

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : HINDU MARRIAGE ACT, 1955

CM(M) 1268/2011

Date of Decision: 01.03.2012

MONIKA GARG

..... Petitioner

Through : Mr M. Husain, Advocate

versus

VILAMB GARG

..... Respondent

Through : None

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J. (ORAL)

1. By way of this petition under Article 227 of the Constitution of India, petitioner has challenged order dated 07.09.2011 passed by learned ADJ, Delhi by which her application under Section 24 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') has been disposed of.

2. Respondent/husband has filed a divorce petition under Section 13 (1) (ia) and (ib) of the Act, against petitioner/wife seeking dissolution of his marriage with the respondent on the ground of cruelty and desertion. The said petition is pending adjudication before the learned trial court. During the pendency of the said petition, petitioner/wife had moved an application under Section 24 of the Act for the grant of maintenance for herself and her two children, namely, Master Nikhil Garg and Kumari Mehar Garg, aged about 16 years and 10 years respectively, born from the wedlock of the parties. In the said application, petitioner/wife has alleged that her husband is a man of means. His mother was the owner of house no. WZA-325-85, Om Vihar, Uttam Nagar, Delhi. Before her death, she bequeathed the said house to the parties in equal shares. After the death of his mother, the respondent/husband had sold 100 sq. yrds. of the said house to one Suresh Chand Jain on 27.03.2006 and from the consideration amount he is having an income of Rs. 39,000/- p.m. as income from interest. She has alleged that

he is also having rental income of Rs. 18,000/- p.m. from the tenants from remaining portions of the house and shops. The petitioner has given the names of the alleged persons to whom the husband has given the loan and is charging interest from them. She has also given the names of the tenants from which it is alleged that respondent/husband is getting rent. It is alleged that both the children are school going and she has to incur Rs.1800/- p.m. towards school fee and transportation charges of the son and Rs.650/- p.m. towards school fee and transportation charges of the daughter. Apart from that, she is also incurring on their tuitions and there are other expenses which she has to incur like stationery, food, clothes, etc. She has also filed a petition under Section 125 Cr.P.C. against the husband as well as under the provisions of Domestic Violence Act but no relief has been granted so far. She has prayed for Rs. 30,000/- p.m. towards maintenance for herself and her children and Rs. 20,000/- towards litigation expenses.

3. Respondent in reply has denied the allegations of income. He has denied that his mother gave any share to him or his wife. As per him he has purchased the house in question from one Vinod Kumar. Respondent/husband has stated that he is facing litigation filed by wife against him seeking possession of the portion of house on the basis of alleged will. Respondent/husband has alleged that petitioner/wife is earning and has got independent source of income. He has denied having invested the consideration amount as is alleged. He has also denied having any rental income as is alleged. As per him, he is only getting rental income of Rs.5,000/- p.m. and apart from that he has no source of income.

4. Nothing was placed on record before the learned trial court to substantiate the alleged income of the husband nor the respondent/husband had substantiated the alleged earning of wife. Considering that respondent is an able bodied person and expected to earn minimum wages, learned ADJ had assessed his income as Rs. 6,450/- p.m. on the basis of minimum wages and also taking into account the rental income of Rs. 5,000/- p.m. took the total earnings of husband as Rs. 11,000/- p.m. Out of said income Rs.6,000/- has been granted to the applicant/wife for maintenance for her and her children. Further Rs. 5,000/- has been awarded towards litigation expenses.

5. The grievance of the petitioner/wife is that the respondent/husband has received a good consideration amount towards sale of portion of his house i.e. 100 sq. yds. Her further stand is that respondent/husband has

given loan to different persons as per details given in Para 16 of the application. It is stated that the learned ADJ has not taken into consideration the income of the respondent/husband by way of interest on the sale proceeds of the house. It is further contended that even the rental income has been taken on a lower side whereas the respondent/husband is getting Rs. 18,000/- p.m. from different tenants.

6. Respondent has not appeared in the matter despite being served and was proceeded ex parte.

7. There is a specific affidavit of the respondent/husband which he had filed before the trial court wherein he has stated that apart from rental income of Rs. 5,000/- he has no other source of income. The respondent/husband has admitted having sold portion of the property and has contended that there is no income from interest. Both the parties have not stated the consideration amount. The sale is of the year 2006. Nothing is stated by the petitioner/wife as to for how much amount it was sold. It is a matter of common knowledge that properties in Delhi are being sold at very high rates. The sale consideration is within his knowledge. The respondent has deliberately concealed the same to avoid maintenance to the wife and the children. It is not his stand that he has spent the consideration amount. It is not believable that he is not earning any interest as is alleged. Considering the locality where the property is situated and the year of sale, the sale price in any event could not have been less than 10 lakhs. Under these circumstances, interest income of respondent/husband can safely be taken as Rs.7,000/- p.m.

8. In the maintenance application, petitioner/wife has given the names of alleged tenants. The details of rent amount is also not stated by her whereas there is a specific affidavit of respondent/husband that he is only getting a rental income of Rs. 5,000/- p.m. from the tenants. There is no reason to disbelieve the affidavit. Learned ADJ has rightly taken rental income as Rs. 5,000/- p.m.

In view of above discussion, taking into consideration the interest income, the maintenance pendente lite of wife and children is enhanced by Rs. 2,000/- p.m. i.e. in all respondent/husband shall pay Rs. 8,000/- p.m. to them. The litigation expenses shall remain the same. The impugned order stands modified accordingly.

The petition stands disposed of accordingly.

Sd/-
VEENA BIRBAL, J