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Court : Patna

Decided On : Mar-20-1996

Judge : Prasun Kumar Deb, J.

Acts : Hindu Marriage Act, 1955 - Sections 9; Code of Civil Procedure (CPC) , 1908 - Sections 2 - Order 21, Rules 32 and 33

Appeal No. : Civil Revision No. 111 of 1995(R)

Appellant : Kanu Charan Deep

Respondent : Bimla Deep

Advocate for Def. : None

Advocate for Pet/Ap. : Jaya Roy and Tapas Roy, Advs.

Disposition : Revision petition allowed

Judgement :

Prasun Kumar Deb, J.

1. A short question has been involved in this revision petition regarding the executability of the decree by a judgment-debtor.

2. The opposite party (Bimla Deep) filed Matrimonial Suit No. 9 of 1993 before the 3rd Additional District Judge, Jamshedpur for the reliefs under Section 9 of the

Hindu Marriage Act (hereinafter referred to as 'the Act') for restitution of conjugal rights with an alternative prayer for grant of maintenance and also custody of child etc. The husband Kanu Charan Deep appearing in the suit admitted the claim of the petitioner regarding restitution of the conjugal rights and on such admission, the suit was decreed and observations were made in the following manner:

'If it is not obeyed forthwith by the respondent, the applicant may move the Court regarding the custody of the child or the articles presented at or about the time of marriage or maintenance Under Sections 26, 27 or 25 of the Hindu Marriage Act or any other law thought proper, apart from exercising her legal right to put the decree in execution as provided u/Order 21 Rule 32, CPC. In addition to this and without prejudice to any application that may be filed on disobedience of the decree to be passed in the suit on admission, for periodical or monthly maintenance, it is also ordered that in case the decree for restitution of conjugal rights is not obeyed by the respondent i.e., the husband within fifteen days from the date of this order, the respondent (J. Dr.) will make payment of monthly maintenance @ Rs. 1,000/- (one thousand) per month with effect from the date of this order to the applicant-decree holder and the same shall be as those payable under a decree for the payment of money as provided u/ Order 21 Rule 33(4), CPC, subject to what has been stated above...'

3. It appears that after the decree there were no resumption of conjugal rights between the two spouses. Then the husband put the decree in execution for resumption of conjugal rights but that execution case being Execution Case No. 1 of 1994 was dismissed without admission by the impugned order dated 15.12.1994 by the 3rd Additional District Judge, East Singhbhum at Jamshedpur. The learned Court below dismissed the execution petition only on the ground that there is no provision under the Code of Civil Procedure wherein a judgment-debtor can seek execution of the decree. It appears that the learned Court below went on with a fixed notion that if a decree is passed against the party then he only becomes the decree-holder and the party against-whom the decree was passed remains as judgment-debtor.

4. The definition of 'decree-holder' and the 'judgment-debtor' remains on the same footing as per Sections 2(iii) and 2(x) of the Code of Civil Procedure. Decree-holder is defined in the following manner:

'2(iii)-'Decree-holder' means any person in whose favour a decree has been passed or an order capable of execution has been made.'

Similarly judgment-debtor has been defined in the following manner :

'2 (x)-'Judgment-debtor' means any person against whom a decree has . been passed or an order capable of execution has been made.'

5. There cannot be a leak proof straight jacket in all the cases regarding the decree in whose favour the same has been passed and against whom it has been passed. In a decree being passed, there can be some relief in favour of one of the parties and the same relief by way can be in favour of the adversaries. The same may be cleared by the following illustration :

'A filed a suit for partition against B, C and D regarding his 1/4th share in the suit property. All the defendants, namely B, C and D contested the suit and there was a prayer by the defendant 'C' to the effect that if a decree is passed for partition, then his 1/4th share may also be separately allotted. The suit was decreed preliminarily in favour of the plaintiff 'A' regarding his 1/4th share and there is also a direction to the effect that a separate allotment of being made in the final decree regarding defendant 'C' 1/4th share. Now after the final decree is passed after allotment being made, then both 'A' and 'C' comes within the footing of the decree-holder and either of the two may seek execution of the final decree and in that case although 'C' remains as a judgment-debtor in the partition suit, he can also seek for execution.'

Thus it depends upon the nature of the decree as to who should be termed as judgment-debtor and who should be termed as decree-holder.

6. Now coming to the present case, a decree for restitution of the conjugal rights under Section 9 of the Act is a mutual obligatory decree, purpose being to get the spouses joined to lead a conjugal life. The foundation of the right to bring a suit for

restitution right is the foundational rule of matrimonial law that one spouse is entitled to the society and comfort and consortium of the other spouse and where either spouse has abandoned or withdrawn from the society of the other without reasonable excuse or just cause, the Court can grant a decree for restitution. Such decree can be sought for execution as contemplated under Order XXI Rules 32 and 33 of the Code of Civil Procedure. When the wife came up for relief of restitution of conjugal rights and on being admitted by the husband, the said relief was granted then it becomes obligatory on both the spouses to lead a conjugal life in a consequence of decree being passed. If one of them has departed away from the decree then the other spouse can have the liberty to get the decree satisfied in its proper way. Moreover, as mentioned earlier, decree has some more obligation and defaulting clause against the husband. If the wife-petitioner did not have the intention to follow the sanctity of the decree then the husband to get rid of the defaulting clause may seek for execution and in that way he comes to replace the position as decree-holder against the adverse party who had initially got the decree for restitution of conjugal rights. On going through the cryptic impugned order, I find the learned Court below did not approach the matter in its proper angle and dismissed the execution on a single plea that the judgment debtor has got no right to seek execution of the decree. However, the decree would be executable or not is a question to be decided later on in the execution proceeding itself but the execution petition cannot be thrown out at the threshold holding the same to be non-maintainable. Thus I find that the learned Court below had committed error of law in dismissing the execution petition and hence this revision petition is allowed, the impugned order is hereby set aside and the matter is sent back to the learned Court below for proceeding according to law in the light of the observations made above. In the circumstances of the case, I shall make no order as to costs.

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