

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Hindu Marriage Act

Date of Reserve: 28.7.2008

Date of Order: 5.9.2008

CM(M) No. 1534/2006

Parnab Kumar Chakarborthy
Through: Mr. (Dr.) J.C.Vashist, Advocate

... Petitioner

Versus

Ruma Chakarborthy
Through: Ms. Manali Singhal, Advocate

... Respondents

JUSTICE SHIV NARAYAN DHINGRA

JUDGMENT

The petitioner is aggrieved by an order dated 22.8.2006 passed by the learned ADJ on application under Section 24 of the Hindu Marriage Act as well as on application under Section 151 of the husband making a prayer for giving visitation rights to him to visit his daughter.

2. The learned ADJ after considering the gross salary of the husband, working as Shift In-charge, as Rs.6625/-, fixed a maintenance of Rs.2,000/- per month for wife and daughter to be paid from the date of moving of the application and also fixed Rs.5,000/- as litigation charges. He directed the petitioner to clear arrears within a period of five months and to pay current maintenance by 10th day of each succeeding month w.e.f. September, 2006 and ordered that in case of default of payment of the current monthly maintenance, the husband would have to pay 20% extra of such maintenance

amount. On visitation rights, the learned ADJ observed that he had called the minor daughter, who did not respond positively towards the father and started crying in the Court. He therefore, considered that no fruitful purpose would be served by granting visitation rights since the child was not having positive response to the father.

3. The petitioner in his petition has stated that the learned Court has taken into account his gross salary while his net salary after deduction was hardly Rs.5,000/-. He had to maintain two houses. He was working in Bhiwadi in Rajasthan as Shift In charge, his daughter from the earlier deceased wife was living at his ancestral house at Rai Barelli with his ailing mother. Thus, he had to maintain two units; one at Rai Barelli and other at Rajasthan. He also pleaded that the learned ADJ had not taken into account the fact that the wife was a professional beautician, who had done diploma in beauty-culture and hair dressing and in the bio data supplied to him at the time of marriage, it was stated that she was a freelance beautician doing the work of beautician. He further stated that the account of expenditure given by the wife would show that she was living in luxury, which was not possible out of the meager income of her father, who was a retired Naval Officer and since she was qualified and was spending a lot so, there was a presumption that she was earning and she had not come to the Court with clean hands.

4. A perusal of salary certificate of the petitioner would show that while his gross salary was Rs.6625/- deductions of EPF of Rs.636/-, ESI- Rs.116/-, a H.Ded. of Rs.500/- were being made. He also shown deduction of Mess of Rs.496/- . I think deduction of Mess and H. Ded. were not statutory deductions so he was entitled to only statutory deductions, his net salary would be a little less than Rs.6,000/-. The bio data of the wife given at the time of marriage to the petitioner shows that she had done two years diploma in Beauty Care and Hair Dressing from South Delhi Polytechnic in 1st Division and she was a freelance beautician. It was stated that she had her own business and got good income. The Trial Court observed that the husband had failed to establish that the wife was running beauty parlour. However, the Trial Court ignored the fact that she was a freelance beautician meaning thereby that she was visiting the houses of her clients. In her bio-data, it was admitted she was having good business. The onus was on her to show as to when she closed down the business. She did not discharge this burden. I consider that the wife was able to maintain herself and was not entitled to any maintenance however the husband had responsibility of maintaining the daughter. The husband had another daughter to maintain. No

doubt he is working in Rajasthan and his daughter is living in his ancestral house at Rai Barelli. If his net income is divided in four parts and two parts are left to him and one part each to his daughters, I consider that a monthly maintenance of Rs.1500/- would be proper maintenance. The order of the trial Court is modified accordingly. The petitioner shall pay maintenance of Rs.1500/- per month during the pendency of the petition filed for divorce from the date of application, to the wife for maintenance of the daughter. However, the condition put by the learned ADJ of payment of 20% penalty is unjustified. An order of maintenance under Section 24 of the HM Act is an executable order and if the maintenance is not paid, the defence of the husband can be struck off and execution can be carried out. In case of late payment, the wife would be entitled to a reasonable interest over the unpaid amount and in my view 10% interest is a reasonable interest on the unpaid amount for the unpaid period.

5. The petition for divorce has been filed by the wife. The husband has in fact filed a petition under Section 9 to ask the wife to join him. I consider that in such a situation the husband is not liable to pay litigation expenses to the wife.

6. As far as visitation rights of the father with the child are concerned, I consider that there is no necessity of interference with the order of the learned ADJ. It is petitioner's own case that right from the birth, the child has been living with the mother. The interaction of the child with the father has been minimal. Under these circumstances, I consider that the trial Court rightly arrived at a conclusion that it would not be in the welfare of the child to compel her to see her father against her wishes. The petition is allowed to the above extent.

Sd/-

SHIV NARAYAN DHINGRA, J.