

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1665 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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SANGITABEN RASIKLAL JAISWAL

Versus

SANJAYKUMAR RATILAL JAISWAL

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Appearance:

MR JITENDRA MALKAN for Petitioner

MS MEGHA JANI for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/12/1999

ORAL JUDGEMENT

1. The wife, the petitioner herein, and the respondent in Hindu Marriage Petition No. 243 of 1996 (Old No. 111 of 1996) which was again renumbered as H.M.P. No. 209 of 1997 pending in the court of Civil Judge (S.D.) Mahesana challenges in this civil revision

application the order passed by the court aforesaid below Ex. 5 dated 29th September, 1997 under which the court has granted her the interim maintenance at the rate of Rs.2000/= p.m. w.e.f. 5-10-1996 and Rs.1500/= towards special costs of the application.

2. The husband respondent filed H.M.P. for divorce at Mahesana. It is not in dispute that the respondent husband is an employee and residing in territorial jurisdiction of the city of Baroda and marriage of the parties was solemnised at Hotel Surya Palace, a three star hotel in the city of Baroda on 9-5-1992 but still he has chosen to file this H.M.P. at Mahesana which prima-facie appears to be a deliberate attempt to harass this lady who is stationed at Vanadra, Taluka Dabhoi Dist, Vadodara with her widow mother.

3. On receipt of summons of this petition, the petitioner filed an application under section 24 of the Hindu Marriage Act, 1956 at Ex.9 and therein she prayed for Rs.20,000/= p.m. as allowance of maintenance from the date of application, a Maruti car with Driver and also the husband to bear the costs of petrol and furnished flat in a good locality in the city of Vadodara admeasuring 800 sq. ft. and Rs.23,350/= towards costs of litigation and such other and further costs of litigation which may be incurred by the petitioner. Under the impugned order, as stated earlier, the court has awarded the allowance of maintenance at the rate of Rs.2000/= p.m. and special costs of Rs.1500/=. It is not clear from the order of the learned trial court whether this Rs.1500/= awarded as special costs of application under section 24 of the Hindu Marriage Act to the wife or it is total amount which has been awarded towards the litigation expenses.

4. The respondent - husband is serving with Indian Petrochemicals Corporation Ltd. and his salary certificate is on the record of this civil revision application dated 30th January, 1997. His gross salary is of Rs.6116-50.

5. This revision application is filed for enhancement of the allowance of maintenance, a Maruti Car with driver, expenses of petrol, flat at Vadodara and Rs.23,350/= as costs of this litigation and further costs of litigation.

6. Taking into consideration the pay package of the husband of the petitioner i.e. Rs.6116-50, this amount of Rs.2000/= awarded is just and reasonable amount.

Normal rule is of awarding maintenance pendente-lite 1/3rd of the net income of the husband arrived at after taking into consideration only statutory permissible deductions from the salary. In this certificate, the employer has not given out what deductions are being made from the salary. So it has to be taken to be a net salary of the husband - respondent and the amount of allowance of maintenance granted per month of Rs.2000/= to the petitioner is a reasonable sum.

7. However, the enhancement has been claimed on the ground that the husband is possessing the properties (i) agricultural lands details of which are given in para-3 of the additional affidavit in rejoinder, (ii) many more other ancestral properties and valuable movable properties. In this affidavit, it is further stated that the present market value of the properties as described therein is estimated to be more than Rs.50 to 60 crores and reference has been made to the fact that recently properties bearing R.S. NO. 1500, 1501 and 1528 were placed in market for sale. On information, the petitioner stated that the said properties could fetch an offer of Rs.22 crores. Then it is stated that she reliably learnt that the husband respondent has also enter into an agreement for sale of abovesaid three properties and received an amount of Rs.2.2 crores as consideration for agreement to sale.

8. Merely because the husband is possessing valuable movable and immovable properties it is hardly of any relevance in the matter for grant of temporary maintenance. It is understandable if the husband is having regular income from the properties then it may be taken into consideration. However, as per the case of the petitioner herself, these are all ancestral properties and at this stage, it is difficult to find out what is the ultimate share of the husband - respondent therein. The petitioner has not given out what regular income per month husband is getting from these properties. The valuation of properties irrespective of the fact whether what is stated is correct or not, is not sufficient to take that what claim has been made for maintenance and other things has to be accepted. Reference of agreement to sale of properties is also difficult to accept as for which also there is no evidence on the record. To reach to a reasonable sum of maintenance to be awarded to the wife on her application under section 24 of the Hindu Marriage Act what income regularly per month the husband is having has to be considered. He is in employment and accordingly his salary is taken into consideration and the amount of

interim maintenance awarded can not be interfered with. There is no scope whatsoever on the basis of the material produced on the record for enhancement to be made in the amount of interim maintenance granted to the wife by the trial court under the impugned order. So to this extent the claim of the petitioner is not acceptable.

9. The further claim made for providing a Maruti Car with chauffeur and further direction to husband to bear the expenses of petrol etc. it is suffice to say that such a claim may not fall under section 24 of the Act, 1956. It is no more the maintenance but may be a luxury in the facts of this case and that can not be taken into consideration.

10. The claim for furnished flat at Vadodara is also difficult to accept what to say to be granted under the provisions of section 24 of the Hindu Marriage Act. It is understandable if ultimately the marriage of the parties is dissolved by a decree of divorce, while considering the matter for grant of permanent alimony under section 25 of the Act, 1956, the court may consider all these aspects but not at this stage. The claim of the petitioner for these two things is also difficult to be accepted.

11. Now I may advert to the claim of the petitioner for litigation expenses. This claim has to be dealt with in two parts. First is the claim which has been made of Rs.23,350/= and second the claim for further expenses. The rejoinder affidavit has given shocking facts and really after going through the contents of this affidavit, it touches the conscience of the court that how the lady who has no source of income whatsoever and entitled for free legal aid under the Legal Services Authorities Act, 1987 has been exploited by an advocate. The shocking facts are of the claims for coming to Mahesana by the advocate, the claim for professional fees of an advocate per appearance, professional fees for drafting of reply to the original application including clerical and typing expenses and affidavit in rejoinder to the advocate, Mrs. Nayna V. Malkan, professional fees of drafting application for maintenance, professional fees for drafting affidavit in rejoinder, expenses incurred for obtaining property documents, car expenses and other expenses of appearance. I cannot do better than to reproduce all these items in the judgment.

Rs.250/- Visit by Shri Anmol Sharon (Lumsum amount, inclusive of Autorickshaw, Bus Fare To & Fro AbdMSN Tea, Snacks his

stipend Dt. 28-11-96.

Rs.250/- Visit By Shri Anmol Sharon inclusive of a  
(lumsom amount inclusive of Autorickshaw,  
Bus fare, To & Fro Abd-MSN Tea, Snacks  
inclusive his stipend Dt. 31-12-96)

Rs.1500/- My visit with my Mother and Lawyer from  
Vanadara to Mahesana in a private Car.  
Dt. 17-1-97.

Rs.500/- Tea, Snacks, Lunch for 5 persons.

Rs.5500/- Professional Fees of Jitendra Malkan for  
his appearance on that date.

Rs.3500/- Professional fees for drafting reply to  
original application including clerical  
and typing expenses. Affidavit in  
rejoinder to Advocate Nayna V. Malkan.

Rs.1500/- Professional fees for drafting  
application for maintenance u/s. 24 of  
the Act with clerical and typing expenses  
to be paid to Mrs. Nayna V. Malkan.

Rs.1500/- Professional fees drafting affidavit in  
rejoinder of reply to application u/s.24  
of the Act to Nayna V. Malkan.

Rs.1000/- Expenses incurred for obtaining property  
documents.

Rs.1500/- Car expenses for my visit with my mother  
and Lawyer from Vanadhara to Mahesana in  
a private car on Dt. 24-2-97.

Rs.500/- Tea, Snacks, Lunch for 5 persons.

Rs.5500/- Professional fees of Jitendra Malkan for  
his appearance on Dt. 24-2-97.

Rs.350/- Professional fees to Advocate Ms.  
Prerana Vakharia for her visit to  
Mahesana (including and snacks on  
7-2-97).

12. The petitioner may not know that she is eligible  
for free legal aid but the advocate and the Presiding  
Officer of the court in which the matter was pending are  
suppose to know for this entitlement of this litigant. A

litigant who has been ordered to be granted Rs.2000/= per month as maintenance, how she will bear out all these expenses and wherefrom she has borne out all these expenses and how in future she will borne out these expenses is a matter of realisation. It is very very difficult for this lady and equally very harsh on the part of the advocate to put burden of heavy litigation expenses over this poor lady more so when she is entitled for free legal aid. This is not the only case but I am seeing cases after cases where very sad stories are being told by the litigants of this class either in the court or in the Chamber when the matters are being placed for conciliation proceedings. There seems to be something wrong somewhere in our efforts to make known to this class of litigants for their right to get free legal aid. Though under section 24 of the Hindu Marriage Act, the husband is under legal obligation to bear out the expenses of litigation of the wife but that is the Act of the year 1956. After this Act of 1987 where this class of litigants are entitled for free legal aid still a husband who belongs to lower middle class may be saddled with all these costs or a question does arise whether he is in a position to bear out such a luxurious litigation expenses of the wife. Now after this Act of 1987 possibly and legitimately the husband may not be made responsible for the litigation expenses of the wife. However, this is not the matter to be considered at this stage and decided in this case. I am only concerned with the shocking facts which have come on record that how this class of litigants are being exploited. I find fault with the system of which I am also the part. It is unfortunate that despite of having all these legal literacy camps, Lok Adalats etc. we are unable to give a message and make known to this class of litigants that they are entitled for free legal services. Out of the total population of the country, very nominal percentage thereof are involved in litigations. So what is important is that there must be some system, method or modality to make known to this class of litigants about their right of free legal aid at the State expenses. It is not unknown and what our system is that on receipt of summons/notices of proceedings of the court, a litigant will do one thing to approach to an advocate. So the first duty falls on the advocate who has been approached by this class of litigant and more so a class of litigant who is eligible for free legal services under section 12 of the Act, 1987 to make her known of the fact that she may not engage him as she is entitled for free legal aid and may approach to the concerned authorities. This is required to be done at the grass root level and where the two important persons to give this message or to make

known of this right to this class of litigants are advocate and the judicial officer concerned. If the advocate, a professional, does not give this information to the litigant of this category or make know him/her of this right then it comes on the court on the first hearing of the case to make known him/her of their entitlement of free legal aid. If such category of litigant appears through an advocate, it is the duty of the court also to ascertain and to make know to the litigant that he/she is entitled for free legal aid. If it has been done then only our these programmes will be successful and beneficiaries thereof will be benefitted. The courts know this but still these litigants are not made known of their right of free legal aid. All the litigants of this class are represented in the courts by advocates. I had an occasion to talk to many of the litigants of this class in the court where they have narrated very sad stories. In one case, a lady litigant - a wife, on being asked by the court stated that his advocate is very good advocate and has not demanded anything from her and has not charged anything from her of the litigation. That was the stage only where application under section 24 of the Act was decided. She has paid to him in installments about Rs.6000/= towards fee. It is no doubt true that certain percentage of advocates are rendering free legal services in these matters but not substantial number.

13. The justification given for claim of this heavy expenses of litigation is that the lady has to travel with some security from her village to Mahesana and it is the creation of husband himself. I find sufficient justification in the contention of the learned counsel for the petitioner that this attempt of husband to file petition at Mahesana though he himself resides near to Baroda and marriage was solemnised at Baroda is with the object to harass this lady. However, if that is so, I cannot do better than to remind the counsel for the petitioner of the provisions of section 24 of the Civil Procedure Code and if such an application is filed by the wife, the court will consider the same accordingly and there may be all possibility of accepting the prayer of the petitioner for transfer of this petition from Mahesana Court to Baroda court.

14. Before parting with this judgment, it is to be stated that the advocate of the petitioner here in this court, or the advocate appearing for her in the Mahesana court as well as the Presiding Officer of the court concerned to make this lady know of her right of free legal aid so that there may not be any further expenses

of litigation to be borne out by her. This judgment is dictated in English. I do not know whether this lady knows English or not. It is also difficult to ensure whether if she knows to read and understand English, whether the judgment will reach to her hands or not. It is a matter of concern of both the advocate and the court and I hope that the advocate being an officer of the court and the court will realise their responsibility and will see that in future she will not have to bear out the heavy expenses of litigation. It is also not fair for wife to spend luxuriously the amount in litigation and burden the husband whose total pay package is of Rs.6116-50p.m.. This claim may be with the object and purpose to harass the husband. Both the parties so long as their relation of husband and wife is tied up should take care of each other and to see that wife also minimises her expenses of litigation and more so when after the Act of 1987 she is entitled for free legal aid. From the order of the court, I find that the amount of Rs.1500/- awarded as special costs may not be final figure of the amount of expenses of litigation. It is still open to the court to reconsider the matter but at the same time the court will keep in mind that the petitioner- wife is entitled for free legal services. As a result of the aforesaid discussion, I do not find any merits in this claim of the petitioner for sum of Rs.23,350/=. So far as further litigation expenses are concerned, as stated earlier, it is the concern of the court below.

15. As a result, of the aforesaid discussion, this revision application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. In this court also, the petitioner was entitled for free legal aid but she could not get this facility either because of unawareness of her right or that her advocate has not made known her of this right, the innocent husband cannot be saddled with the costs of this revision application. Hence, no order as to costs.

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