

Andhra High Court

G. Chilakamma vs G. Sattaiah on 20 February, 2003

Equivalent citations: 2003 (4) ALD 219, 2003 (5) ALT 354

Author: P Narayana

Bench: P Narayana

JUDGMENT P.S. Narayana, J.

1. Heard Smt. W.V.S. Rajeshwari representing Sri P. Venugopal, learned Counsel for the appellant and Sri Shaik Anwar Pasha, the learned Counsel for the respondent.

2. The short question which was raised and argued at length in the Second Appeal is in relation of the reduction of quantum of maintenance by the appellate Court without any basis. The appellant is the plaintiff in O.S. No. 109 of 1988 on the file of the District Munsif, Medchal, R.R. District and the respondent is the defendant. The parties are wife and husband. The suit O.S. No. 109 of 1988 was decreed directing the defendant to pay maintenance of Rs. 800/- per month to the plaintiff from the date of the judgment and pay the costs of the suit. Aggrieved by the same, the defendant/husband filed AS. No. 51 of 1992 and the plaintiff/wife filed A.S. No. 63 of 1992 on the file of the Additional District Judge, R.R. District at Saroomagar, and the appellate Court had modified the judgment and decree made in O.S.No. 109 of 1988 on the file of the District Munsif Medchal, awarding maintenance at Rs. 700/- p.m., which is approximately 1/3rd of his salary per month and this should be made effective from the date of the impugned judgment and decree and the maintenance from the date of plaint till the impugned judgment and decree which was refused by the trial Court, had been granted by the appellate Court in the appeal filed by the plaintiff in A.S. No. 63 of 1992 and the same was fixed as only at Rs. 500/- p.m., during the pendency of the suit. The appellant/wife though satisfied with the granting of the relief, aggrieved by the reduction of the quantum of maintenance from Rs. 800/- to Rs. 700/- and granting only Rs. 500/- during the pendency of the suit, had preferred the present second appeal.

3. Smt. Rajeshwari, the learned Counsel for the appellant had drawn my attention to Sections 18 and 23(2) of the Hindu Adoption and Maintenance Act, 1956 and had submitted that the principles and the guidelines governing the granting of maintenance had not been properly appreciated by the appellate Court and the appellate Court is not justified in reducing the quantum of maintenance from Rs. 800/-to Rs. 700/- and also the appellate Court erred in granting only Rs. 500/- during the pendency of the suit. The learned Counsel also had taken me through the findings which had been recorded by the Court of first instance and also by the appellate Court in this regard. However, the learned Counsel submitted that the appellate Court was well justified in granting maintenance during the pendency of the suit which was not granted by the Court of first instance. Strong reliance was placed on Dr. Kulbhushan Kunwar v. Smt. Raj Kumari, , Jasbir Kaur Sehgal v. District Judge, , and K. Sivakumari v. K. Sambasiva Rao, .

4. Per contra the Counsel for the respondent submitted that the appellate Court had exercised the discretion in granting the relief which was not granted by the Trial Court and on appreciation of evidence, the appellate Court had arrived at a conclusion that granting of Rs. 700/- p.m., is just and proper in the circumstances of the case. The learned Counsel had drawn my attention to the

evidence of D.Ws. 1 to 3 and also EX.B1 to B4 in general and Ex.B4 in particular.

5. Heard both sides and perused the material available on record.

6. The substantial questions of law which fall for consideration are as follows:

1. Whether the lower appellate Court was justified in reducing the quantum of maintenance without any material ?

2. Whether the lower appellate Court was justified in not following the judicial pronouncements with respect to award of maintenance depending upon the salary?

3. Whether the lower appellate Court was justified in ignoring the cardinal principles as stipulated under Section 18 of the Hindu Adoption and Maintenance Act, 1956 ?

4. Whether the Court below was justified in ignoring the increase in the salary of the respondent upon passing of time?

The facts in nutshell as reflected in the respective pleadings of the parties are as hereunder:

7. The appellant/plaintiff/wife pleaded in the plaint as follows:

"The plaintiff was married to the defendant on 3.5.1975 at Chiryal Village of Keesra Mandal, Ranga Reddy District, and that they have lived together happily up to the end of August, 1987 and later since the complainant could not bear the children of the defendant in spite of their marriage from 1974 to 1987, the defendant forcibly drove her away under the impression that the fault was with the plaintiff and that she was a barren lady. Plaintiff claimed that since she could not bear the children of the defendant, the defendant started ill-treating her and beating her up mercilessly, which resulted in her treatment at Gandhi Hospital as out-patient and later when the villagers advised the defendant to look after the plaintiff well and not to ill-treat her, he had taken her back and continued to ill-treat her. The plaintiff claimed that she and the defendant were advised by the village elders to take necessary treatment and that her Medical check up proved that there was nothing wrong with her and in spite of the same, the defendant continued to harass her and then one fine day, he drove her out of his house on the night of 25/ 26.6.1988, after beating her black and blue and threatened her that she need not return back, unless she fetches Rs. 40,000/- from her parents and that if she fails to bring the said amount, he will marry again as he is already having illicit intimacy with another lady, who was ready to pay Rs. 40,000/- as dowry to him in return for the marriage, the plaintiff claimed that while the defendant was attacking her, her sympathetic neighbours intervened and saved her from the defendant and escorted her to her father's house. She claimed that on 4.7.1988 at about 11.45 a.m., she got herself treated as in-patient in Gandhi Hospital and that she has produced the Medico-legal certificate at the Court. She claimed that the neighbours after saving her, advised her and her father, that it would not be correct on their part to allow the plaintiff to join the defendant as he is likely to kill her and then frame the same as a suicide case and that the defendant already intended to marry another lady and that the said marriage was to be

solemnized on the same day at about 1.00 a.m., i.e., on 10.7.1988. She claimed that the defendant after his second marriage, is living with his second wife in his house at Cheeryal, after driving away the plaintiff. She claimed that the plaintiff issued a notice dated 5.7.1988 asking the defendant to pay her maintenance of Rs. 600/- per month as the defendant was working in ECIL and that the defendant sent reply notice on 8.7.1988, making false allegations against her that she left him on her own and her father has got enough land to provide her with subsistence, apart from the plaintiff herself working as field labourer and earning her livelihood. She claimed that as per the Hindu Minority and Guardianship Act, 1956 the defendant is liable to pay her maintenance as he is guilty of desertion, without reasonable cause and without her consent, apart from neglecting her. She further claimed that in view of the cruelty meted out to her by the defendant she is entitled for maintenance from the defendant in spite of her living separately from him. She denied that her father is having enough land and claimed that in view of his meager income, he is unable to maintain her and his other children, who are still young. She denied that the defendant is maintaining his aged parents as mentioned by him in the reply notice. Hence, prayed that in the said circumstances she be granted Rs. 800/- per month from the plaintiff, who is also having income, through his salary, as he owns a house and two plots fetching him in all Rs. 8000/- per month. She claimed that the suit is within the jurisdiction of this Court and the Court fee is paid as per the Court Fee Act. Hence, prayed that the defendant be directed to pay maintenance of Rs. 800/- per month and direct to create a charge for security of the plaintiff over the properties of the defendant and to pay costs apart from the other reliefs.

8. The respondent/defendant/husband filed a written statement pleading as follows:

"The defendant admitted that he married the plaintiff as mentioned by the plaintiff and that they have lived together happily till 30.8.1987, but denied that he developed any hatred, or aversion towards her as he did not bear any children for him and thus entertained an idea of marrying for a second time. He further denied that in view of furtherance of his desire for a second marriage, he ill-treated the plaintiff, which resulted in her treatment at Gandhi Hospital and that he had ultimately driven her out from his house. He claimed that under the said circumstances, the plaintiff did not have any right to file any criminal case against him under Dowry Act. He further denied that on the night of 25/26.6.1988, he demanded and threatened the plaintiff to bring Rs. 40,000/- as mentioned by her under the threat that he shall marry again, if she did not comply with his demand. He further denied that his neighbours saved the plaintiff while he was beating her up black and blue and that he has married for the second time as alleged by the plaintiff. He admitted that he is working in ECIL, but claimed that he draws a salary of only Rs. 1000/- per month and that he has to maintain his parents and claimed that the plaintiff left him on her own in spite of his repeated requests and did not choose to join his company, and as such, is not entitled for maintenance. He denied that he chased, away the plaintiff after ill-treating her physically handling her. He claimed that he is still ready to maintain her provided she joins him. He claimed that he has suitably replied to the notice given by the plaintiff and since his basic salary is Rs. 1,000/- per month, his total income is Rs. 1800/- per month as such, the plaintiff is not entitled for maintenance at the rate of Rs. 800/- per month. He claimed that the plaintiff is not entitled for any charge over his property as the same is untenable one. He claimed that on cause of action arose for the plaintiff to file the present suit and as such, the suit is liable to be dismissed. He claimed that in the said circumstances,

the plaintiff is not entitled for maintenance."

9. On the strength of the respective pleadings of the parties, the Trial Court framed the following issues:

1. Whether the plaintiff is entitled for maintenance from the defendant ?
2. To what extent ?

10. On behalf of the appellant/plaintiff, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondent/defendant, D.Ws.1 to 3 were examined and Exs.B1 to B4 were marked. Both the Courts have recorded concurrent findings relating to the entitlement of the appellant/plaintiff/wife to maintenance. But the only controversy now is relating to the reduction of quantum of maintenance. Since the findings which had been recorded by both the Courts are concurrent findings relating to facts on appreciation of the evidence of P.Ws.1 and 2 and D.W.s 1 to 3 and also Exs.A1 to A6 and Ex.B1 to B4 such findings of facts do not deserve to be disturbed in the second appeal. Ex.B4, the salary certificate is the crucial document on the strength of which, the finding relating to the quantum had been arrived at. No doubt, apart from the salary, the respondent/ defendant/husband is having some other properties. D.W.1 also had stated that the appellant/plaintiff wife is not entitled to maintenance since she can maintain herself. In Ex.B4, the gross salary is at the rate of Rs. 2,187.05 Ps, but the said salary certificate is for the year 1990 and this aspect was taken note of. But due to the passage of time, a finding had been recorded that even in the light of Ex.B4, it can be taken that the respondent/defendant/husband is drawing a salary of more than Rs. 3,000/- on the said day. On the strength of such a finding, the Court of the first instance granted maintenance at the rate of Rs. 800/- p.m., but, however, restricted it from the date of judgment. The appellate Court taking the self-same salary certificate had reduced the quantum to Rs. 700/- per month on the ground of applying the principle of 1/3rd of the salary. A clear finding had been recorded by the Court of first instance to the effect that the salary will be more than Rs. 3,000/-. Even if the view of the appellate Court is accepted on its face value, definitely the quantum of Rs. 800/- per month is far below to the 1/3rd of the salary since 1/3rd may come to Rs. 1,000/-. This finding of the appellate Court had been seriously assailed by the learned Counsel for the appellant/ plaintiff/wife stating that, no doubt discretion is vested in the Court while fixing the quantum of maintenance, but it should be based on certain specified principles and the guidelines. Apart from this aspect of the matter, no doubt, the appellate Court had granted an additional relief granting Rs. 500/- per month during the pendency of the suit instead of granting Rs. 800/- as prayed for. The reasons why a distinction had been drawn in granting Rs. 800/- from the date of judgment and not granting the said quantum to the prior period, had not been specified by the appellate Court. Section 18 of the Hindu Adoption and Maintenance Act dealing with maintenance of wives reads as hereunder:

"Maintenance of wife :--(1) Subject to the provisions of this Section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance--

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion."

However, in view of the concurrent findings recorded by both the Courts below relating to the entitlement of maintenance, the availability of the grounds or otherwise of Section 18 of the aforesaid Act need not be gone into the second appeal especially in the light of the fact that the respondent/defendant/ husband had not preferred any appeal as against the judgment and decree made in the aforesaid appeals referred to supra. Section 23 of the Hindu Adoptions and Maintenance Act, 1956 deals with amount of maintenance and Sub-section (2) of Section 23 specifies as hereunder:

"Amount of maintenance :--(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act regard shall be had to--

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) The number of persons entitled to maintenance under this Act."

11. In Kulbhushan Kumwar's case (supra) the Apex Court held that the quantum of maintenance depends upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families, a survey of the conditions and necessities and rights of the members on a reasonable view of change or circumstances possibly required in the future, regard being, of course had to the scale and mode of living and to the age habits, wants and class of life of the parties and Section 23(2) of the Hindu Adoptions and Maintenance Act, 1956 makes no departure from these principles as enunciated in AIR 1929 PC 128 except perhaps to a limited extent envisaged in Sub-clauses (d) and (e) of Section 23 (2) of the said Act.

12. In Jasbir Kaur Sehgal 's case (supra) the Apex Court had dealt with the factors to be considered in deciding the maintenance pendente lite under Section 24 of the Hindu Marriage Act, 1955. In K. Sivakumari's case (supra) this Court while dealing with the aspect of deciding the quantum of maintenance had observed as under:

"In this appeal, the first appellant/plaintiff is also assailing the quantum of maintenance granted by the Court below in favour of the first plaintiff at the rate of Rs. 80/- per month. Section 23 of the Hindu Adoptions and Maintenance Act is the relevant section which deals with the quantum of maintenance. According to this section, it shall be the discretion of the Court to determine what maintenance shall be awarded. In doing so the Court shall have due regard to the considerations set out in Sub-section (2) thereof. Sub-section (2) ordains that the position and status of the parties, the reasonable wants of the claimant, whether the claimant is justified in living separately, the properties possessed by the claimant if any, and the number of persons entitled to maintenance. P.W.1 admittedly has been living separately from her husband. The petition filed by the first respondent for restitution of conjugal rights has been dismissed and the decision given therein has become final. There can, therefore, be no doubt that P.W.1 can legitimately claim maintenance from her husband. The quantum has been fixed by the Court below taking the income of the defendant alone is the criterion. The Apex Court in Kulbhushan v. Raj Kumar case, has observed that the quantum of maintenance depends upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families; a survey of the conditions and necessities and rights of the members and a reasonable view of the change of circumstances possibly required in the future, regarding being, of course, to the scale and mode of living and to the age, habits, wants and class of life of the parties, Determination of the quantum of maintenance is not left to caprice but to the exercise of sound discretion by the Court. The approach of the Court below although cannot be said as totally wrong, however, it failed to consider the necessary indicia as enjoined under Sub-section (2) of Section 23 and as envisaged by the Apex Court in the judgment referred to supra, more particularly the changed circumstances that might obtain in future. Having due regard to the circumstances prevailing then at the time when the judgment came to be passed in the year 1979 and having regard to the family background and status of the parties and considering the dire necessities of the first plaintiff to sustain herself in the manner befitting the dignity of the family of the first defendant, the quantum of maintenance granted by the Court below at Rs. 80/- per month is certainly on low side. The rate of maintenance claimed by the first plaintiff is at Rs. 300/- per month. True even at that rate in the present days one will certainly be not able to make both the ends to meet. But, it is for the first plaintiff to claim enhancement depending upon the changed circumstances and the escalation of prices. Having regard to the respective contentions and

regard also being had to the indicia enjoined under Section 23(2) and the judgment of the Apex Court I am of the considered view that the quantum of maintenance if granted at Rs. 200/- per month would meet the ends of the justice. The judgment and Decree of the Court below are to be modified to that extent."

13. Coming to the facts of the present case, even if the evidence of P.W.1, D.W.1 and also Ex.B4 are taken into consideration, the finding recorded by the Court of first instance that the salary of the respondent/ defendant/husband will be more than Rs. 3,000/- on the relevant day at the relevant time cannot be in any way faulted. When that being so, even accepting the findings of the appellate Court definitely it cannot be said that granting of Rs. 800/- per month is either unjust or unreasonable. On reducing the said amount to Rs. 700/- without any just reasons, in my considered opinion, may not be in accordance with law for the reason that the discretion was not exercised properly by the appellate Court for the reason that finding had been recorded even by the appellate Court that the principle of 1/3rd salary can be taken as the basis for fixing the quantum. Hence, in this view of the matter, the judgment and decree of the Court of first instance granting Rs. 800/- per month are liable to be restored. The matter does not stop there since the appellate Court had granted additional relief granting Rs. 500/- during the period, of pendency of the suit. The reasons why the difference of amount had been granted for the said period and the subsequent period, had not been recorded. In view of the evidence of PW1, DW1 and also Ex.B4 and the findings which had been recorded by the Court of first instance, which, in fact, in a way had been affirmed by the appellate Court, it would be just and reasonable to grant the same quantum of maintenance of Rs. 800/- during the period of pendency of the suit also.

14. Having regard to the facts and circumstances of the case, I modify the judgment and decree of the appellate Court to the said extent of granting Rs. 800/- per month to the appellant/plaintiff/wife during the pendency of the suit also.