

Delhi High Court

Annurita Vohra vs Sandeep Vohra on 15 March, 2004

Equivalent citations: 110 (2004) DLT 546, I (2004) DMC 568, 2004 (74) DRJ 99

Author: V Sen

Bench: V Sen

JUDGMENT Vikramajit Sen, J.

1. This revision petition is directed against the Order dated 20.8.2001 whereby the Additional District Judge had granted maintenance at the rate of Rs. 6,000/- per month to the Petitioner/Applicant/Wife for herself and her minor children. The Court had come to the conclusion that the net disposable income of the Respondent/Husband is about Rs.32,000/- per month which is exclusive of his perks and reimbursements. It had also been found that there were no dependents other than the wife and children. In *Jasbir Kaur Sehgal v. District Judge, Dehradun and Ors.*, it has been observed that - "no set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate".

2. In other words the court must first arrive at the net disposable income of the Husband or the dominant earning spouse. If the other spouse is also working these earnings must be kept in mind. This would constitute the Family Resource Cake which would then be cut up and distributed amongst the members of the family. The apportionment of the cake must be in consonance with the financial requirements of the family members, which is exactly what happens when the spouses are one homogeneous unit. Ms. Geeta Luthra, learned counsel for the Respondent, had fervently contended that normally 1/5th of the disposable income is allowed to the Wife. She has not shown any authority or precedent for this proposition and the only source or foundation for it may be traceable to Section 36 of the Indian Divorce Act, 1869. This archaic statute mercifully does not apply to the parties before the Court, and is a vestige of a bygone era where the wife/woman was considered inferior to the husband as somewhat akin to his chattels. The law has advanced appreciably, and for the better. In the face of Legislatures reluctant to bring about any change over fifty years ago the Courts held that the deserted wife was entitled to an equal division of matrimonial assets. I would be extremely loath to restrict maintenance to 1/5th of the Husband's income where this would be insufficient for the Wife to live in a manner commensurate with her Husband's status or similar to the lifestyle enjoyed by her before the marital severance. In my view, a satisfactory approach would be to divide the Family Resource Cake in two portions to the Husband since he has to incur extra expenses in the course of making his earning, and one share each to other members.

3. Observations in similar vein have been made by a Learned Single Judge of this Court in *Harminder Kaur vs. Sukhwinder Singh*, 2002 VI AD (DELHI) 797. S.N. Kapoor, J. had opined that one should not be oblivious of the fact that equal status has been given to the Indian women under Articles 14 and 16 of the Constitution and that she should live according to the status of her husband along with the child of the parties. The Learned Judge had ordered that the income has to be equitably apportioned for maintenance of wife and the child. In his opinion the income should have been divided into five units, two units for each of the parents and one for the young child. On a disposable income of Rs.12,000/- he had granted Rs.7,200/- per month for the maintenance of the wife and the child.

4. Whichever method one may adopt, on a disposable income of Rs.32,000/- per month, the wife and child would ordinarily be entitled to approximately Rs.18,000/-. It has been vehemently argued that since the Petitioner/Wife has set up her residence, on her own volition, with her affluent parents, she does not require to pay rentals etc. but this factor has been rejected by the Court.

5. The determination of maintenance pendente lite is essentially an interim measure which normally does not call for interference under Section 115 of the Code of Civil Procedure, especially after the amendments carried out in the Code of Civil Procedure. On an understanding of the law as enunciated in *Shiv Shakti Coop. Housing Society, Nagpur vs. Swaraj Developers and Ors.*, , no scope for discussion on this question remains.

6. However, in the present circumstances the Trial Court has committed an error in the exercise of jurisdiction vested in it of such proportions as would necessitate interference by this Court. The impugned Order is modified to the extent that in place of Rs. 6,000/- per month the Husband shall pay monthly maintenance of Rs.15,000/- keeping in view the tender age of the child of the parties. It may be reiterated that whenever a change in the circumstances occurs, the affected party can seek modification of interlocutory orders such as interim maintenance. As the children starts going to school, the financial needs of the Wife would increase. Such adjudication should be left to the Trial Court.

7. The revision petition is allowed in these terms.