court in Mamta Jaiswal v. Rajesh Jaiswal (2000 (3) MPLJ 100) thus :

".....Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well as idlers so also does not want an army of self-made lazy idlers. Everyone has to earn for the purpose of maintenance of himself or herself, at least, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That cannot be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient effort are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours. "

12. In Smt Kanchan w/o Kamalendra Sawarkar v. Kamalendra Sawarkar (AIR 1992 Bombay 493) the Bombay High Court held as follows:

"The non-applicant-husband is mentally and physically well bodied person. He has a skill of a particular business. There is no handicap for him to earn bare minimum to support his livelihood. Merely because his business is closed, it cannot be held that he has no source to earn. Since MAT.APP.(F.C.) 15/2020 Signing Date:18.09.2021 23:50:07 the wife is in the employment, the husband cannot make himself wholly dependent on her income through a device of section 24 of the Act. In absence of any handicap or impediment to earn, to grant maintenance to such able bodied person equipped with skill would promote idleness. It is opposed to spirit of section 24 of the Act. The trial Court was wholly without justification in awarding maintenance in favour of the non- applicant-husband. The impugned order therefore cannot be sustained."

13. In the matter of Yashpal Singh Thakur v. Smt. Anjana Rajput (2001) MP 67, the High Court held:

"In the case at hand it can be irrefutably concluded that the husband petitioner has, by his own conduct decided to lead a leisurely life, and has made no attempts to earn money which he is capable of earning. He cannot afford to incapacitate himself and sustain an application under Section 24 of the Act. It will be an anathema to the very purpose of the said provision."

14. In this view of the matter, we find that the Appellant before us has culinary skills; was a Chef and had been running a catering business till January - February, 2019. Despite being able-bodied and skilful, the Appellant claims to be idle for no apparent reason. If the provision of Section 24 is permitted to be invoked in such like cases, it will only lead to a growing population of self-made, lazy idles. This will not only be against the aim and goal of Section 24 of the Hindu Marriage Act, but also adversely affect the health of the society.

15. In this view of the matter, we hold that the Appellant is not entitled to seek maintenance from the Respondent-wife, who herself, is only getting Rs. 17,853/- as rent.

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16. In this view of the matter, we find no infirmity in the impugned order dated 21.09.2019 and the present appeal is dismissed being devoid of merits.

VIPIN SANGHI, J JASMEET SINGH, J JULY 28, 2021/'ms' MAT.APP.(F.C.) 15/2020 Signing Date:18.09.2021 23:50:07