

Madras High Court

Pandian Alias Ganesan vs Suganthi on 29 October, 1996

Equivalent citations: (1997) 1 MLJ 282

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ORDER AR. Lakshmanan, J.

1. Heard Mr. N. Vanchinathan, learned Counsel for the petitioner and Mr. P. Mani, learned Counsel for the respondent. This revision is directed against the order dated 8.4.1996 in I.A. No. 114 of 1995 in H.M.O.P.19 of 1995 on the file of the Subordinate Judge, Chidambaram awarding interim maintenance pendente lite at Rs. 500 p.m. to the respondent herein and Rs. 250 for the minor daughter and a sum of Rs. 2,000 for litigation expenses.

2. The respondent herein filed H.M.O.P. No. 19 of 1995 for divorce under Section 13(1) of the Hindu Marriage Act, 1955. Pending final disposal of the main O.P., the respondent herein filed I.A. No. 114 of 1995 claiming interim maintenance for herself and for her daughter at Rs. 3,000 p.m. and for litigation expenses at Rs. 7,000.

3. The petitioner resisted that application contending inter alia that the allegation that the respondent was treated cruelly by him is not true and on the other hand, respondent has been cruel to him and that application filed for the maintenance pendente lite is not sustainable either on facts or in law since the maintenance can be awarded to the wife or to the husband as the case may be, in a case of this kind. Further the respondent's family is in affluent circumstances and that there is no necessity to grant any maintenance pending decision of the main O.P. It is also contended that the maintenance if at all can be granted only to the wife and not for the daughter, and at any rate, the sum awarded at Rs. 500 for herself and at Rs. 250 for the minor daughter is too high.

4. The learned Subordinate Judge, Chidambaram passed an order granting interim maintenance at Rs. 500 per month for the respondent herein and Rs. 250 p.m. to the minor daughter from the date of the application till date of the disposal of the main O.P. and a sum of Rs. 2,000 towards legal expenses to the respondent herein. Aggrieved by the said order, the husband has filed this revision in this Court which was admitted on 15.7.1996.

5. The petitioner mainly contended that the Court below has failed to note that Section 24 of the Hindu Marriage Act contemplates maintenance pendente lite to only one of them either the husband or the wife as the case may be and not to her daughter as in the present case and hence the granting of maintenance pendente lite to the daughter is not sustainable in law. Taking into consideration of the said argument at the time of admission, Arumugham, J. granted interim stay stating "Interim stay with regard to the order passed by the Court below regarding the maintenance amount to be paid for the daughter alone, and notice returnable in two weeks." The respondent is now represented by her counsel Mr. P. Mani. At the time of hearing, the very same legal contention was raised, stating that under Section 24 of the Hindu Marriage Act, interim maintenance cannot be granted to the child of the marriage and the same can be granted for the spouse only. It is also urged by Mr. N. Vanchinathan, learned Counsel for the petitioner, that the award of maintenance pendente lite to the daughter is contrary to the provisions of the Hindu Marriage Act and therefore,

the order of the subordinate court is vitiated by material irregularities in the exercise of its jurisdiction, he denied the allegation that the petitioner is in affluent circumstances and that in any event, the amount now awarded is on the higher side. In support of his contention, Mr. N. Vanchinathan cited the following decisions:

Assam Chinna Bapu v. Akasam Parbati ; Puran Chand v. Mst. Kamala Devi ; Kartarchand Dalliram Jain v. Smt. Taravati Kartarchand Jain .

Mr. P. Mani, learned Counsel for the respondent in support of his contention that the court has power to grant interim maintenance not only to the wife but also for the children under Section 26 of the Hindu Marriage Act and that any interim maintenance to wife alone is meaningless if it does not provide for the maintenance of the children has cited the following rulings.

Dr. D. Thimappa v. R. Nagavani A.I.R. 1976 Karn. 215; Manoj K.R. Jaiswal v. Lile Jaiswal (1986) 2 D.M.C. 269; Damodharan v. Meera ; Smt. Subhasini v. B.R. Umakanth ; Gulab Chand v. Sampati Devi.

6. Before considering the rival submissions on the legal aspect of the matter, it is beneficial to look into the two important provisions of the Hindu Marriage Act, 1955 with which we are presently concerned in this lis. Section 24 of the Hindu Marriage Act reads thus:

Chapter 19 Section 24 - Maintenance Pendente lite and expenses of proceedings. Where in any proceeding under this Act it appears to the Court that either the wife of the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceedings, 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.

Chapter 21. Section 26 - Custody of children. "In any proceeding under this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining and such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

8. Let me deal with the cases cited by the learned Counsel for the petitioner and then deal with the cases cited by the learned Counsel for the respondent. Assam Chinna Babu v. Akasam Parbati and Anr. was rendered by a Division Bench of the said Court. The Division Bench held that in view of the clear provisions of Section 24, there cannot be any dispute that the wife is entitled to pendente lite maintenance when she has no independent income sufficient for her support and also the necessary expenses for the proceedings. In view of the matter, the order for pendente lite maintenance was

granted to the defendant No. 1 was maintained. It is also stated in the judgment that Section 24 however does not authorise grant of pendente lite maintenance to the daughter and in terms applies either to the wife or the husband as the case may be. The maintenance of Rs. 10 awarded in favour of the daughter therefore set aside.

9. *Puran Chand v. Mst. Kamala Devi* was rendered by the Acting Chief Justice of the Jammu and Kashmir High Court. The learned Judge held that under Section 24 of the Act, maintenance can be granted during the proceeding in favour of the husband or the wife as the case may be and not in favour of a child born out of the wedlock of the litigating spouses.

10. *Kartarchand Dalliram Jain v. Smt. Taravati Kartarchand Jain*, was also rendered by a learned single Judge of the Bombay High Court (Mehta, J.) In this case, the Bombay High Court considered the scope of the Sections 24 and 26 of the Hindu Marriage Act. The Court held that on a reading of Section 24, it becomes evident that the Section makes provision for granting maintenance pendente lite to a party who has no independent income sufficient for his or her support, and that Section does not provide granting maintenance for the children, that Section 26 of the said Act provides for interim orders from time to time as also for making provision in the decree with regard to custody, maintenance and education of minor children consistently with their wishes, and that therefore Section 26 empowered the court to provide for the maintenance of the minor children and it provided for maintenance both pendente lite as also after the passing of the decree. The High Court held that the lower court in granting separate maintenance to each of the three adult daughters had clearly transgressed beyond the scope of the provision of the Section s in exercising its jurisdiction and therefore the order was invalid and contrary to law.

11. In the decisions cited by the learned Counsel, for the petitioner in *Assam Chinna Babu v. Akasam Parbati and Anr.* and *Pura Chand v. Mst. Kamala Devi* both courts have had no occasion to consider the scope of Section 26 of the Hindu Marriage Act. However in the judgment reported in *Kartarchand Dalliram Jain v. Smt. Taravati Kartarchand Jain*, the learned single Judge considered the scope of Section 26 of the Act, and held that Section 26 of the Act empowers the court to provide for the maintenance of the minor children and it provides for maintenance pendente lite as also after the passing of the decree. Further the said Court set aside the grant of maintenance to the three adult daughters on the ground that the Court has awarded the same beyond the scope of the provision of Sections 24 and 26 of the Act.

12. Let me now consider the rulings cited by the learned Counsel for the respondent in support of his contention. In *Dr. D. Thimmappa v. R. Nagavani* A.I.R. 1976 Karn. 215 a learned single Judge of the Karnataka High Court (B. Venkataswami, J. held that the Court is entitled to grant maintenance not only for the wife but also for children acting under Section 26 and that when a wife claims maintenance and she has children to support, any interim maintenance to wife alone is meaningless if it does not provide for the maintenance of children also *Assam Chinna Babu v. Akasam Parbati and Anr.* was cited before the learned Judge of the Karnataka High Court. The learned Judge distinguishing the judgment of the Orissa High Court held that the said decision had not examined the scope of Section 26 of the Act on which also reliance had been placed by the respondent before the Karnataka High Court. This apart, the order impugned before the Karnataka High Court was

that of a civil Judge, Mysore who has taken into account the Section 26 of the Act while awarding separate maintenance to the children. Therefore, the learned single Judge held that the decision in Assam Chinna Bapu v. Akasam Parbati was not of much assistance to the appellant before it. The counsel for the respondent before the Karnataka High Court placed reliance on a decision of the High Court of Andhra Pradesh in Katamanchi Appa Rao v. Katamanchi Paradeshamma (1974) 2 An.W.R. 359. In the said decision it is laid down that it was open to a Court while considering an application under Section 24 of the Act to take into account the provisions of Section 26 also whenever it was just and proper. The relevant enunciation reads thus:

So far as the first point is concerned it has to be noticed that while granting maintenance pendente lite to the wife or to the husband, as the case may be, regard should also be had to Section 26. While Section 24 of the Act provides for granting maintenance to the wife or the husband as the case may be Section 26 speaks of passing interim orders and also making provision in the decree by the Court with regard to custody, maintenance and education of the minor children consistently with their wishes. When the wife makes an application under Section 24 of the Act to the Court for the grant of interim maintenance to the children also, the court can grant the relief to the children also under Section 26 wherever it considers just and proper.

In the case on hand, it is no doubt true that in the application, filed for the purpose, there is no specific prayer for grant of maintenance to the children. But in the affidavit filed in support of the application the averments clearly indicate that such maintenance is claimed on behalf of the children also. Be that as it may, it seems to me that when a wife claims maintenance and she has some children for her own to support and maintain, any interim maintenance than may be awarded to the wife would be meaningless if the same was not intended to provide for the maintenance of the children also. In my view, the enunciation of the High Court of Andhra Pradesh with which I am in respectful agreement, is clearly applicable to the facts of the present case.

13. Manoj K.R. Jaiswal v. Lila Jaiswal (1986) 2 D.M.C. 269 was delivered by a Division Bench of the Calcutta High Court. The court held therein that it should also be noted that while Section 24 requires for its operation an application from the spouse concerned, the provision of Section 26 so far it relates to interim maintenance, may be invoked even without any application in writing and formal application in writing is necessary under Section 26 only for awarding maintenance and other reliefs after the decree. The learned Judge, therefore, had perfect jurisdiction to grant pendente lite maintenance to the minor child even without a formal application, and therefore, his granting such interim maintenance even when moved by an application labelled as one under Section 24 only, cannot be branded as without jurisdiction or to involve any jurisdictional question even though Section 24 does not provide for maintenance for children.

14. Damodharan v. Meera was rendered by a learned single Judge (M.M. Pareed Pillay, J). Similar contention raised by the counsel for the petitioner herein was also raised before the Kerala High Court. The learned Judge held that the question that has to be considered is as to whether the order of the court granting maintenance to the children of the respondent is legally sustainable. Section 24 of the Hindu Marriage Act empowers the court to grant maintenance pendente lite and expenses of proceedings to either the wife or the husband, as the case may be, when it is found that the person

claiming maintenance has no independent income sufficient for her or his support and to meet the necessary expenses of the proceedings. It is true that Section 24 does not make any mention about granting of maintenance to the children of the spouses. Section 26 of the Act postulates that in any proceeding under the Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children. The decisions reported in *PurusOttam Das v. Smt. Pushpa Devi* and *Puran Chand v. Mst. Kamala Devi* relied on by the petitioner have not considered whether the Court could invoke Section 26 of the Act and grant maintenance to the children of the litigating spouses. Section 26 of the Act makes the position very clear that in any proceeding under the Act, the Court can pass interim orders and make provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children. A petition filed under Section 26 cannot be considered in isolation and the court cannot altogether ignore Section 26 of the Act in a case where maintenance of the children is also claimed. In I.A. No. 1359 of 1965, respondent has claimed maintenance not only for herself but also for her minor children. It is also averred in the petition that the husband was not maintaining them for the past seven months. When such a petition is filed it is incumbent upon the court to consider the plight of the minor children and not to confine itself within the limits of Section 24 alone. In any proceeding under the Act, the Court has ample power to make interim orders and make such provisions as it deems necessary, with regard to the custody, maintenance education of the minor children. The contention of the revision-petitioner that Section 26 of the Act applies only to a case where custody of the minor children is mooted is not tenable in view of the plain reading of the Section. In a petition filed under Section 24 of the Act the court can always invoke Section 26 of the Act and grant maintenance to the children of the spouses in cases where it is found necessary.

15. *Smt. Subhasini v. B.R. Umakanth* . A Bench of that Court, while holding so, have also considered the earlier judgment of the said Court reported in *Dr. D. Thimmappa v. R. Nagavani* A.I.R. 1976 Karn. 215. The Court held that where an application for maintenance was filed under Section 24 with an averment of the existence of minor child the Court could make an order awarding maintenance pendente lite in respect of minor child as well as the applicant having regard to the provisions of Section 26.

16. The Bench held that they are in entire agreement with the observations made by Venkataswami, J. in *Dr. D. Thimappa v. R. Nagaveni* A.I.R. 1976 Karn. 215.

17. *Gulab Chand v. Sampati Devi* A.I.R 988 J and K 22 is again an application for maintenance by wife. The Court while considering the claim of the wife held that the Court has power to grant appropriate relief in the form of maintenance to the minor children as well, under Section 26 of the Act. Before the learned single Judge, apart from the other decisions, *Puran Chand v. Mst. Kamala Devi* and *Dr. D. Thimappa v. R. Nagavani* A.I.R. 1976 Karn. 215 were also cited. The learned Judge held that while Section 24 requires for its operation an application from the spouses concerned, the provision of Section 26, so far it relates to interim maintenance may be invoked even without an application in writing and a formal application in writing is necessary under Section 26 only for awarding maintenance and other reliefs after the decree. I am in respectful agreement with the views expressed by the learned single Judge in the decision referred to earlier and particularly in

Smt.Subhasini v. B.R.Umakanth, ; Manoj K.R. Jaiswal v. Lile Jaiswal (1986) 2 D.M.C. 269; Damodharan v. Meera and Gulab Chand v. Sampati Devi and Dr. D. Thimappa v. R. Nagavani A.I.R. 1976 Karn. 215. The Judgments cited by Mr. N. Vanchinathan in support of his submission in Assam Chinna Bapu v. Akasam Parbati A.I.R. 1967 On. 163; Puran Chand v. Mst. Kamala Devi and Kartarchand Dalliram Jain v. Smt. Taravati Kartarchand Jain are clearly distinguishable. Excepting , the other two decisions have considered only the scope and impact of Section 24 of the Act only. In my opinion, it cannot be said that the children as a general are not entitled to the grant of maintenance under the provisions of the Hindu Marriage Act. The Court exercising jurisdiction under the Act has powers to grant appropriate reliefs in the form of maintenance to the children of the spouse as in the instant case, the wife had demanded the relief of maintenance for herself and for her minor daughter. On an appreciation of the evidence let in, the Court below came to the conclusion that the wife is entitled to maintenance of a sum of Rs. 500 p.m. and Rs. 250 p.m. for the minor daughter and the litigation expenses at Rs. 2,000. In my opinion, the order passed by the court below cannot at all be disturbed, since the Court below has arrived at the finding on facts and on appreciation of the entire materials placed before it and also considering the liability of the husband for paying the maintenance to his wife and daughter. In my opinion, the application in the instant case had been filed under Section 24 of the Act for pendente lite maintenance both for wife and for her minor child, the Court below has granted maintenance rightly for the wife and for the minor child for the reasons recorded in its order. Section 26 of the Act enables the Court, from time to time, pass such orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children consistently with their wishes. Section 24 requires for its operation an application from the spouse concerned. The provision of Section 26 so far it relates to interim maintenance, may be invoked even without any application in writing and a formal application in writing is necessary under Section 26 only for awarding maintenance and other reliefs after the decree. In this case, the court below had rightly granted the maintenance to the minor child though not specifically mentioning the provision of Section 26 of the Act. In my opinion, the Court can exercise its jurisdiction without any formal application in a matter like this. The technicalities have to be deprecated because the substance that counts and must take precedence over the form. If for subsistence the wife had applied for the maintenance of the child also and the materials on record also justify such grant, then the application is being labelled as one under Section 24 is only a matter for form and the form can very well be treated for the purpose of Section 26 also even if an application was necessary for pendente lite maintenance of the children under Section 26 of the Act. In my opinion, in the decisions reported in Assam Chinna Bapu v. Akasam Parbati and Puran Chand v. Mst. Kamala Devi , the Courts have not considered the impact of Section 26 of the Act in its proper perspective. The other judgments cited by the counsel for the respondent are in full agreement with the views expressed by me wherein it has been held that when the wife makes an application under Section 24 of the Act to the Court for the maintenance for herself and also for the minor daughter, the Court can grant maintenance to the children in exercise of its power under Section 26 of the Act, wherever it considers to be just and proper.

18. Baboolal v. Prem Lata A.I.R. 1974 Raj. 93 rendered by a learned single Judge is also to the same effect where it has been held (at 96) that if a case is made out to that effect, interim maintenance can be granted to the minor children while considering an application under Section 24 by the wife even

in the absence of separate application under Section 26 of the Act.

19. I am therefore of the view that in granting maintenance to the minor daughter, while disposing of and allowing the application under Section 24 by the wife, the lower court has not made any illegal assumption and illegal exercise of jurisdiction to warrant intervention in this revision. I accordingly decline this revision. However, there will be no order as to costs.