

**Uttam Nandi Vs. Momi Nandi**

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**Court :** Guwahati

**Decided On :** Jul-02-2008

**Judge :** T. Nandakumar Singh, J.

**Appellant :** Uttam Nandi

**Respondent :** Momi Nandi

**Advocate for Def. :** Mr. T.C. Khetri

**Disposition :** Appeal dismissed

**Prior history :** T. Nandakumar Singh, J. 1. This appeal under Section 28 of the Hindu Marriage Act, 1955 (for short 'Act 1955') is directed against the order dated 7.4.07 passed by the learned Additional District Judge, Fast Track Court, Sonitpur at Tezpur. 2. Heard Mr. A.R. Banerjee, learned Senior Counsel assisted by Miss B. Choudhury, for the appellant and Mr. T.C. Khetri, learned Counsel for the respondent. 3. The appellant (husband) filed a suit for divorce being No. T.S. (D) Case No. 36 of 2004 for disso

**Judgement :**

**T. Nandakumar Singh, J.**

1. This appeal under Section 28 of the Hindu Marriage Act, 1955 (for short 'Act 1955') is directed against the order dated 7.4.07 passed by the learned Additional

District Judge, Fast Track Court, Sonitpur at Tezpur.

2. Heard Mr. A.R. Banerjee, learned Senior Counsel assisted by Miss B. Choudhury, for the appellant and Mr. T.C. Khetri, learned Counsel for the respondent.

3. The appellant (husband) filed a suit for divorce being No. T.S. (D) Case No. 36 of 2004 for dissolution of marriage of the appellant with the respondent (wife) by a decree of divorce in the court of the learned Additional District Judge, Sonitpur at Tezpur. During the pendency of the T.S. (D) Case No. 36/2004, the respondent (wife) filed an application being No. NIL dated 10.1.2005 under Section 24 of the 'Act 1955' for payment of maintenance pendente lite and expenses of proceedings in T.S. (D) Case No. 36/2004. The learned Additional District Judge, Fast Track Court allowed both the parties to put up their respective cases in the said application under Section 24 of the 'Act 1955' and after hearing both the parties passed the impugned order dated 7.4.07 in the said application under Section 24 of the 'Act 1955' directing the present appellant (husband) to pay an amount of Rs. 20,000/- to the respondent (wife).

4. Admittedly, the T.S. (D) Case No. 36/04 is still pending and the impugned order dated 7.4.07 was passed for payment of the said amount as an interim measure pending disposal of the said T.S. (D) Case No. 36/04.

5. For deciding the present appeal, it is required to look into the Sections 24 of the 'Act 1955'. For easy reference, Section 24 of the 'Act 1955' is quoted hereunder:

Section 24. Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

6. By Section 19 of the Amendment Act 68 of 1976, Section 28 of the 'Act 1955' had been amended. The amended Section 28 of the 'Act 1955' read as follows:

Section 28. Appeals from decrees and orders--

(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of Sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act under Section 25 or Section 26 shall, subject to the provisions of Sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order.

Section 28 of the 'Act 1955' prior to Amendment Act 68 of 1976 read as follows:

Section 28. All decrees and orders made by the court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the court made in the exercise of the original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force:

Provided that there shall be no appeal on the subject of costs only.

7. The object behind Section 25 of the 'Act 1955', as it appears, are that, firstly to prevent vagrancy resulting from the strained relationship between the husband and the wife and secondly to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case for want of money. It reveals from the provisions of Section 24 of the 'Act 1955' that the order passed on the application under Section 24 of the 'Act 1955' is an 'interlocutory order'. The Apex

Court through justice S. Murtaza Fazal Ali, (as then he was, (for himself) and on behalf of Justice Mr. A.P. Sen) in *V.C. Shukla v. State* through CBI reported in : 1980 CriLJ690 observed that--Thus summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decide the rights of the parties is only an interlocutory order, mother words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code or any other statute. That is to say, if we construe interlocutory order in ordinary parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in Section 11(1) of the Act.

8. In *V.C. Shukla v. State* case (supra), the Apex Court also considered the meaning of the expression 'final order'. Para 30 of AIR in *V.C. Shukla v. State* (supra) read as follows:

Para 30. 'The expression 'final order' has been used in contradistinction to what is known as 'interlocutory order' and the essential test to distinguish the one from the other has been discussed and formulated in several cases decided by the Judicial Committee. All the relevant authorities bearing on the question have been reviewed by this Court in their recent pronouncement in *S. Kuppuswami Rao v. The King*, and the law on point, so far as this Court is concerned, seems to be well settled. In full agreement with the decisions of the Judicial Committees in *Ram Chand Manjimal v. Goverdhandas Vishindas* and *Abdul Rahman v. D.K. Cassim and Sons*, and the authorities of the English Courts upon which these pronouncements were based, it has been held by this Court that the test for determining the finality of an order is, whether the judgment or order finally disposed of the rights of the parties'. Thus, the Federal Court in its decision seems to have accepted two principles, namely.

(1) that a final order has to be interpreted in contradistinction to an interlocutory order, and

(2) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.

9. The Apex Court also followed the meaning of 'expression' 'interlocutory order' and the 'final order'. Propounded in V.C. Shukla's case (supra) in Usmanbhai Dawoodbhai Memon and Ors. etc. v. State of Gujarat reported in : 1988 CriLJ938 and observed that--

Para 24.....The expression 'interlocutory order' has been used in Section 19(1) in contradistinction to what is known as final order and denotes an order of purely interim or temporary nature. The essential test to distinguish one from the other has been discussed and formulated in several decisions of the Judicial Committee of the Privy Council, Federal Court and this Court. One of the tests generally accepted by the English Courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue. In V.C. Shukla v. State through CBI : 1980 CriLJ690 , Fazal Ali J. in delivering the majority judgment reviewed the entire case law on the subject and deduced therefrom the following two principles namely, (i) that a final order has to be interpreted in contra-distinction to an interlocutory order; and (ii) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.

10. The order under Section 24 of the 'Act 1955', which itself speaks that the order under Section 24 of the Act is one made or passed during the progress of an proceeding under the 'Act 1955', is an 'interlocutory order'.

11. On bare perusal of the pre-amended Section 28 of the 'Act 1955' it is clear that an appeal may be filed against of decrees and orders, save and except the order of cost only made by the Court in any proceeding under 'Act 1955'. The Section 28 of the 'Act 1955' had been drastically changed after the Amendment Act, 68 of 1976 and amended Section 28 has been quoted above. On perusal of the amended Section 28, it is crystal clear that any order under Section 24 of the 'Act 1955' had been excluded from the appealable order.

12. It is a settled law that when the Legislature speaks judge cannot be wiser. Reference : Shri Mandir Sita Ramji v. Governor of Delhi and Ors. reported in : [1975]1SCR597 . Again no appeal under Section 28 of the 'Act 1955' lie against an interim order. No doubt, appeal is a creature of a statute. As there is no provision for appeal under Section 28 of the 'Act 1955' against the order passed on the application under Section 24 of the 'Act 1955', the present appeal against the impugned order dated 7.4.07 passed by the learned Additional District Judge, Fast Track Court, Sonitpur at Tezpur on the application under Section 24 of the 'Act 1955' filed by the respondent (wife) is not maintainable. The different High Courts are of the view that no appeal under Section 28 lie against the order, which is an interlocutory order, under Section 24 of the 'Act 1955' in as much as, there is no provision of appeal under Section 28 of the 'Act 1955' against the order passed under Section 24 of the 'Act 1955'. Ref: (1) Sunil Hansraj Gupta v. Payal Sunil Gupta : AIR1991 Bom423 .

(2) Jayanti Pradhan v. Kunjabehari Pradhan AIR 1987 Orissa 184.

(3) Rajpal v. Smt. Dharamavati : AIR1980 All350 .

(4) Gurbaksh Singh v. Smt. Taran Jit .

(5) Smt. Subhasini v. B. R. Umakanth AIR 1981 Karnataka 115.

13. For the reasons discussed above, the present appeal is not maintainable.

14. Accordingly, dismissed.

15. The parties are to bear their own costs.

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