

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 2827/2019

Manoj Advani S/o Shri Vasudev Advani, Aged About 39 Years,
R/o Housing Board, Shasri Nagar, Jaipur, Rajasthan

----Appellant

Versus

Usha @ Bhavika D/o Shri Chandrasen Aswani, Aged About 38
Years, W/o Shri Manoj Advani, R/o 17E/795, Chopasni Housing
Board, Jodhpur, Rajasthan.

----Respondent

For Appellant(s) : Ms. Meena Sharma
For Respondent(s) : Dr. Shailendra Kala

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE SAMEER JAIN**

Order

01/12/2021

The instant misc. appeal has been preferred by the appellant Manoj Advani being aggrieved of the order dated 06.09.2019 passed by the learned Judge, Family Court No.2, Jodhpur in Civil Case No.170/2017 whereby, while accepting the application preferred under Section 125 Cr.P.C. by the respondent Smt. Usha, the appellant was directed to make payment of an amount of Rs.5,000/- per month to the respondent Smt. Usha and Rs.5,000/- per month each to the minor sons of the appellant and Smt. Usha as interim maintenance from the date of filing of the application i.e. 06.04.2016. The amount of maintenance to the sons was ordered to be paid till the date they attain majority.

This appeal is time barred and an application has been moved by the appellant to condone the delay.

Dr. Shailendra Kala, learned counsel representing the respondent, pointed out that a sum of Rs.9,45,000/- had become due to be paid to the respondent and that the appellant had not paid a single penny to her either in the proceedings under the Hindu Marriage Act or in pursuance of the order dated 06.09.2019 whereby, the prayer for interim maintenance made by the respondent under Section 125 Cr.P.C. was accepted. Accordingly, a specific direction was given by this Court on 04.08.2021 that the appellant shall deposit a sum of Rs. 2,00,000/- with the Family Court on or before 23.08.2021 and submit a receipt thereof failing which the appeal would be liable to be dismissed for want of prosecution. The appellant however, failed to present the receipt of the payment as directed by this Court by 23.08.2021. On 11.11.2021, the appellant's counsel presented a receipt reflecting transfer of a sum of Rs.40,000/- into the respondent's account. Further opportunity of two weeks was granted to the appellant to comply with the order dated 04.08.2021 but till date, he has failed to do so.

We have heard and considered the submissions advanced by the appellant's counsel on the application for condonation of delay and so also on the merits of the appeal.

Learned counsel Ms. Sharma representing the appellant vehemently and fervently urged that the respondent is to be faulted for the fall-out of the matrimonial relations. The appellant

was and is always ready to maintain his wife and children. The competent courts have exonerated the appellant in the proceedings under the Domestic Violence Act and so also, for the offences punishable under Sections 498-A and 406 IPC. Learned counsel Ms. Sharma further submitted that as per the income tax returns of the appellant, he earns a pittance of Rs.15,000/- per month by being employed in the business of his father Shri Vasudev. She thus, urged that maintenance awarded by the Family Court to the wife and children is unjustified and out of proportions and that the impugned order dated 06.09.2019 deserves to be quashed and set aside.

Per contra, Shri Kala, learned counsel representing the respondent, vehemently and fervently urged that the marriage of the appellant and the respondent was solemnized way back in the year 2003. Two sons were born from the wedlock. Both of them are minor as on date. Right from the marriage, the appellant started harassing and humiliating the respondent on account of demand of dowry. An FIR No.32/2008 was registered by the respondent against the appellant and proceedings for maintenance were also initiated. During the course of these proceedings, the appellant and his parents gave a totally false assurance that they would treat Smt. Usha with dignity on which, she withdrew the cases and went back to live at the matrimonial home. For some days, the behaviour of the appellant with the respondent and her children was normal but some time later, he again resumed his evil ways and started harassing and humiliating the respondent on which, she was compelled to file the application under Sections 24 and 26 of the Hindu Marriage Act as well as one under Section 125

Cr.P.C. He urged that the dismissal of the application under the provisions of Domestic Violence Act, cannot prejudice the right of the respondent wife and children to claim maintenance from the appellant Manoj under the provisions of Sections 24 and 26 of the Hindu Marriage Act. He further pointed out that the appellant has filed an application under Section 13 of the Hindu Marriage Act against the respondent on frivolous grounds and thus also, the wife and children are entitled to claim maintenance.

We have given our thoughtful consideration to the submissions advanced by the appellant's counsel and the counsel representing the respondent and have gone through the impugned order and the other documents placed on record.

Suffice it to say that the fact regarding the spouses having indulged in an earlier round of litigation wherein also, maintenance was awarded to the respondent is admitted from the record. The respondent has taken a specific plea that after the maintenance has been awarded in her favour in those proceedings, the appellant gave an assurance that he shall restore the matrimonial ties and treat her with dignity on which, the respondent went back and started living at the matrimonial home after withdrawing all the cases. However, soon thereafter, the maltreatment of the respondent resumed and thus, she was compelled to file fresh proceedings for maintenance under the provisions of Section 125 Cr.P.C..

On an overall appreciation of the material available on record, we are of the firm view that the appellant cannot shun his

lawful obligation to maintain his wife and children moreso because it is the appellant who has filed the application for divorce under Section 13 of the Hindu Marriage Act against the respondent. The appellant is an able bodied man. The plea taken by the appellant that he works as an employee in his father's shop and is drawing salary only to the tune of Rs.15,000/- per month is totally untenable because when a pertinent query being put, learned counsel Ms. Sharma representing the appellant upon being instructed by her client, present in the Court, apprised that the appellant's father Shri Vasudev is an old infirm man and is suffering from parkinson's disease. The appellant is the only son of his father and his two sisters have no concern with the business.

In this background, manifestly, the appellant Manoj would be single handedly running the family business, which runs in a shop at Chandpole Bazar, Jaipur a thriving business area. Therefore, we are least impressed with the submissions of the appellant's counsel that her client does not have sufficient means to pay maintenance to the respondent. The observations made by the criminal court concerned in the proceedings under the Domestic Violence Act on which, सत्यमेव जयते much reliance was placed by Ms. Sharma are not germane and reliable for deciding the proceedings of maintenance under the Hindu Marriage Act.

Upon an overall assessment of the material available on record and after appreciating the arguments advanced at bar, we are of the view that the impugned order dated 06.09.2019 whereby the learned Family Court No.2, Jodhpur directed the appellant to make payment of an amount of Rs.5,000/- per month

to the respondent Smt. Usha and Rs.5,000/- per month each to the minor sons of the appellant and Smt. Usha as interim maintenance from the date of filing of the application i.e. 06.04.2016, does not suffer from any infirmity whatsoever warranting interference therein.

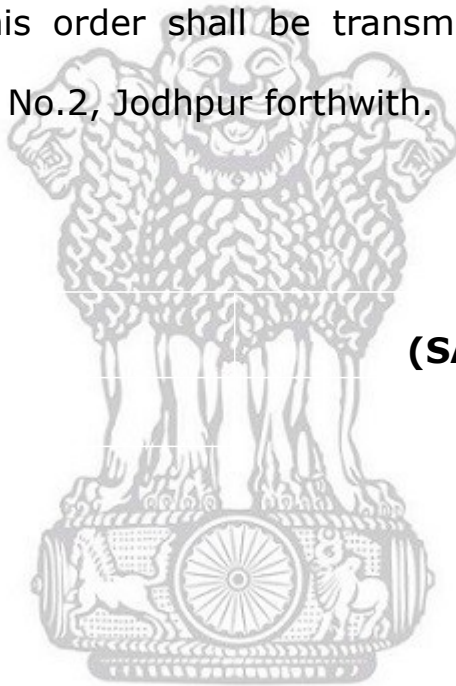
As a consequence, we find no merit in this appeal, which is dismissed as being delayed and so also on merits. The Family Court shall forthwith take steps for ensuring compliance the order of maintenance in favour of the respondent and her sons.

A copy of this order shall be transmitted to the learned Judge, Family Court No.2, Jodhpur forthwith.

(SAMEER JAIN),J

9-Sudhir Asopa/-

(SANDEEP MEHTA),J



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