

Neeta Rakesh Jain vs Rakesh Jeetmal Jain on 20 July, 2010

Equivalent citations: AIR 2010 SUPREME COURT 3540, 2010 AIR SCW 4417, 2010 (5) AIR BOM R 237, 2011 (1) AIR JHAR R 806, (2010) 2 HINDULR 113, (2010) 7 MAD LJ 723, (2010) 6 ANDHLD 26, (2010) 7 SCALE 201, (2010) 82 ALL LR 500, (2010) 4 JCR 60 (SC), (2010) 2 CLR 420 (SC), (2010) 3 RECCIVR 775, (2010) 3 ICC 707, (2010) 2 WLC(SC)CVL 510, (2010) 94 ALLINDCAS 145 (SC), (2010) 4 CAL HN 350, (2010) 2 DMC 275, (2010) 3 CIVILCOURTC 756, (2010) 5 MAD LW 495, 2010 (12) SCC 242, 2011 (1) SCC (CRI) 326, (2010) 5 BOM CR 693

Author: R.M.Lodha

Bench: R.M. Lodha, Aftab Alam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5660 OF 2010
(Arising out of SLP (C) No. 6736 of 2007)

Neeta Rakesh Jain

.... Appellant

Vs.

Rakesh Jeetmal Jain

....Respondent

JUDGMENT

R.M.LODHA,J.

Leave granted.

2. The order dated September 21, 2006 passed by the High Court of Judicature at Bombay (Appellate Side), which fixes the interim maintenance at the rate of Rs. 12000/- per month pending appeal, is under challenge at the instance of the wife - appellant in this appeal by special leave.

3. The parties were married on May 8, 1995. The respondent-husband petitioned for divorce under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 (for short, 'the Act') on the ground of cruelty and desertion against the wife. The Principal Judge, Family Court No. 5, Pune, passed an ex-parte decree on April 7, 2005 dissolving the marriage between the parties on the ground of cruelty. The wife has preferred an appeal before the Bombay High Court challenging the ex-parte decree. The appeal has been admitted. On July 18, 2005 an ad-interim order was granted staying the operation of the ex-parte decree. The husband was also restrained from re-marrying until further orders. The ad-interim stay order is operative although the husband has informed the High Court that on July 22, 2005 he had re-married. The factum of re-marriage has been disputed by the wife before the High Court.

4. The wife made an application (Civil Application No. 107 of 2006) for direction to the husband to pay to her interim maintenance of Rs. 50,000/- per month. In that application it was stated that husband's income is Rs. 2,00,000/- per month approximately. It was stated that the husband is a highly qualified person; he is Chartered Accountant (CA) and has also passed Cost and Works Accounts of India (ICWA). He passed Chartered Institute of Management Accountants (CIMA), U.K., examination in May, 1999 and also completed course of Computer Information Technology. According to wife, at the time of marriage the husband was working with M/s. Kalpataru Constructions at Mumbai drawing a salary of Rs. 40,000/- per month; in 1996 he changed his job and was appointed as Finance Manager with M/s. Kimberly Clark, Pune (a multi-national company) at double the salary and in May, 1998 he joined a highly reputed software company, namely, M/s. Tata Technology on substantially increased salary. In 1999, the husband was sent to Sri Lanka by the company as a Senior SAP Consultant where he was entitled to a chauffeur driven Toyota Van and a large bungalow to live. He returned to Pune in August 1999. At that time his monthly income was about Rs. 1,50,000/-. The wife averred that somewhere in the month of January, 2000 the husband started his own company in the name and style of M/s. Paysquare Consultancy Limited at Pune and engaged several computer and IT engineers, chartered accountants and MBAs as employees. As regards her own income, the wife stated that she did not have any independent source of income and was pursuing her studies of Ph.D. at the mercy of her elder sister who has been supporting her since 2001.

5. The husband responded to the application by filing his affidavit. Substantial part of the reply affidavit deals with the proceedings before the Family Court. As regards his income, he stated that he joined the service with M/s. Kalpataru Constructions as an entry level job with a total income of Rs. 7,000/- per month. According to him, his salary in M/s. Kimberly Clark was Rs. 15,000/- per month while his salary in M/s. Tata Technology was Rs. 20,000/- per month. He stated that having worked for six years, he decided to start on his own and put all his savings in the company - M/s. Paysquare Consultancy Limited. He also stated that he was not the sole owner or proprietor of the company and that from August 2005 he has started drawing the salary of Rs. 30,000/- per month from the company.

6. The Division Bench in the impugned judgment observed that since an application for interim maintenance was being considered, it was not inclined to deal with the submissions advanced by the counsel for the parties on the earning capacity of the husband in extenso and accepting the

husband's statement that he was getting Rs. 30,000/- per month, fixed an amount of Rs. 12,000/- per month as interim maintenance to the wife.

7. Section 24 of the Act makes a provision for maintenance pendent lite and expenses of proceedings. It reads thus:-

"S.24.- Maintenance pendent lite and expenses of proceedings.- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly, during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

8. Section 24 thus provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may apply to the court to direct the respondent to pay the monthly maintenance as the court may think reasonable, regard being had to the petitioner's own income and the income of the respondent. The very language in which Section is couched indicates that wide discretion has been conferred on the court in the matter of an order for interim maintenance. Although the discretion conferred on the court is wide, the Section provides guideline inasmuch as while fixing the interim maintenance the court has to give due regard to the income of the respondent and the petitioner's own income. In other words, in the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute.

9. In a case such as the present one, the stand of the husband that he is drawing salary of Rs. 30,000/- per month from the company since August 2005 is inherently improbable. The husband is highly qualified; he is CA, ICWA, CIMA and has also completed course of Computer Information Technology. He has worked with renowned and big companies like M/s. Kimberly Clark and M/s. Tata Technology as Finance Manager and Senior SAP Consultant respectively before he started on his own in January, 2000. He did not leave the job due to any compulsion but because he wanted to grow big. He has admitted that having worked for six years, he decided to do his own business and started the company, namely, M/s. Paysquare Consultancy Limited in which he has sought

financial/administrative help of his brother and one Ms. Nilima Apte. How can it be believed that a person who has started his own business leaving the job in 2000 would start drawing the salary of Rs. 30,000/- per month from the company from August, 2005? The High Court has not taken into consideration these vital aspects and accepted the statement of the husband that he was drawing salary of Rs. 30,000/- per month as a gospel truth. Insofar as wife is concerned, it appears that she does not have any settled job; she has worked at few places for few months. We think this is eminently a case in which the High Court must reconsider the wife's application for interim maintenance.

10. Accordingly, this appeal is partly allowed, the impugned order dated September 21, 2006 is set aside and Civil Application No. 107 of 2006 made by the wife for interim maintenance is restored to the file of the High Court for fresh consideration. We expect the High Court to dispose of the application for interim maintenance expeditiously and before it proceeds with the hearing of the main appeal, being Family Court Appeal No. 10 of 2006. The cost of the appeal is quantified at Rs. 20,000/- (Rupees twenty thousand) which the respondent shall pay to the appellant within one month from today.

.....J. [AFTAB ALAM]J. [R.M. LODHA] New Delhi, July 20, 2010.