

Ambreen Akhoon Vs. Shri Aditya Aurn Paudwal and Another

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Court : Mumbai

Decided On : Aug-04-2015

Judge : The Honourable Mrs. Justice Mridula Bhatkar

Appeal No. : Writ Petition No. 5648 of 2015

Appellant : Ambreen Akhoon

Respondent : Shri Aditya Aurn Paudwal and Another

Judgement :

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
2. This Writ Petition involves a question of law as to whether any relief can be sought against the relative of the respondent “ husband in the proceedings filed under section 26 of the Protection of Women from Domestic Violence Act before the Family Court?
3. In this writ petition, the petitioner challenges the legality of the order dated 11.5.2015 passed by the Family Court at Bandra, Mumbai in Petition No.A-1086 of 2013. The petition before the Family Court was filed for divorce under the Special Marriage Act, 1954 r/w Protection of Women from Domestic Violence Act, 2005 (for the sake of brevity, hereinafter referred to as 'D.V. Act'). In the said petition, the petitioner/wife has made her mother-in-law as a party respondent. Therefore, an application was moved by Respondent No.2, the mother-in-law, under section

9A and Order 1 Rule 10 of the Civil Procedure Code for deleting the party on the ground of a misjoinder of party. An issue was raised before the Family Court that Respondent No.2 mother-in-law cannot be made a party to the nullity proceedings filed under the Hindu Marriage Act or Special Marriage Act as the Family Court has jurisdiction in respect of the proceedings between the parties to marriage only. The said application for compensation in the said petition was objected to on the ground that Respondent No.2, the mother of the husband, cannot be party to the proceedings under the D.V. Act before the Family Court. The learned Judge of the Family Court heard the matter and passed a reasoned order by which application under section 9A with Order 1 Rule 10 of the Civil Procedure Code was allowed and inter alia the preliminary issue is framed as to whether the petitioner has proved that Respondent No.2 is a necessary party to the proceedings??

4. Under Order 1 Rule 10, the Court has power to delete the parties, who are not necessary for adjudication of the issue. A preliminary issue framed by the Family Court that whether Respondent No.2 is a necessary party can be answered by the Family Court depending on evidence led by the parties leading evidence. However, the learned Counsel for the petitioner has raised the contention that in view of section 2(q) of the D.V. Act, a relative of respondent/husband can also be made respondent. The proviso to section 2(q) reads thus:

(q)

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;?

5. The learned Counsel for the petitioner argued that the order passed by the learned Judge of the Family Court is erroneous. The provisions under Order 1 Rule 10 of the Civil Procedure Code has no relevance to the matter when is filed under the D.V. Act against the mother-in-law. The learned Judge of the Family Court has ignored the statement and object of the D.V. Act i.e., to protect the rights of women. He relied on the section 26 of the D.V. Act and submitted whether mother-in-law is a necessary party or not cannot be raised in such proceedings when the D.V. Act itself provides jurisdiction over the relative of the

husband specifically. He submitted that the petitioner can claim reliefs under sections 18, 19, 20, 21, 22 of the D.V. Act, as specified under section 26 of the D.V. Act in any legal proceeding filed before the Family Court and, therefore, the finding given by the learned Judge that for seeking remedy of compensation, jurisdiction under the D.V. Act lies in the Magistrate is erroneous. While entertaining the petition under the Hindu Marriage Act, the Family Court can entertain the petition under section 26 of the D.V. Act. Hence, he prayed that the order be set aside. In support of his submissions, Mr.Wagh relied on **Brundaban Patra and anr. vs. Rajalaxmi Patra, 2011 DGLS (AHC) 26266; Jaydipsinh Prabhatsinh Jhala and Ors. vs. State of Gujarat and Ors., 2010 Cri.L.J. 2462** and on **Lokesh Kirankumar Shah vs. Shraddha Lokesh Shaha and anr., 2012 BCI 526.**

6. Both the learned Counsel for the respondents have opposed the petition. Ms.Deshmukh, appearing for the Respondent No.2, has submitted that the Family Court, Mumbai, has earlier passed the order dated 18.2.2014 which was challenged in this Court by preferring Family Court Appeal No.78 of 2014. The learned Counsel referred to the previous proceedings and orders passed by the Family Court and also the Division Bench of this Court.

7. These orders in the previous proceedings can be summed up for better understanding of the background of the issue. Earlier by order dated 18.2.2014, the Family Court had directed that the name of Respondent No.2 was to be struck down from the petition and necessary amendment to be carried out accordingly. The said order passed by the Family Court was on the application preferred by Respondent No.1 / husband under Order 7 Rule 11 of the Civil Procedure Code and the provisions of the Family Court Act praying for rejection of the plaint. The Division Bench of this Court by order dated 4.9.2014 observed that as the application under Order 7 Rule 11 of the Civil Procedure Code was presented by the respondent/husband only and no specific pleading was made by the respondents that the relief be granted only in favour of Respondent No.2. It held that the Family Court had not considered the pleadings of the petitioner and therefore, there was no scope for the Family Court to adjudicate upon the application for dismissal of the petition preferred by Respondent No.1 under Order

7 Rule 11 of the Civil Procedure Code and therefore the matter was remanded and the order dated 18.2.2014 was set aside. Therefore, the matter was again restored and the application under Order 1 Rule 10 alongwith section 9A was preferred.

8. Ms.Deshmukh read over the orders in the previous proceedings and submitted that as per the directions of the Division Bench, the Family Court had to take up the matter and has rightly framed the issue. She submitted that this Writ Petition is nothing but putting the cart in front of the horse because the Family Court has not given any finding on the point that whether Respondent No.2 is a necessary party or not. This issue is framed under section 9A of the Civil Procedure Code and both the parties will be heard and it will be decided by the Family Court. She further submitted that though under section 26 of the D.V. Act, the reliefs as specified therein can be claimed if some other proceedings are filed under the Hindu Marriage Act and are pending before the Family Court or civil Court, however, it is not permitted for the original petitioner to make any other person as a party respondent than spouse even if the petition is filed under the D.V. Act. The Family Court is governed by the Family Courts Act and the jurisdiction of the Family Court is restricted by section 7 of the Family Courts Act, 1984. The parties before the Family Court should be necessarily parties to the marriage because the Family Court decides the issues in respect of the marriage or the issues which are arising out of marriage where the husband and wife only are the necessary parties. She argued that the Family Courts Act is a special enactment and has overriding effect over any other Act. She relied on section 36 of the D.V. Act which states that the provisions of the D.V. Act shall be in addition to and not in derogation of the provision of other law for the time being in force. She further argued that the meaning of 'respondent' is restricted under section 7 of the Family Courts Act, has overriding effect over the meaning of 'respondent' under section 2(q) of the D.V. Act. In support of her submissions, Ms.Deshmukh relied on **S.R. Batra and anr. vs. Taruna Batra, (2007) 3 SCC 169** and **Vimlaben Ajitbhai Patel vs. Vatslaben Ashokbhai Patel and Ors. (2008) 4 SCC 649**.

9. It is a settled position of law that the jurisdiction to seek remedies under the D.V. Act is before the Judicial Magistrate First Class or the Metropolitan Magistrate. Section 26 of the D.V. Act reads thus:

26. Relief in other suits and legal proceedings.”

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

10. Section 26 of the D.V. Act enables a party to seek relief available under sections 18, 19, 20, 21 and 22 of the D.V. Act in any legal proceeding before the civil Court or Family Court or criminal Court affecting the aggrieved person and whether such proceeding was initiated before or after the commencement of this D.V. Act. Subsections (1) and (2) of section 26 presupposes that there should be a suit or legal proceeding before the civil or criminal Court wherein the relief under the D.V. Act also can be sought in addition to that relief.

11. Section 7 of the Family Courts Act limits the jurisdiction of the Family Court to the parties to a marriage. The explanation to clause 7 reads thus:

7. Jurisdiction.-

(1) Subject to the other provisions of this Act, a Family Court shall “

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

(emphasis added)

12. Though jurisdiction of the Family Court is restricted to the parties to a marriage, under subsection (2) of section 7, the jurisdiction of the Family Court is widened as the cases under Chapter IX of Criminal Procedure Code are also

made triable before the Family Court; so also, under section 2(b), 'such other jurisdiction is conferred on it by any other enactment'. Thus, under clause (b) of subsection (2), if there is a specific provision under any other statute that such matters can also be entertained and tried by the Family Court, then, the jurisdiction of the Family Court can be extended to that effect. Any relative of the husband is covered under the definition of respondent under section 2(q) of the D.V. Act. If the statute covers a particular person in the array of the respondent, then, the status and necessity of that person cannot be challenged under Order 1 Rule 10 of the CPC. Thus, this issue cannot be raised at all as the D.V. Act covers the relatives of the husband under the definition of respondent. Hence, mother-in-law can be brought under the definition of 'respondent' under the D.V. Act has to be adopted while granting relief and entertaining petition under the D.V. Act.

13. Under section 26 of the D.V. Act, if at all the jurisdiction to entertain and try matters under the sections specified therein is conferred to the Family Court, then, it is to be conferred in entirety in respect of the reliefs which are available and can be sought under the sections specified in the said section. The Legislature did not put any rider while invoking the reliefs under section 26 of the D.V. Act. Therefore, a meaning of 'respondent' has to be borrowed from section 2(q) of the D.V. Act for the proceedings under section 26 of the D.V. Act. Adding and reading such qualification will amount to illegal interpretation of the law.

14. The jurisdiction under section 7 of the Family Courts Act insofar as the parties to the proceedings are concerned, is limited to between the parties to the marriage. However, scope of the term 'respondent' is wider under section 2(q) of the D.V. Act. The D.V. Act takes care of any type of violence in the house and, therefore, the meaning of respondent is not restricted to only husband but his relatives are also included in the definition. It is possible that the same word in one statute may bear a different meaning in the other statute. The word 'respondent', if taken under the Family Courts Act, is restricted and so different than the word 'respondent' under section 2(q) of the D.V. Act. However, section 26 is an enabling section for a wife to seek remedy under the D.V. Act in the other proceedings pending under the Family Courts Act. The intention of the Legislature to allow to claim reliefs which are available under the D.V. Act in the proceedings pending

under the Family Courts Act is to curtail the multiplicity of litigation, to save the time of the Court and litigants, to avoid duplication of the evidence and so on. The Legislature did not use any language expressly or impliedly suggesting qualified use of the sections specified in the section 26. Thus, for the purpose of section 26 of the DV Act, a meaning of word 'respondent' on the Family Courts Act is controlled by the definition of 'respondent' under section 2(q) of the DV Act. Therefore, by plain interpretation of law, the word 'respondent' under section 2(q) is to be given the same meaning under the sections which are specified under sections 26 of the D.V. Act, which are triable by the Family Court. The relief cannot be prayed in piecemeal. If jurisdiction is widened under section 7(2) of the Family Courts Act, then, by applying rule of harmonious construction, the definition of the word respondent as contemplated under the D.V. Act is necessarily be imported when the said proceedings are tried before the Family Court. Section 36 of the Family Courts Act reads that the Act shall be in addition to and not in derogation of the provisions of any other law, for the time being in force. Thus, section 26 is in fact in consonance with section 36 of the D.V. Act.

15. In the present matter, it is to be noted that a preliminary issue whether the Respondent No.2 is a necessary party is based on and decided as per the facts and merit of that particular case independently. The case against the Respondent No.2 considering the merits of the matter and evidence, may fail and the Court is free to hold on merit that she may or she may not be liable to the reliefs prayed by the wife.

16. In the case of **Brundaban Patra (supra)**, relied on by Mr.Wagh, the daughter in law filed application under section 23(2) of the D.V. Act before the Family Court for interim relief under sections 18, 20 and 22 of the D.V. Act, after the death of her husband against the relief of her husband. The jurisdiction of the Family Court was challenged and in the said judgment, the High Court has highlighted the object of the enactment of the D.V. Act. However, it directed that instead of quashing the proceedings before the Family Court, the learned Judge of the Family Court shall transmit the record to the learned JMFC and it is to be registered as a criminal case. It also held that the application simpliciter filed before the learned judge of the Family Court is not maintainable. So, in the present

case, the facts are different. The other judgements relied on by Mr.Wagh in **Jaydipsinh Prabhatsinh Jhala and Ors. (supra)** and **Lokesh Kirankumar Shah vs. Shraddha Lokesh Shaha and anr.**, are also in respect of the object of the D.V. Act.

17. In the case of **S.R. Batra and anr. (supra)** relied on by the learned Counsel Ms.Deshmukh, the concept of shared household under the D.V. Act was dealt with and it is held that under sections 19(1)(f) of the D.V. Act, a direction can be sought against the husband and not against the husband's relatives if the premises belong to the mother-in-law exclusively, then the daughter-in-law cannot claim any right to live therein. In the case of **Vimlaben Ajitbhai Patel (supra)**, the right of residence of wife can be extended to only joint properties in which the husband has a share and mother-in-law cannot be fastened with any legal liability to maintain her daughter in law from her own property. The ratio laid down in **S.R. Batra and anr. (supra)** and **Vimlaben Ajitbhai Patel (supra)**, may be useful to the respondent while contesting her matter on merit as it is the law laid down by the Supreme Court. It deals with the facts and proof of it. Thus, the two decisions are not useful in respect of the issue raised before this Court of the jurisdiction of the Family Court in respect of section 26 of the D.V. Act.

18. As a question of law is raised before this Court, the Court has restricted its finding only to that extent and answered that the relatives of the husband being respondents under section 2(q) of the DV Act can be made party respondents before the Family Court if the proceedings specified under section 26 of the D.V. Act are preferred.

19. The learned Judge of the family Court in para 17 of his order has rightly observed on the basis of the documents and the witnesses filed by both the parties the preliminary issue can be answered. Therefore, the trial Court has framed the issue. The trial Court now need not go into the legal aspect of the jurisdiction of the Family Court under section 7 while dealing with the matters filed under section 26 of the D.V. Act but the issue needs be answered otherwise on merits.

20. In the circumstances, the petition is partly allowed.

