

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 25.7.2008

Date of Order: 18th September 2008

CM(M) No. 1790/2006 and CM No. 14635/2006

18.09.2008

Ritu Raj Kant ... Petitioner

Through: Mr. S.K.Tyagi, Advocate

Versus

Anita ...Respondent

Through: Mr.Usman Chaudhari, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

With the consent of the Counsel for parties this petition is heard finally and being disposed of by following order.

2. The petitioner challenged an order of the learned ADJ whereby he fixed maintenance of Rs.1500/- p.m. for the respondent and her son under Section 24 of the Hindu Marriage Act. It is undisputed fact son Jitender was not from this wedlock and he was not son of the petitioner. He was son of the respondent from her earlier husband. Right to claim maintenance for Jitender would be against his father i.e. earlier husband of the respondent and not against the petitioner however, the Court below had not considered this aspect at all and order is liable to be set aside on this ground.
3. In her application, the wife had made allegations about the husband's (petitioner herein) income as under:

The petitioner was doing job of tuition and earning more than Rs.10,000/- p.m. and huge amount in lac was in circulation in the market on interest from which husband was earning more than Rs.20,000/- p.m. The husband was running a kiriyana shop in premises no. RZ-F-35, West Sagar Pur, Delhi and from this he was earning Rs.10,000/- p.m. He had no other liability except to maintain respondent and her son.
4. The husband in his reply had taken the stand that he was trapped into this marriage by fraud and he was not aware that the respondent was earlier married. Jitender was told to be the son of sister of wife being brought up by her. She married with the petitioner during subsistence of her earlier marriage so the petitioner had to file a petition under Section 11 of the HM Act for nullity of marriage.
5. About his income he submitted that his father retired from Food Corporation of India in the year 2004 and he purchased a house no. RZ-10/230 Dayal Park, West Sagarpur, Delhi in the joint name of the applicant (wife) and non applicant (husband) so that both may live together. Both were living in that house. The petitioner's father also purchased a maruti van which petitioner used to ply to earn his livelihood. This van was sold in the year 2004 and another maruti 800 was purchased in the name of the wife, which she sold out in the year 2005 and she kicked out the husband/petitioner from house no. RZ-10/230 Dayal Park, West Sagarpur, Delhi. She even sold out this house purchased by his father for a sum of Rs.8 lac with the result that husband got

jobless and homeless. The petitioner also had to face litigation initiated against him and his family members resulting out of an FIR registered under Section 498A/406 IPC at PS Dabri and another FIR got registered at Kanpur by the wife. The husband and his family members had to obtain bail in respect of case registered at PS Dabri. He was arrested and taken to Kanpur by Kanpur Police in regard to the FIR registered at Kanpur. Due to circumstances as stated above, he had been rendered workless. He was dependent upon his father. There was no telephone connection in his name, there was no vehicle in his name and he was not even in a position to purchase vehicle.

6. The learned ADJ fixed maintenance of Rs.1500 p.m. on the ground that husband was an able bodied person.
7. The maintenance is to be fixed on the basis of actual earnings of a person and not on his being able bodied person. In this country, there is no job guarantee given by the government to every able bodied person. Many able bodied persons are jobless in our country. The only job guarantee is under National Rural Employment Guarantee Scheme under which 100 days labour work is assured to an unemployed rural person. The husband does not qualify for that. Moreover, the wife is equally able bodied. The wife has failed to show, in this case, any earning of the husband. She did not dispute the facts stated that the van was sold by her, the house was sold by her and she was facing a case filed by the father of the husband in respect of illegal sale of the house. The amount received from sale of the house is with the wife and she must be earning interest on it. She has failed to show any source of income to the husband. The bald allegation of his doing tuition without stating as to what was his educational qualification and to whom he was teaching, would not serve the purpose.
8. I find that the order of the learned ADJ was based on no material and was simply made on the ground that the husband was an able bodied person. The order of maintenance is not tenable and is hereby set aside. However, the husband is liable to pay the litigation expenses as fixed by the trial Court.

With these directions, the petition stands disposed of.

September 18, 2008 SHIV NARAYAN DHINGRA, J.
CM(M) No. 1790/2006 Ritu Raj Kant v. Anita