

SANJEEVA JAYAWARDENE
vs
HARSHANI KARUNASINGHE

COURT OF APPEAL
SOMAWANSA J (P/CA)
WIMALACHANDRA J.
CALA : 338/2004
DC PANADURA 2784/D
MAY 25, 30, 2005

Civil Procedure Code - S- 614, 614 (1), 614 (3) - Application for Alimony Pendente lite - should an Inquiry be held ? - Is it different from costs of litigation?

The Plaintiff (husband) instituted action for divorce against the Defendant Respondent (wife). On the Summons returnable date Defendant appeared in Court and filed proxy, on this day she was paid Rs. 1,500 as costs. After the pleadings were completed, the Defendant Respondent made an application in terms of Section 614 for alimony - pendente - lite and for costs by way of summary procedure.

The Plaintiff raised a preliminary objection that as the defenant had already obtained Rs. 1,500 as costs of suit she is not entitled to make a further application under Section 614 (3). The Court overruled the objection and set the matter for inquiry. On Leave being sought :

HELD

- (1) Alimony pending action is different from costs of litigation. Under Sec: 614 (1) the wife may present a petition for alimony pendente lite.
- (2) Under Section 614 (3) where one of the spouses is not possessed of sufficient income or means to defray the cost of litigation the Court may at any stage of the action order the spouse who is possessed of sufficient income means to pay to the other spouse cost as the Court thinks reasonable.
- (3) The payment of Rs. 1,500 is not an order made upon an application under Section 614 - The court can make such order on the husband for payment to the wife alimony -pendente lite only after a proper inquiry held under Section 614. Similarly court can order the plaintiff to defray the expenses of the proceedings to the wife after an inquiry upon an application under Section 614 (3).

- (4) Just because the court has merely ordered the Plaintiff to pay Rs. 1500 as cost of litigation it cannot in law prevent the wife from making an application under Sec : 614 (1) and 614 (3). The cost of litigation has to be decided after a due inquiry held according to law.

Application for Leave to Appeal from an order of the District Court of Panadura.

Case referred to :

(1) *Edirippuli vs. Wickremasinghe* - 1995 2 Sri LR 22

Saliya Peiris with A Devendra for Plaintiff Respondent Petitioner

Ranjan Suwandarathne with *Ms. Anusha Ratnayake* for Defendant Petitioner Respondent.

Cur. Adv. Vult.

September, 15th 2005

WIMALACHANDRA, J.

The plaintiff - respondent - petitioner (the plaintiff) filed this application for leave to appeal from the order of the learned District Judge of Panadura dated 24.08.2004.

The plaintiff instituted the above action for divorce against the defendant - petitioner - respondent (defendant) on the ground of constructive malicious desertion. On the summons returnable date the defendant appeared in Court and filed the proxy. On that day she was paid Rs. 1,500 as costs. (j. E. No 2 date 2.6.2003). On 8. 9. 2003 the defendant filed her answer and prayed inter - alia for the dismissal of the plaintiffs action and also prayed for a divorce on the grounds of malicious desertion on the part of the plaintiff, and a sum of Rs. 100,000 as permanent alimony and the custody of the two children.

Thereafter the plaintiff sought to amend the plaint and the amended plaint was filed and the defendant amended her answer and it was filed on 15.12.2003. The defendant thereafter made an application in terms of section 614 of the Civil Procedure Code for alimony *pendente lite* and for costs. This application was filed as provided for by section 614 and by way of summary procedure.

The plaintiff raised preliminary objection to the application made by the defendant for alimony *pendente lite*, that as she had already obtained Rs. 1,500 as costs of suit from the plaintiff, she is not entitled to make a further application under Section 614 (3) of the Code.

In any matrimonial action, whether instituted by the wife or the husband, the wife is entitled to make an application for alimony pending the action. Alimony pending the action is different from costs of litigation. Under Section 614 (1) the wife may present a petition for alimony pending the action. Under Section 624 (3), where one of the spouses is not possessed of sufficient income or means to defray the cost of litigation, the Court may at any stage of the action order the spouse who is possessed of sufficient income or means to pay to the other spouse costs as the Court thinks reasonable.

The plaintiffs complaint is that because the Court has ordered him to pay Rs. 1,500 to the defendant on the summons returnable date, the Court has no power to inquire into the application made by the defendant under Section 614 of the Code. It appears from the journal entry dated 02.06.2003, that it is not an order made upon an application made under Section 614 of the Code. The Court can make such order on the husband for payment to the wife alimony pending the action only after a proper inquiry held on an application made under section 614 of the Code. Similarly, the court can order the plaintiff to defray the expenses of the proceedings to the wife after an inquiry upon an application made under Section 614 (3) of the Code.

In the case of *Edirippuli Vs. Wickramasinghe S. N. Silva, J.* (as he then was) made the following observations.

"We are of the view that an application made under Section 614 for alimony and costs is made in the course of the action for divorce and pertains only to a matter of

procedure Only matters at issue in an application for alimony *pendente lite* are the needs for financial support on the part of the applicant spouse that stems from the lack of his or her income and the income of the respondent spouse. This is made very clear by the proviso to Section 614 (1) which states that the alimony ordered shall not be less than 1/5 of the respondent spouse's average income for the 3 years preceding the date of the order. Similarly in an application for costs the only matters at issue in terms of Section 614 (3) are insufficiency of income or means of the respondent spouse defray the costs of litigation and the income or means of the respondent spouse"

Therefore it is only after a proper inquiry the Court can decide the amount of alimony pending action that has to be awarded to the wife. Similarly, the Court can decide only after an inquiry whether the wife is possessed of property and is in a position to find means to defend the action or whether the husband is liable to pay his wife's costs. In the circumstances just because the Court has merely ordered the plaintiff to pay Rs. 1,500 as costs of litigation to the defendant, it cannot in law prevent the wife from making an application under Section 614 (1) and 614 (3) of the Civil Procedure Code. Moreover, the said amount of Rs. 1500 was ordered without any inquiry and without taking into consideration the need for financial support on the part of the applicant spouse and the income and means of the applicant spouse to defray the costs of litigation. The court cannot arbitrarily determine the cost of litigation. It has to be decided after a due inquiry held according to law.

In the circumstances it seems to us that the learned District Judge is correct in deciding to hold an inquiry with regard to the application made by the defendant in terms of Section 614 (1) and 614 (3) of the Civil Procedure Code.

For these reasons the leave to appeal application is dismissed with costs fixed at Rs. 10,000.

SOMAWANSA, J. (P/CA). - 1 agree.

Application dismissed.