

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).14735-14736/2012

(From the judgement and order dated 25/08/2010 in AO No.287/2010 dated 28/09/2010 in AO No.287/2010, MCCA No.827/2010 of The HIGH COURT OF UTTARAKHAND AT NAINITAL)

PUSHPA SHARMA & ANR.

Petitioner(s)

VERSUS

VIMAL SHARMA

Respondent(s)

(With appln(s) for c/delay in filing SLP and prayer for interim relief and office report)

Date: 17/10/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s)

Mr. Ambar Qamaruddin, Adv. (SCLSC)

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

List the matter for re-hearing on 22.10.2013.

The Registry shall inform the advocate for the appellants that the matter shall be listed for re-hearing on 22.10.2013.

| (Parveen Kr. Chawla)
| Court Master
|

| | (Phoolan Wati Arora)
| | Court Master
| |

[signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.

OF 2013

Pushpa Sharma and another

..Appellants

versus

Vimal Sharma

..Respondent

O R D E R

Although notice of the special leave petitions has been served upon the respondent, he has not appeared either in person or through an advocate.

We have heard Shri Ambar Qamaruddin, learned counsel for the petitioners and perused the record.

The delay in filing as well as refiling of the special leave petitions is condoned.

Leave granted.

The appellants are aggrieved by orders dated 25.8.2010 and 28.9.2010 passed by the Division Bench of the Uttarakhand High Court in Appeal from Order No. 287 of 2010 and MCC Application No. 827 of 2010 respectively.

Appellant No.1 and the respondent were married on 21.11.2000 at Dehradun. Appellant No.2 - Kunal was born out of their wedlock. After about seven years of marriage, the respondent filed petition under Section 13 of the Hindu Marriage Act, 1955 (for short, 'the Act') for dissolution of marriage by grant of decree of divorce. That petition is said to be still pending before the Family Court at Dehradun.

During the pendency of the divorce petition, appellant No.1 filed an application under Section 24 of the Act for grant of maintenance pendente lite at the rate of Rs.10,000/- per month for herself and her child and Rs.14,900/- as litigation expenses. She averred that the respondent is working as Lance Nayak with S.S.B. 38th Battalion and is getting salary of Rs.19,181/- per month. In support of this assertion, appellant No.1 produced salary slip of the respondent for the month of March, 2010.

The respondent contested the application filed by the appellants and pleaded that his total salary is Rs.8,500/- per month and that he has been paying Rs.6,000/- per month to his aged parents.

After considering the averments contained in the application and the counter filed by the respondent, the Family Court awarded Rs.2,500/- per month to appellant No.1 and Rs.2,000/- to appellant No.2 with effect from the date of the order, i.e., 24.7.2010. The Family Court also awarded Rs.8,000/- towards litigation expenses.

The appeal filed by the appellants was summarily dismissed by the High Court vide order dated 25.8.2010, which was corrected by order dated 28.9.2010 passed in MCC Application No. 827 of 2010.

We have heard learned counsel for the appellants and perused the record.

Since the respondent did not produce any material to prove that his monthly salary was Rs.8,500/- only, we do not find any error in the conclusion recorded by the Family Court that his salary was Rs.19,181/- per month.

The material placed on record shows that appellant No.2 is

now receiving education in a school at Dehradun. This being the position, we are convinced that the Family Court should have awarded Rs.10,000/- per month as maintenance to the appellants who are none other than his wife and the child. In our opinion, this amount is required for survival of the appellants and the educational expenses of appellant No.2.

The appeals are accordingly allowed, the impugned orders are set aside and the one passed by the Family Court is modified with a direction that the respondent shall pay to the appellants a sum of Rs.10,000/- per month as maintenance from the date of application till the date of final adjudication of the petition filed by the respondent under Section 13 of the Act.

.....J.
[G.S. SINGHVI]

NEW DELHI;
OCTOBER 17, 2013.

.....J.
[C. NAGAPPAN]

Before this order could be signed, we noticed that the Registry committed an error by treating the notice as duly served upon the respondent. From orders dated 8.10.2012 and 4.12.2012 recorded by the Registrar, it is borne out that notice was sent to the respondent to be served through the Family Court, Jamnagar, Gujarat. This was clearly impermissible because at the time of filing the special leave petition, the respondent was serving in Arunanchal Pradesh and there could be no justification to serve notice upon him through the Family Court, Jamnagar, Gujarat.

In view of the above, we direct that the matter be re-listed for hearing on 22.10.2013.

The Registry shall inform the advocate for the appellants that the matter shall be listed for re-hearing on 22.10.2013.