

RAMANATHAN
v.
THAMBIMUTHU

COURT OF APPEAL,
ANANDA COOMARASWAMY, J. AND
EDUSSURIYA, J.
C.A. LA NO. 169/93
D.C. KANDY CASE NO. D 2237
JANUARY 25, FEBRUARY 07, MARCH 08 AND JUNE 29, 1994.

Matrimonial action – Divorce – Alimony pendente lite – Section 624 A of the Civil Procedure Code.

Held:

Alimony *pendente lite* is payable from the date of application to court and not retrospectively from the date of desertion.

APPLICATION for leave to appeal.

Cases referred to:

1. *Menika v. Dissanayaka* 7 NLR 8.
2. *Asserappa v. Asserappa* 37 NLR 372.
3. *Yadagoda v. Herat* Supreme Court Circular Vol. II No. 9 page 39.

Batty Weerakoon for petitioner.

A. K. Premadasa, P.C. with *C. E. de Silva* for respondent.

Cur adv vult.

August 24, 1994.

ANANDA COOMARASWAMY, J.

This is an application for leave to appeal to this Court from an order of the learned District Judge of Kandy delivered on 28.7.93 holding that the respondent is entitled to alimony *pendente lite* from the date of filing papers for such claim under section 624A of the Civil Procedure Code.

The petitioner instituted this action for a divorce on the ground of malicious desertion and the respondent appeared on summons and filed papers claiming alimony *pendente lite* on 23rd January 1991.

On 30th November 1992 it was agreed that the petitioner would pay Rs. 6000/- per mensem, and the respondent claimed this amount from the date of filing the papers for alimony *pendente lite* but the

petitioner submitted that it was payable from the date of the order and after the learned District Judge heard submissions he made order that it was payable from the date she claimed the sum, which is the date of filing the papers. It is from this order that the application is filed for leave to appeal and leave was granted by this court.

Alimony pendente lite is maintenance payable by husband to his family pending the conclusion of the divorce action and therefore it follows that it is payable from the date she claims this money as she brings to the notice of court that she and her children are not being maintained by her husband. Obviously it cannot operate retrospectively as claim is from the date she files the papers, otherwise it will cause hardship to the husband if the wife waits long and claims retrospectively. Equally true that the wife should not suffer for the delay in delivering the order of the court. It therefore follows both in law and equity that the payment must be made from the date of application, unless parties otherwise agree. In the instant case the amount was agreed upon and not the operative date.

However a view has been expressed that alimony *pendente lite* is payable from the date of service of the principal petition (Vide **Latey on Divorce** 14th Edition page 899, and **Rayden on Divorce** 5th Edition page 270).

Section 614 of the Civil Procedure Code applies to divorce actions in Sri Lanka, according to which a petition may be presented by a wife for alimony in an action for divorce. Such claim is payable from the date of application (Vide *Menika v. Dissanayaka* ⁽¹⁾, *Asserappa v. Asserappa* ⁽²⁾, *Yadalgoda v. Herat* ⁽³⁾ and also **The Roman Dutch Law of Divorce** by C. E. Jayawardene page 90).

We are therefore of opinion that the respondent is entitled to claim alimony *pendente lite* from the date she made the application for such a claim.

For the foregoing reasons we dismiss the appeal with costs fixed at Rs. 3150/-.

EDUSSURIYA, J. - I agree.

Appeal dismissed.