

Krishna Kumar Vs. Smt. Shobha Devi @ Shohba Devi Razak Alias Shobha Devi Prasad and ors.

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Court : Patna

Decided On : Feb-27-2007

Judge : Chandramauli Kr. Prasad, J.

Acts : Hindu Marriage Act - Sections 21, 23, 24 and 28; Code of Civil Procedure (CPC) - Order 9, Rules 4, 9 and 13

Appeal No. : Civil Revision No. 1785 of 2005

Appellant : Krishna Kumar

Respondent : Smt. Shobha Devi @ Shohba Devi Razak Alias Shobha Devi Prasad and ors.

Advocate for Def. : Shiva Nandan Ray, Sr. Adv.

Advocate for Pet/Ap. : P.K. Verma, Adv.

Disposition : Application dismissed

Judgement :

Chandramauli Kr. Prasad, J.

1. Husband-petitioner, being aggrieved by the order dated 17.8.2005 passed by the Principal Judge, Family Court, Patna in Misc. Case No. 2 of 2002 awarding interim maintenance of Rs. 2000/- per month to the wife from the date of filing of the petition besides litigation expenses of Rs. 3000/-, has preferred this application.

2. Short facts, necessary for the decision of the present application, are that the petitioner filed application for dissolution of the marriage between him and his wife- Opposite Party No. 1 held on 11.3.1993 by a decree of divorce on the ground of cruelty. The Principal Judge, Family Court, Patna, by judgment dated 29th of November, 2001 passed in Matrimonial Case No. 245 of 1996, granted the prayer of the husband and the marriage solemnised between the party was dissolved by a decree of divorce. Wife-Opposite Party No. 1 filed application for setting aside the aforesaid ex parte decree under Order IX Rule 13 of the Code of Civil Procedure. During the pendency of the said application, she filed application on 3.8.2004 for maintenance pendente lite and expenses of the proceeding under Section 24 of the Hindu Marriage Act.

3. By reason of the impugned order, the prayer of the wife has been accepted and the petitioner-husband directed to pay maintenance pendente lite at the rate of Rs. 2000/- per month from the date of filing of the petition and the litigation expenses of Rs. 3000/-.

4. Mr. P.K. Verma, learned Counsel appearing on behalf of the petitioner, contends that the order passed by the Principal Judge under Section 24 of the Hindu Marriage Act, hereinafter referred to as the 'Act', is clearly illegal and completely without jurisdiction and hence, calls for interference by this Court in exercise of its revisional jurisdiction. He points out that under Section 21 of the Act all the proceeding under the Act is to be regulated by the provisions of the Code of Civil Procedure but the converse is not true. He submits that a proceeding under Order IX Rule 13 of the Code of Civil Procedure for setting aside an ex parte decree can not be said to be a proceeding under the Act.

5. It is pointed out that the wife had a remedy of appeal under Section 28 of the Act and an appeal being continuance of the proceeding, an application under

Section 24 of the Act may lie.

6. It is further pointed out that the expression "Act" used in Section 24 thereof shall obviously mean the Hindu Marriage Act. He submits that it is only in a proceeding under the Act that an order for maintenance pendente lite and expenses of proceeding, can be passed under Section 24 of the Act.

7. Mr. Shiva Nandan Ray, Senior Advocate appearing on behalf of the Opposite Party No. 1, however, submits that proceeding under Order IX Rule 13 of the Code of Civil Procedure emanated from an order of the decree of divorce passed under the Act and hence such a proceeding shall be construed to be a proceeding under the Act.

8. In support of his submission, he has placed reliance on a judgment of the Delhi High Court in the case of Rishi Dev Anand v. Devinder Kaur : AIR1985 Delhi40 and my attention has been drawn to paragraph No. 8 of the said judgment, which reads as follows:

8.- In the view that proceedings under Order 9 Rule 9 of the Code for restoration are proceedings under the Act, it can safely be held that proceedings for setting aside the ex parte decree are also proceedings under the Act. With respect I agree with the prima facie view expressed by Avadh Behari J, in CM. 1938 of 1978.

Having considered the rival submission; I do not find any substance in the submission of Mr. Verma. In the scheme of the Act, there is no specific provision for setting aside an ex parte decree.

9. True it is that Section 28 of the Hindu Marriage Act gives to a party remedy of appeal against all decrees but at the same time, the remedy of setting aside an ex parte decree under Order 9 Rule 13 of the Code of Civil Procedure is also available to the aggrieved party.

10. Taking into account object underlying Section 24 of the Act for awarding maintenance pendete lite and for making provision for payment of expenses of proceedings, the expression "proceeding under the Act" appearing in the aforesaid section cannot be given a narrow and restricted meaning.

11. Here, the wife had taken recourse to the remedy under Order 9 Rule 13 of the Code of Civil Procedure and simply because she had not resorted to the remedy of appeal under Section 23 of the Hindu marriage Act, it cannot be said that for the purpose of Section 24 of the Act, the proceeding under Order 9 Rule 13 of the Code of Civil Procedure, would not be a proceeding under the Act.

12. Hence, I am inclined to hold that a proceeding under Order 9 Rule 13 of the Code of Civil Procedure shall be deemed to be a proceeding under the Act for the purpose of grant of maintenance pendente lite and litigation expenses under Section 24 of the Act. Accordingly, I reject the submission of Mr. Verma.

13. The view which I have taken is also supported by the decision of the Bombay High Court in the case of Vinod Kumar Kejriwal v. Usha Vinod Kejriwal : AIR1993 Bom160 in which it has been held as follows:

In the first place, I have no doubt that the proceedings under Section 24 of the Hindu Marriage Act can be initiated even during the pendency of the application either under Rule 13 of Order 9 or Order 9 or Rule 4 of Order 9 of the Code of Civil Procedure. In the case of Ramesh v. Savita, reported in 3 MC 74 this Court was dealing with the question as to whether pending the application under Rule 13 of Order 9 the wife could maintain an application under Section 24 of the Hindu Marriage Act. The learned Chief Justice answered the question in the affirmative. Applying the same ratio and bearing in mind the object of the provisions contained in Section 24 of the Hindu Marriage Act, I have no hesitation in holding that even pending the application made by the husband under Order 9 Rule 4 of the Code of Civil Procedure, the wife can initiate proceedings under Section 24 of the Hindu Marriage Act. It should be borne in mind that, in general, the husband is bound to defray the wife's costs of the proceedings under the Act and to provide her with the maintenance and support pending disposal of the proceedings. Having regard to the object that is sought to be achieved by making provision for awarding maintenance pendente lite and for making provision for payment of expenses of proceedings, the expression 'proceedings under the Act' appearing in Section 24 cannot be given a narrow and restrictive meaning.

(Underlining mine)

14. This view finds support from the judgment of Calcutta High Court in the case of Dipti Ghosh v. Swapan Kumar Ghosh 1991 DMC 135 in which it has been held as follows:

We are of the view that a proceeding under Order 9 Rule 13 of the C.P.C. is a proceeding under the Provision of the Hindu Marriage Act if the proceeding is initiated for setting aside a decree obtained ex parte in a proceeding under the said Act. Accordingly, an application under Section 24 of the Hindu Marriage Act is maintainable in such a proceeding. If such an application is filed it is open to the Court to decide the same on merit but it cannot be held that such application cannot be disposed of till the proceedings under Order 9 Rule 13 terminates and the decree is set aside.

15. Mr. Verma, then contends that the conduct of the wife does not entitle her the grant of maintenance pendente lite or the litigation expenses. He submits that the decree of divorce was rendered on 29th of November, 2001, whereas she had filed application for setting aside said ex parte decree on 9.4.2002 and the application for maintenance pendente lite and litigation expenses on 3.8.2004. In support of his submission, he has placed reliance on a judgment of this Court in the case of Durga Pada Banerjee v. Smt. Sushmita Banerjee 1991 (2) PLJR 215 and my attention has been drawn to paragraph No. 31 of the judgment, which reads as follows:

'31. Coming now to the merits of the case, there cannot be any doubt that in the matter of grant of pendente lite maintenance the court may consider the conduct of the party as also other relevant factors.

16. I do not find any substance in the submission of Mr. Verma and the decision relied on, in no way, supports his case. True it is that the conduct of the party is relevant for determining the question of pendente lite maintenance but merely on the ground that an application for setting aside the ex parte decree was filed belatedly and in that, the application for pendente lite maintenance was filed later on, itself shall not disentitle the wife, the maintenance pendente lite. It is her plea that when she came to know about ex parte decree, she had filed the application.

17. Mr. Verma, then contends that the order has been passed without considering the plea of the husband-petitioner about the capability of the wife to maintain herself. He points out that the husband had pleaded that the wife had her own source of income, she is working in a play land school, a cloth shop and as Promoter in Sahara India.

18. I am not inclined to go into this submission in detail. Petitioner is aggrieved by an order of pendente lite maintenance, which is interim in nature and such prayer is decided on the basis of affidavits and prima facie satisfaction of the court. The learned Judge has referred to the plea of the husband-petitioner and being prima facie satisfied, had granted the prayer made by the wife.

19. The view taken of the learned Judge, while passing the impugned order, cannot be said to be perverse calling for interference by this Court in its revisional jurisdiction.

20. I am told that the evidence on behalf of the wife has already concluded and the evidence on behalf of the husband is being led. The learned Judge, in seisin of the case, shall make endeavour to dispose of the entire proceeding within three months from the date of receipt/production of a copy of this order and for that purpose, reject unnecessary prayer for adjournment.

Accordingly, I do not find any merit in this application and it is dismissed but without any order as to costs with the direction aforesaid.

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