

ITEM NO.3

COURT NO.2

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. NOS.5-6 OF 2010 IN CIVIL APPEAL NOS.366-367 OF 2009

NATHU LAL

Appellant (s)

VERSUS

NATHI BAI

Respondent(s)

(With appln(s) for directions and office report)

Date: 02/02/2012

These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Appellant(s)

Mr. S.D. Singh, Adv.
Ms. Bharti Tyagi, AOR
Mr. Rahul Kr. Singh, Adv.

For Respondent(s)

Mr. D.N. Goburdhan, AOR
Mr. Prabal Bagchi, Adv.

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

I.A. Nos.5-6 of 2010, have been filed by the respondent-wife, Nathi Bai, in the pending Civil Appeal Nos.366-367 of 2009, praying for a direction upon the appellant-husband to pay ad-interim maintenance during the pendency of the appeals, at the rate of Rs.25,000/- per month, from the date of filing of the special petitions till the disposal thereof.

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According to the respondent-wife, the appellant is working under a Government/Public Sector company and is drawing a gross salary of Rs.30,103.68 per month. It has been stated that he also has agricultural income of about Rs.18,000/- per month. The respondent-wife has no independent income or means to support herself and that the amount of maintenance, which had been granted to her earlier, was completely insufficient for her to survive in today's circumstances.

It appears that initially the appellant was directed

to pay a sum of Rs.1,000/- per month to the respondent-wife as maintenance. Subsequently, we are informed that the said amount was increased to Rs.3,000/- per month.

When the wife's applications came up for hearing on 10th January, 2012, it was contended on her behalf by Mr. D.N. Goburdhun, learned counsel, that he had obtained information under the Right to Information Act on 1st August, 2011, which indicated that the appellant was drawing a salary of Rs.34,321.25, but after deduction it was shown that his take home pay was Rs.9,299.75. Mr. Goburdhun submitted that the huge difference between the appellant's gross salary and the net salary is on account of the fact that he was deducting 80% of his salary towards deposit in his provident fund account. From the information received by the respondent-wife, the statements made by Mr. Goburdhun are substantiated. From the total gross salary of Rs.34,321.25, it is indicated that a sum of Rs.23,695/- have been deducted towards deposit in the appellant's provident fund account, leaving a balance of Rs.9,299.75, as take home salary.

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We had, accordingly, directed the respondent-wife to bring on record the information, which have been provided under the Right to Information Act on 1st August, 2011, and an additional affidavit to that effect has been duly filed on 17th January, 2012. From the said information it appears that under the Provident Fund Rules, the appellant has been required to make a minimum deduction of 12% from his salary, but he was voluntarily getting 80% of the provident fund deducted, which included 12% minimum deduction. What is even more revealing is the fact that it has been indicated in the said communication that after depositing the major part of his income in his provident fund account, he withdrew the same twice in the past two years.

Prima facie, it appears to us that this was nothing but a devise, which was adopted by the appellant in trying to avoid his responsibilities in maintaining his wife. Of course, it has been submitted on behalf of the appellant-husband, that on account of the poor financial condition of the Company, the employees were being forced to deduct the said amount of 80% by way of provident fund deduction. Unfortunately, the statement made by Mr. S.D. Singh, learned counsel appearing for the appellant, is not borne out from the letter dated 1st August, 2011, which has been annexed to the additional affidavit, where it has been categorically stated that Mr. N.L. Tanwar, had voluntarily deposited 80% of his salary in his provident fund account and had thereafter withdrawn the same.

It has also been stated that the Company has been referred to the Board for Industrial and Financial Reconstruction because of its financial problems.

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It is well-settled that a Company which is being run and is in operation, cannot deny its employees their due salary, even if the Company has been referred to the BIFR. We have not also been informed whether any scheme has been formulated for the purpose of rehabilitation of the Company.

In such circumstances, we have no other option but to accept the information, which has been received from the Company under the Right to Information Act, which clearly indicates the salary of the appellant to be Rs.34,321.25 per month, out of which 80% is being deducted towards provident fund deposit.

In such circumstances, we allow the applications filed on behalf of the respondent-wife and direct that the appellant-husband shall pay to the respondent-wife ad-interim maintenance during the pendency of these appeals, at the rate of Rs.10,000/- per month, with effect from January, 2012, which is less than one-third of the gross salary which is being drawn by him.

Let the hearing of the appeals themselves be expedited and since both the parties are duly represented and the matter is otherwise ready, let it be listed for hearing on priority basis on 28th March, 2012.

(Chetan Kumar)
Court Master

(Renuka Sadana)
Court Master