SUPREME COURT OF INDIA **REPORTABLE**

Bench: Justices Vikram Nath and Satish Chandra Sharma

Date of Decision: 29 January 2024

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1318-1319 OF 2024

[Arising out of Special Leave Petition (Civil) Nos. 10362-10363 of 2017]

Xxx …APPELLANT(S)

VERSUS

Xxx …RESPONDENT(S)

Legislation:

Section 18 of the Hindu Adoption and Maintenance Act, 1956

Section 13 of the Hindu Marriage Act, 1955

Order 9 Rule 13 of the Code of Civil Procedure, 1908

Subject: Civil appeals involving enhancement of maintenance awarded by the High Court of Rajasthan under the Hindu Adoption and Maintenance Act, 1956, in light of the respondent's financial capacity and appellant's circumstances.

Headnotes:

Maintenance Award Enhancement – Enhanced maintenance to appellant, Yagwati @ Poonam, from Rs. 10,000 to Rs. 20,000 per month under Section 18 of the Hindu Adoption and Maintenance Act, 1956 – Consideration of

respondent's financial capacity and pension from Bharat Sanchar Nigam Limited (BSNL) – Arrears of maintenance to be paid in installments not exceeding 50% of the respondent's pension [Paras 2-3, 8-14].

Marital History and Proceedings – Marriage complications leading to separate living since 1998 and ex-parte divorce decree in 2005, later set aside – Appellant's struggle for maintenance post-divorce and remarriage of the respondent [Paras 4-7].

Financial Circumstances of Respondent – Respondent's significant salary as Assistant Manager in BSNL and pension post-retirement – Appellant's appeal for increased maintenance considering respondent's capacity [Paras 8-10].

Court's Direction – Supreme Court's direction to Family Court, Jaipur, for calculation and payment of arrears in maintenance, ensuring total monthly payment does not exceed 50% of respondent's pension – Direction to BSNL for compliance in disbursing maintenance [Paras 12-14].

Referred Cases: None.

O R D E R

SATISH CHANDRA SHARMA, J.

1. Leave granted.

2. The present appeal(s) culminate out of a common order dated 11.11.2016 whereunder the High Court of Rajasthan (the "**High Court**") enhanced the award of maintenance granted to the Appellant by the Family Court at Jaipur under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (the "**Act**") from Rs.3,000/- (Rupees Three Thousand) per month to (i) Rs.6,000/- (Rupees Six Thousand) from the date of filing the application before the High Court i.e., 16.05.2009 up until 31.12.2005; and (ii) Rs.10,000/- (Rupees Ten Thousand) per month from 01.01.2006 onwards (the "**Impugned Order**").

3. The Appellant herein seeks an enhancement of maintenance awarded by the High Court on the ground that the maintenance awarded by the High Court is inadequate and does not reflect the true financial capacity of the Respondent.

4. The marriage between the Appellant and Respondent came to be solemnized on 27.04.1982, thereafter 3 (three) children came to borne out of the wedlock i.e., (i) Abhishek; (ii) Aashish; and (iii) Nikki. Subsequently in 1998, the marriage encountered complications which led to the parties residing separately. Pertinently, the Respondent chose to reside with 2 (two) of his

major children, namely (i) Abhishek; and (ii) Aashish. Accordingly, the Respondent left the Appellant and Nikki i.e., a minor, to fend for themselves.

5. In the aforesaid circumstances, the Respondent filed an application under Section 13 of the Hindu Marriage Act, 1955 (the "**HMA**") seeking dissolution of the marriage between the parties. *Vide* an order dated 31.05.2005, an *ex-parte* decree came to be passed in favour of the Respondent. Thereafter, the Respondent married another lady on 20.07.2007.

6. In the *interregnum*, the Appellant preferred an application before the Family Court, Jaipur seeking maintenance under Section 18 and Section 20 of the Act. *Vide* an order dated 15.04.2009, the Family Court, Jaipur allowed the Appellants' application, and accordingly granted maintenance as follows:

(i) Appellant: Rs.3,000/- (Rupees Three Thousand) per month w.e.f from 15.04.2009;

(ii) Nikki: Rs.5,000/- (Rupees Five Thousand) per month w.e.f from 15.04.2009 until Nikki attained the age of majority; and

(iii) Litigation Cost: Rs.2,000/- (Rupees Two Thousand)

(hereinafter referred to as the "**Underlying Order**")

7. Subsequently, an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (the "**CPC**") came to be preferred by the Appellant. *Vide* an order dated 09.09.2011, in the aforesaid application, the *ex-parte* order decreeing the divorce in favour of the Respondent came to be set aside; and accordingly, the application under Section 13 of the HMA preferred by the Respondent was restored.

8. The parties preferred cross-appeal(s) against the Underlying Order of the Family Court, Jaipur which came to be disposed of by the High Court *vide* the Impugned Order. In the present appeal, the Appellant has drawn the attention of this Court to the considerable salary that the Respondent was drawing from Bharat Sanchar Nigam Limited ("**BSNL**"), whilst dragging his feet in relation to his obligations qua maintenance under the Impugned Order.

9. The Learned Counsel appearing on behalf of the Appellant has submitted that the Respondents' salary has increased significantly. In this regard he has relied upon a Right to Information ("**RTI**") application filed with BSNL, whereunder it is revealed that the Respondent was last drawing a handsome salary of Rs.1,05,871/- (Rupees One Lakh Five Thousand Eight Hundred and SeventyOne) per month whilst serving as Assistant Manager, BSNL. Accordingly, it is prayed that the maintenance awarded by the High

Court ought to be enhanced further. Pertinently, it was also brought to the attention of this Court that the arrear(s) of maintenance have not been paid to the Appellant despite a categorical direction from the High Court to clear the arrear(s) of maintenance within 1 (one) year from date of the Impugned Order i.e., on or before 11.11.2017.

10. On the other hand, the Learned Counsel appearing on behalf of the Respondent submitted that the Respondent has since attained the age of superannuation and accordingly, no longer receives the aforementioned salary. It was submitted that the Respondent is only drawing pension from BSNL; and that the maintenance granted by the High Court ought not to be interfered with.

11. Considering the position of the parties and the totality of circumstances surrounding the present appeal(s), we are of the considered view that the Appellant should be granted a sum of Rs.20,000/- (Rupees Twenty Thousand) per month as maintenance with effect from the date of this Order.

12. We accordingly allow the appeal(s) preferred by the Appellant and enhance the monthly maintenance payable under Section 18 of the Act from Rs.10,000/- (Rupees Ten Thousand) per month to Rs.20,000/- (Rupees Twenty Thousand) per month with effect from the date of the pronouncement of this Order. Furthermore, the arrears payable in respect of the maintenance due to the Appellant shall be payable in equal instalments by the Respondent in addition to the regular maintenance as quantified by us above.

13. Resultantly, in furtherance of our orders above, the Family Court, Jaipur is directed to:

(i) Quantify the total arrears due to the Appellant in terms of the Impugned Order;

(ii) Fixate the duration and the quantum of monthly payment to be made by the Respondent in furtherance of arrears of maintenance as computed in terms of Paragraph 13(i) above, in such a manner that the total amount i.e., (a) regular maintenance to the extent of Rs.20,000/- (Rupees Twenty Thousand); and (b) the amount quantified towards the extinguishment of arrears of maintenance does not exceed 50% of the pension drawn by the Respondent from BSNL;

(iii) Issue necessary directions to the BSNL to ensure that the total amount i.e., (a) regular maintenance to the extent of Rs.20,000/- (Rupees Twenty Thousand); and (b) the additional monthly payment as more particularly

identified in 13(ii) above, is credited into the Appellants' bank account on an identified date of every calendar month; and

(iv) A copy of this Order may also be sent to BSNL for necessary compliance and onward action (if any).

14. Further, it is made clear that the aforementioned quantification process would not interfere with our direction to the Respondent to pay the Appellant regular maintenance to the extent of Rs.20,000/- (Rupees Twenty Thousand) per month with effect from the date of the pronouncement of this Order.