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RAJESH BURMANN

v.

MITUL CHATTERJEE (BURMAN)
(Civil Appeal No. 6443 of 2008)

B

NOVEMBER 4, 2008

[C.K. THAKKER AND D.K. JAIN, JJ.]

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Maintenance – Medical reimbursement – Claim for, by wife – Entitlement – Held: Wife is entitled to maintenance and support under the 1954 Act – Expressions ‘maintenance’ and ‘support’ are comprehensive and of wide amplitude and take within their sweep medical expenses – Special Marriage Act, 1954 – s.36 – Hindu Marriage Act, 1955 – Hindu Adoption and Maintenance Act, 1956.

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Special Marriage Act, 1954 – s.36 – Application under s.151 CPC, by wife for claiming medical expenses, pending suit for dissolution of marriage – Maintainability of – Held: Maintainable – The provisions of Code of Civil Procedure apply to Courts exercising power under the Act – Code of Civil Procedure, 1908 – s.151.

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Words and phrases: ‘maintenance’ and ‘support’ – Meaning of.

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In a suit filed by respondent–wife for dissolution of marriage, the wife filed an application under s.151, CPC claiming reimbursement of medical expenses. Case of wife was that she was pushed by her husband from the staircase. As a result, she fell down and fractured her left arm. She was operated twice. The suit for dissolution of marriage was filed 15 days after the incident. The appellant–husband stated that he was not responsible for the injuries sustained by his wife and a false claim was put forward by her. It was further the case of husband that

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the respondent-wife had received amount from Insurance Company towards medical expenses and reimbursement had already been made.

The Trial Court held that the wife was entitled to medical reimbursement but observed that admittedly, the wife had received an amount of Rs.76, 181/- out of the total expenses incurred by her, from the Insurance Company. Accordingly, the trial Court directed the husband to pay an amount of Rs.3, 06, 181/-, after deducting the said amount received by her.

Appellant-husband challenged the said order by approaching the High Court invoking Article 227 of the Constitution. The High Court partly allowed the petition observing that the Trial Court did not commit any error of law or of jurisdiction in ordering the husband to pay reimbursement of medical expenses to the wife. It was however, held that the wife was not entitled to the amount reportedly spent for air-fare. Accordingly, the said amount was deducted and the remaining amount was ordered to be paid. Hence the instant appeal.

Dismissing the appeal, the Court

HELD: 1. Interference is not called for against the order passed by the trial Court and as modified by the High Court. So far as maintainability of application filed by the wife is concerned, there is no substance in the contention that such an application is not tenable. Proceedings had been initiated in accordance with the provisions of the Special Marriage Act, 1954 and matrimonial suit was pending. In the circumstances, it was open to the applicant wife who had initiated the proceedings for dissolution of marriage in a competent Court to institute such application. Even otherwise, looking to the scheme of the Act, it is clear that provisions of the Code of Civil Procedure would apply to Courts

A exercising power under the Act. The preliminary objection raised for the appellant as to the jurisdiction of the trial Court has no substance and must be rejected. [Para 18] [272-C-E]

B *Chand Dhawan (Smt.) v. Jawaharlal Dhawan*, [1993] 3 SCC 406 and *M/s MSCO Pvt. Ltd. v. Union of India & Ors.*, [1985] 1 SCC 51, referred to.

C 2. The Special Marriage Act, 1954 provides for solemnization of special marriages, registration thereof, consequences of marriage under the Act, restitution of conjugal rights, judicial separation and nullity of marriage and divorce. It also provides for jurisdiction of Courts and procedure to be followed. Reading the scheme of the Act, it is clear that a wife is entitled to 'maintenance and support'. The two terms 'maintenance' and 'support' are comprehensive in nature and of wide amplitude. Apart from the provisions of Hindu Marriage Act, 1955 or Hindu Adoptions and Maintenance Act, 1956, the two expressions, 'maintenance' and 'support' in the Act of 1954 are comprehensive and of wide amplitude and they would take within their sweep medical expenses. [Paras 20, 23 and 30] [273-B; 274-F-G; 277-F]

F *Mangat Mal & Anr. v. Puni Devi (Smt) & Anr.*, [1995] 6 SCC 88, relied on.

G *Pradeep Kumar Kapoor v. Ms. Shailja Kapoor*, AIR (1989) Delhi 10; *Atul Sashikant Mude v. Niranjana Atul Mude*, AIR (1998) Bombay 234; *R. Suresh v. Smt. Chandra*, AIR (2003) Karnataka 183 and *Ajay Saxena v. Smt. Rachna Saxena*, AIR (2007) Delhi 39, referred to.

H 3. On the basis of material on record, the trial Court held that the wife was entitled to medical expenses which order was slightly modified by the High Court upholding her right to get medical reimbursement from her husband.

There is no infirmity in the decision or reasoning of the Courts below which calls for interference in exercise of discretionary and equitable jurisdiction under Article 136 of the Constitution. [Para 31] [277-G-H; 278-A] A

Case Law Reference :

[1993] 3 SCC 406 referred to Para 19 B

[1985] 1 SCC 51 referred to Para 19

[1995] 6 SCC 88 relied on Para 29

AIR (1989) Delhi 10 referred to Para 26 C

AIR (1998) Bombay 234 referred to Para 27

AIR (2003) Karnataka 183 referred to Para 28

AIR (2007) Delhi 39 referred to Para 29 D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6443 of 2008.

From the final Judgment and Order dated 13.2.2007 of the High Court at Calcutta in C.O. No. 2975 of 2006. E

Bijan Kumar Ghosh for the Appellant.

Mukul Rohatgi, Utpal Majumdar, Dipak Kumar Jena, Humanyu Sahoo, Meenakshi Jena and Pranab Kumar Mullick for the Respondent. F

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

2. The present appeal is directed against the judgment and order dated January 06, 2006 in Order No. 22 of 2002 in Matrimonial Suit NO. 4 of 2005, passed by the Court of Additional District Judge, 7th Court, South, 24 Parganas, Alipore and modified by the High Court of Calcutta on February G
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A 13, 2007 in C.O. No. 2975 of 2006.

B 3. Shortly stated the facts of the case are that the appellant Rajesh Burman is the husband of respondent Mitul Chatterjee (Burman). The marriage between the parties was solemnized on January 26, 2000 at Calcutta. The wife permanently joined matrimonial home by coming to Bombay on February 25, 2001 where her husband was serving.

C 4. According to the appellant, on June 16, 2001, he was stuck up in the office work and could not reach at home after office hours. At about 9.30 p.m., the respondent-wife came to the office of her husband and abused him for being late and not coming back in time. At 1.30 a.m. in the night, he returned home but as soon as he arrived, his wife became furious and violently abusive in presence of her father and grand parents.

D 5. It is the say of the appellant that he wanted to walk out and to allow her anger to cool down. He was leaving fast through a stair case which was a rotated three fold stair of about 4 steps + 8 steps + 7 steps. According to the appellant-husband, his wife came out to prevent him from getting down but mis-stepped being sleeping drowsy in the dead hour and clad in long sleeping gown. She, hence, fell down and suffered injury in the left arm resulting in fracture. Medical treatment was given to her.

F 6. It was stated by the appellant that even according to the wife, it was a case of accident wherein she received injuries. After long period of ten days, on June 26, 2001, the wife-respondent herein lodged a complaint in local police station against her husband (appellant) and her-in-laws for offences punishable under Sections 498A, 325, 406 and 506 read with Section 34 of the Indian Penal Code, 1860 (IPC). It was also alleged by her that it was her husband who had pushed her and caused injuries. The appellant has stated that he as well as his mother (mother-in-law of the respondent) were arrested. The
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H appellant was constrained to approach the High Court of

Bombay for quashing criminal proceedings and obtained stay of further proceedings. Due to shock, however, his mother suffered heart attack and died. The appellant is facing criminal trial. It has also come on record that the wife was operated twice; first operation was performed in the Bombay Hospital on June 19/20, 2001 and the second operation was performed on May 02, 2002.

7. It may also be stated at this stage that the relations between the husband and wife are far from cordial and friendly. The respondent-wife has filed a suit for dissolution of marriage and for a decree of divorce on July 01, 2001 against the appellant-husband under Section 27 of the Special Marriage Act, 1954 (hereinafter referred to as 'the 1954 Act') in the Court of District Judge, Aliore, 24 Parganas (S), West Bengal. In the suit, prayers were sought to declare that the marriage between the parties was liable to be dissolved by a decree of divorce at the instance of plaintiff-wife, to return goods lying under the care, custody and control of the defendant-husband, to pay alimony pendente lite as also permanent alimony, to pay costs and to grant such other relief as the Court may deem fit and proper. The appellant-husband is contesting the suit.

8. According to the appellant, though he was not responsible for the injuries sustained by his wife, a false claim was put forward by her against the appellant-husband for reimbursement of medical expenses. It was his case that the respondent-wife had received amount from Insurance Company towards medical expenses and reimbursement had already been made. Yet by suppressing all those facts and with a view to harass the husband, she preferred a claim for medical reimbursement by filing an application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') in the pending suit praying therein that the husband may be directed to pay a sum of Rs.3,82,262-75 paise towards medical reimbursement.

9. The appellant contested the claim of reimbursement of

- A wife by filing counter affidavit taking several grounds *inter alia* contending that the petition filed by the wife was not maintainable; there was suppression of facts on her part; she was gainfully employed and was not entitled to any amount from him; she had already received the amount from the Insurance Company and the husband was not liable to pay anything to her. It was, therefore, prayed by the husband that the application was devoid of any merit and was liable to be dismissed.

10. The learned Judge, however, rejected all the contentions of the husband. He held that the wife was entitled to medical reimbursement but observed that admittedly, the wife had received an amount of Rs.76,181/- out of the total expenses incurred by her from the Insurance Company. The said amount was, therefore, required to be deducted. Accordingly, the trial Court directed the husband to pay an amount of Rs.3,06,181/-.

11. The appellant-husband challenged the said order passed by the trial Court by approaching the High Court of Calcutta invoking Article 227 of the Constitution. The High Court partly allowed the petition observing that the trial Judge did not commit any error of law or of jurisdiction in ordering the husband to pay to the wife medical reimbursement. He, however, held that the wife was not entitled to the amount reportedly spent for air-fare i.e. an amount of Rs.21,568/- plus Rs.62,155/- totaling Rs.83,723/-. Accordingly, the said amount was deducted and the remaining amount was ordered to be paid.

12. The above decision of the High Court is challenged in the present proceedings by the husband.

13. We have heard learned counsel for the parties.

14. The learned counsel for the appellant strenuously contended that both the Courts had committed an error of law in granting medical reimbursement to the wife. It was urged that the appellant-husband was not responsible for the injuries

sustained by the wife. It was a case of accident—pure and simple and the wife was to be blamed for it. No order, therefore, could have been passed by the Courts directing the appellant—husband to pay any amount to the wife. It was also urged that the parties are governed by the 1954 Act which does not provide for such expenses. An application under Section 151 of the Code filed by the wife was, therefore, not maintainable and the Court had no jurisdiction to entertain such application or to make any order. It was further urged that an equitable relief could not be granted in favour of the applicant—wife who suppressed material facts. She had not stated that she had been gainfully employed and did not depend on husband. Initially, it was not disclosed by her that she had received any amount from the Insurance Company. She had also claimed air fare charges to which she was not entitled and the High Court reduced the said amount. All actions had been taken by the wife only with a view to harass the appellant—husband and in the totality of circumstances, the application was liable to be dismissed.

15. The learned counsel for the respondent—wife, on the other hand, supported the order passed by the trial Court and modified by the High Court. According to him, the wife was entitled to the amount claimed by her. It was stated that so far as the gainful employment of wife is concerned, the said issue is no more in controversy. The wife was held entitled to maintenance and the said right has been upheld upto this Court. Regarding medical expenses, the wife had to undergo two major operations and still she is not completely cured. In future, she will have to undergo further operation as also to take medical treatment. She has spent substantial amount.

16. According to her, she was pushed by her husband from the stair case. His intention was to cause such injuries which may result in her death. Fortunately, however, she survived. It was also submitted that air fare charges were also incurred in connection with medical treatment of the wife but the High Court

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A had reduced the amount. That, however, does not mean that the wife is not entitled to medical expenses granted in her favour by the Courts below.

B 17. It was also submitted that the terms 'maintenance' and 'support' are very wide so as to include medical expenses and both the Courts were right in granting medical reimbursement. This Court may not interfere with the order in exercise of discretionary power under Article 136 of the Constitution.

C 18. Having heard learned counsel for the parties, in our opinion, no interference is called for against the order passed by the trial Court and modified by the High Court. So far as maintainability of application filed by the wife is concerned, we see no substance in the contention of the learned counsel for the husband that such an application is not tenable. D Proceedings had been initiated in accordance with the provisions of the 1954 Act and matrimonial suit was pending. In the circumstances, in our view, it was open to the applicant wife who had initiated the proceedings for dissolution of marriage in a competent Court to institute such application. E Even otherwise, looking to the scheme of the Act, it is clear that provisions of the Code would apply to Courts exercising power under the Act. The preliminary objection raised by the learned counsel for the appellant as to the jurisdiction of the trial Court has no substance and must be rejected.

F 19. It was also contended that the Act is 'self contained Code' and hence while interpreting the provisions of the 1954 Act, interpretation on various provisions of the Hindu Marriage Act, 1955 or Hindu Adoptions & Maintenance Act, 1956 cannot be blindly accepted nor a case can be decided on the basis G of those decisions. It was submitted that whether the wife is entitled to the relief of medical expenses should be considered under the Act of 1954. The decisions of some High Courts on which reliance has been placed by the Courts below are not H under the 1954 Act but they are either under the Hindu Marriage Act, 1955 or Hindu Adoptions & Maintenance Act, 1956. The

counsel urged that it has been held by this Court that no relief can be claimed under one statute relying on the provisions of the other statute [vide *Chand Dhawan (Smt.) v. Jawaharlal Dhawan*, [1993] 3 SCC 406 and *M/s MSCO Pvt. Ltd. v. Union of India & Ors.*, [1985] 1 SCC 51]. The 1954 Act does not provide for medical expenses and hence on that ground also no order could have been made.

20. We are unable to uphold the contention. The Special Marriage Act, 1954, as stated in the Preamble, provides a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce. The Act provides for solemnization of special marriages, registration thereof, consequences of marriage under the Act, restitution of conjugal rights, judicial separation and nullity of marriage and divorce. It also provides for jurisdiction of Courts and procedure to be followed.

21. Section 36 of this Act deals with '*alimony pendente lite*' and states;

Section 36 – Alimony pendente lite.—Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband's income, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.

22. Section 37 of the Act provides for 'permanent alimony

A and maintenance' and reads thus;

Section 37 – Permanent alimony and maintenance.—(1)

B Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case, it may seem to the court to be just.

D (2) If the district 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 it may seem to the court to be just.

E (3) If the district court is satisfied that the wife in whose favour an order has been made under this section has re-married or is not leading a chaste life, it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.

F 23. Reading the scheme of the Act, it is clear that a wife is entitled to 'maintenance and support'. In our considered opinion, the learned counsel for the respondent-wife is right in submitting that the two terms 'maintenance' and 'support' are comprehensive in nature and of wide amplitude.

G 24. The term 'maintenance' is defined in Black's Law Dictionary, (6th Edn., pp. 953–54) thus;

H "The furnishing by one person to another, for his or her

support, of the means of living, or food, clothing, shelter, etc., particularly where the legal relation of the parties is such that one is bound to support the other, as between father and child or husband and wife". A

25. Likewise, the word 'support' as defined in the said Dictionary (p. 1439) reads as under; B

"That which furnishes a livelihood; a source or means of living; subsistence, sustenance, maintenance, or living. In a broad sense the term includes all such means of living as would enable one to live in the degree of comfort suitable and becoming to his station of life. It is said to include anything requisite to housing, feeding, clothing, health, proper recreation, vacation, traveling expense, or other proper cognate purposes; also proper care, nursing and medical attendance in sickness and suitable burial at death". C D

26. The Court below also considered some of the decisions cited before them. In *Pradeep Kumar Kapoor v. Ms. Shailja Kapoor*, AIR (1989) Delhi 10, the High Court of Delhi interpreted 'maintenance' and 'support' under Section 24 of the Hindu Marriage Act, 1955 and observed; E

"Under Section 24 of the Act, the court has to see if the applicant who may either be wife or husband has no independent income sufficient for her or his support and the necessary expenses of the proceeding, and then award expenses of the proceeding and such sum every month, having regard to the applicant's own income and the income of the respondent which may seem to the court to be reasonable. This section may be contrasted with Section 25 of the Act which deals with permanent alimony and maintenance. Under Section 25, the court may order the respondent to pay to the applicant for her or his maintenance and support, till her or his lifetime, either a lumpsum amount or such monthly or periodical sum, H

A having regard to the respondent's own income and other
property, if any, and the income and other property of the
applicant, the conduct of the parties and other
circumstances of the case, which the court might deem just.
B It may be noticed that heading of Section 24 of the Act is
"Maintenance pendente lite and expenses of
proceedings". The section, however, does not use the
word "maintenance", but, to me, it appears that the words
"support" and "maintenance" are synonymous; "Support"
means "to provide money for a person to live on", like "he
supports a family" or "he supports his old mother."
C Maintenance is "an act of maintaining", i.e. to support with
money. For example, "he is too poor to maintain his family".
D It may be useful at this stage to refer to the definition of
"maintenance" as given in the Hindu Adoptions and
Maintenance Act, 1956 (for short 'the Act of 1956'). Under
Section 3 of that Act, "maintenance" includes—(i) in all
cases, provision for food, clothing, residence, education
and medical attendance and treatment ; (ii) in the case of
E an unmarried daughter also the reasonable expenses of
and incident to her marriage. I would, therefore, think that
when we talk of maintenance and support, the definition
of "maintenance" as given in the Act of 1956 should be
adopted. Section 18 of the Act of 1956 also refers to
maintenance of wife and gives the circumstances under
F which a Hindu wife is entitled to live separately from her
husband without forfeiting her claim to maintenance".

27. In *Atul Sashikant Mude v. Niranjana Atul Mude*, AIR
(1998) Bombay 234, the Court considered the provisions of the
Hindu Adoptions and Maintenance Act, 1956 and held that a
G Court is empowered to pass interim and ad-interim orders of
maintenance. It was held that the inclusive definition of the
'maintenance' under the Act would include food, clothing,
residence, education, medical attendance and treatment.

H 28. In *R. Suresh v. Smt. Chandra*, AIR (2003) Karnataka

183, a similar question arose before the High Court of Karnataka. Construing the word 'support' in Section 24 of the Hindu Marriage Act, 1955, the Court held that the word 'support' occurring in the said section can be given the same meaning attributed to the word 'maintenance' as defined in Section 3 of the Hindu Adoptions and Maintenance Act, 1956 which would include provisions for food, clothing, residence, education, medical attendance and treatment.

29. Recently, in *Ajay Saxena v. Smt. Rachna Saxena*, AIR (2007) Delhi 39, analysing the provisions of Hindu Adoptions and Maintenance Act, 1956, the Court held that in a suit under Section 18 of the Act, the wife can claim interim maintenance. It was further held that such interim maintenance may also cover expenses incurred towards medical treatment. Obligation of the husband to pay such expenses cannot be deferred till final adjudication of the suit. Nor can husband avoid obligation to pay further sum to his wife towards medical reimbursement on the ground that the amount of interim maintenance being passed included entire expenses on medical treatment. [See also *Mangat Mal & Anr. v. Puni Devi (Smt) & Anr.*, [1995] 6 SCC 88].

30. As already indicated earlier, the right of the wife to claim interim maintenance has been upheld by the Court and the said decision has attained finality. Apart from the provisions of Hindu Marriage Act, 1955 or Hindu Adoptions and Maintenance Act, 1956, in our considered opinion, the two expressions, 'maintenance' and 'support' in the Act of 1954 are comprehensive and of wide amplitude and they would take within their sweep medical expenses.

31. On the basis of material on record, the trial Court, after hearing the parties, held that the wife was entitled to medical expenses which order was slightly modified by the High Court upholding her right to get medical reimbursement from her husband. We see no infirmity in the decision or reasoning of the Courts below which calls for our interference in exercise of

A discretionary and equitable jurisdiction under Article 136 of the Constitution. The appeal in our view, therefore, has no substance and must be dismissed.

B 32. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed with costs.

C 33. The learned counsel for the appellant–husband at this stage prayed for instalments or extension of time to make payment as per the order of the High Court. In our opinion, the prayer is reasonable. On the facts and in the circumstances of the case, ends of justice would be met if we grant some time to the appellant–husband to pay the amount. Let the said amount be paid by the husband latest by December 31, 2008.

34. Ordered accordingly.

D D.G.

Appeal dismissed.