

Shamkumar Vs. Suman and Others

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Court : Mumbai Aurangabad

Decided On : Aug-07-2014

Judge : V.M. Deshpande

Appeal No. : Criminal Writ Petition No. 266 of 2001

Appellant : Shamkumar

Respondent : Suman and Others

Advocate for Pet/Ap. : Shri. R.S.Deshmukh

Judgement :

Oral Judgment:

1. Present Writ Petition arises out of the order, passed by the learned Principal Judge, Family Court at Aurangabad, dated 1.6.2001, below Exh.8 in Petition No.E-83 of 2000.

By the said order, the learned court below was pleased to reject the application Exh. 8 filed on behalf of the present petitioner praying to dismiss the proceedings initiated by the present respondent Nos.1 to 3 under Section 125 of the Code of Criminal Procedure.

2. This writ petition was admitted by this court in the year 2001 and record and proceedings were called by this court.

3. I have heard Shri R.S.Deshmukh, learned counsel for the petitioner and Shri Godbharle, learned Additional Public Prosecutor for the respondent no.4. Though respondent nos.1 to 3 are served and they were represented by their counsel, the learned counsel for them remained absent when the matter was taken up for its final hearing after the lapse of 13 years.

4. Present petitioner is husband of respondent no.1 and father of respondent Nos.2 and 3. Herein after the petitioner and respondent Nos.1 to 3 will be referred as, the husband and the wife and daughters, respectively.

On 4.2.2000, the wife and the daughters of the petitioners were required to initiate proceedings against the husband for their maintenance. The said proceeding was registered as Petition No.E-83 of 2000 in Family Court, Aurangabad.

By the said application, monthly maintenance was claimed at the rate of Rs.1500/- for the wife and Rs.1000/-each for two daughters. In paragraph 8 of the said application, it is specifically disclosed by the wife and the daughters that, earlier an application was filed on their behalf in the year 1996. It is also disclosed that in the year 1996, an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed in Civil Court at Jalna by the husband against the wife and the said proceedings for restitution of conjugal rights were decreed in favour of the husband, however ex parte. It is further disclosed that in view of the decree for restitution of conjugal rights in favour of the husband, the wife along with her daughters had been to the house of the husband, however, that time the husband drove away the wife and the daughters requiring the wife to lodge police complaint at police station, Sadar Bazar, Jalna.

5. The police report lodged by the wife is dated 7.9.1999 and it was placed on record along with the list of documents Exh.3.

6. On being summoned, the husband put his appearance before the Family Court at Aurangabad and filed an application Exh.8, whereby it was prayed that in view of the rejection of the earlier application for maintenance bearing No.787 of 1997 which was confirmed by this court on 22.2.1999 the wife and daughters are disentitled for moving second application for the maintenance.

The said application was rejected by the learned Principal Judge, Family Court at Aurangabad on 1.6.2001 and aggrieved thereby the present writ petition is filed.

7. Much stress is given by the learned counsel appearing for the petitioner that the wife along with the daughters who are entitled for moving the application under Section 125 of the Code of Criminal Procedure on second occasion when previously their application for maintenance was rejected. Further, he submitted that in view of the decree for restitution of conjugal rights the wife is not entitled to move the application for maintenance, because it is proved in the said proceeding that it is the wife who has deserted the husband, making herself disentitled to claim the relief under Section 125 of the Code of Criminal Procedure.

8. It is to be noted that the proceedings i.e. Hindu Marriage Petition No.105 of 1996 in respect of the restitution of conjugal rights were not decided on merits. That order was an ex parte order. Further, the husband himself has stated in the application Exh.8 that the wife has already filed an appeal against the said ex parte order of restitution of conjugal rights. Therefore, on the day when the application Exh. 8 was filed, the ex parte order was under challenge before the appellate court and it could not be said that the order granting the decree of restitution of conjugal rights, which was ex parte in nature, has attained finality. Therefore, merely because an ex parte order is passed in favour of the husband, which is the subject matter of challenge in the appeal, the husband cannot submit that the wife has deserted the husband and that she is not entitled to claim maintenance.

9. Assuming that there is a decree of restitution of conjugal rights in favour of the husband, the said decree will not operate as bar for filing the application for maintenance for and on behalf of the daughters. The father is under obligation to maintain his siblings. Nothing is brought on record by way of pleadings in the Family Court to show that the father i.e. present petitioner was taking care of his daughters and/or he has made any provision for their maintenance. Therefore, it does not lie in the mouth of the husband before this court that since there is a decree of restitution of conjugal rights in his favour, the application for maintenance before the Family Court, which is a joint application filed on behalf of

the wife and the daughters, is not maintainable. Therefore, the contention in that respect is rejected.

10. Further, merely because the first application for maintenance is disallowed, that will not debar even the wife to file the subsequent application. The cause of action to enforce the right of maintenance by the wife along with the daughters is continuous one. The rejection of first application will not debar the person, who is entitled to get maintenance from the opposite party, for raising a claim again by efflux of time or otherwise demonstrating change in circumstance in favour of the party claiming the maintenance. Such thing will have to be agitated by giving ample and proper opportunity to the person claiming the maintenance. The court will be required to grant opportunity to the wife and the daughters to prove the case as to how they are entitled to claim the maintenance, especially when the basic pleadings are available in the subsequent application for maintenance that after ex parte decree of restitution of conjugal rights when the wife along with her daughters had been to the place of the husband/petitioner, they were mercilessly beaten and driven out of the matrimonial house. The application is having the basic features of pleadings in order to substantiate her claim about the same, since she has made a disclosure that the said fact is immediately reported to the police station Sadar Bazar, Jalna. Not only that, she has filed the police report against the present petitioner and the said report is attached along with the list of documents Exh.3. At the time when the application Exh. 8 was moved by the petitioner, surely that was not the time when it was expected from the wife to prove her case.

11. The learned Principal Judge, Family Court at Aurangabad has rightly rejected the application moved on behalf of the present petitioner. It appears that the said application was filed only to drag the litigation, and in fact, it is clear that the petitioner husband is successful in dragging the litigation from 2000 to 2014. During all these 14 years, nothing is brought on record to show that the petitioner/husband has provided any maintenance either to the wife or to the daughters. Therefore, the present petition is required to be dismissed with costs, and accordingly, the petition is dismissed with costs of Rs.2,000/-.

12. The Registry of this court is directed to remit back the record and proceedings immediately to the Family Court, Aurangabad. Upon such receipt of the record and proceedings from this court, it is expected from the Family Court to take necessary steps to decide Petition No.E-83 of 2000, in accordance with law, by following the principles of natural justice. Rule discharged.

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