

Sadhana Devi Vs. Bijendra Kumar and ors.

Sadhana Devi Vs. Bijendra Kumar and ors.

SooperKanoon Citation : sooperkanoon.com/139896

Court : Patna

Decided On : Mar-03-1998

Judge : M.Y. Eqbal, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24

Appeal No. : Civil Revn. No. 1498 of 1996

Appellant : Sadhana Devi

Respondent : Bijendra Kumar and ors.

Advocate for Def. : Farooque Ahmad Khan and Nadim Siraj, Advs.

Advocate for Pet/Ap. : S.K. Verma, Rajnandan Pd. Singh and Prem Kumar Verma, Advs.

Disposition : Revision dismissed

Judgement :

1. This Civil Revision application is directed against the order dated 23-7-1996 passed by the Principal Judge, Family Court. Patna, in Matrimonial Case No. 46 of 1995, whereby and whereunder the Court below rejected the application filed by the petitioner under Section 24 of the Hindu Marriage Act (hereinafter to be referred to as 'the Act' for short) claiming alimony pendente lite for her maintenance and for the maintenance of minor son. The plaintiff-opposite party

filed Matrimonial Case No. 46 of 1995 against the petitioner for a decree for restitution of conjugal rights and for a direction to the petitioner to return to her matrimonial home and on failure of the petitioner, the marriage may be dissolved by a decree of divorce.

2. The suit was contested by the petitioner by filing written statement stating, inter alia, that she is willing to live with her husband provided proper security is given to her as she was ill-treated by the plaintiff-opposite party and his parents, while she was living with the opposite party. During the pendency of the aforesaid case, the petitioner filed a petition dated 3-6-1996 praying for alimony pendente lite which application was opposed by the plaintiff-opposite party on the ground that he is a student and has no source of income. The Court below disposed of the application by the impugned order dated 23-7-1996. The Court below came to the finding that there is no evidence on behalf of the plaintiff-opposite party to prima facie prove that the petitioner-wife is working as teacher in the school and she has no source of independent income and she is fully dependent for her maintenance on her parents. The Court below further came to the finding that the plaintiff-opposite party has also

no independent source of income and he is still

prosecuting his studies and dependent on his

father. On that ground that petition filed by the

petitioner was rejected. So far the maintenance to

the minor child is concerned, the Court below

held that since no separate application claiming

maintenance of the child was filed, therefore, no

order can be passed. Hence, this Civil revision

application.

3. Mr. S. K. Verma, learned senior counsel appearing on behalf of the petitioner, assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel submitted that the Court below has committed grave error of law insofar, as it held that the plaintiff-opposite party having no independent source of income is not liable to pay maintenance to the wife according to the learned counsel, in no event, the husband can be exonerated from his liability to maintain his wife and minor children. He put reliance on the decisions rendered in the cases (i) *Smt. Urmila Devi v Hari Prakash Bansal*, AIR 1988 Punj & Har 84, (ii) *Gurmali Singh v. Bhuchari*, AIR 1980 Punj & Har 120. Learned counsel further submitted that the Court below has failed to appreciate the settled law that no separate application with regard to maintenance of child is required and even on the basis of affidavit, such order can be passed. In support of his contention, learned counsel referred to the decisions in the cases of (i) *Manoj Kumar Jaiswal v. Smt. Lila Jaiswal*, AIR 1987 Cal 230 and (ii) *Durga Pada Banerjee v. Smt. Sushmitta Banerjee*. (1991) 2 Pat LJR 215. Learned counsel lastly submitted that it was not disputed that the plaintiff husband is an able person capable of working and in such event, he is bound to maintain the wife and minor children. Learned counsel referred to the decisions in the cases, reported in (1995) 2 Pat LJ Reports, 199 and in 1997 Patna Law Reports 129. On the other hand, Mr. Farooque Ahmad Khan, learned counsel for the husband-opposite party submitted that the main suit filed by the plaintiff opposite party has been disposed of in terms of the judgment dated 13th June 1996 and a decree for restitution of conjugal rights has been passed. The learned counsel submitted that even after the decree the petitioner-wife did not resume her conjugal life. The Court below decided all the issues in favour of the plaintiff-husband. According to the learned counsel, therefore, the

question of payment of maintenance to the wife

does not arise and by reason of passing of the

decree, the application became infructuous.

Learned counsel submitted that when the main

suit stood disposed of, then the application under

Section 24 of the Act does not survive. In this connection, the learned counsel relied upon the decision in the case of *Nirmala Devi v. Ramdas*. AIR 1973 Punj and Har48. Learned counsel then submitted that admittedly the opposite party-husband is studying and he has not finished his study. Learned counsel submitted that it is not a case where the husband is able to work, but is not working; rather it is a case where he has been studying and for doing work, he will have to leave his studies. According to the learned counsel. therefore, the principles of the law, can vassed by the learned counsel for the petitioner does not apply. In support of his contention, he has cited two decisions, one of Allahabad High Court in the case, of *Smt. Preeti Archana Sharma. v. Ravindra Kumar Sharma*, AIR 1979. All 29 and another of Mysore High Court in the case of *N. Subramanyam v. M. G. Saraswathi*, AIR 1964 Mysore 38.

4. Before appreciating the rival contentions

made by the learned counsel for the parties, it

would be useful too took into the provision of

Section 24 of the Hindu Marriage Act which is

quoted below:--

'24. Maintenance, pendente lite and expenses of proceedings: -- 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 the petitioner the expenses of 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.'

5. From the aforesaid provision, it is manifest that the object of this section is to enable the husband or wife, as the case may be, who has no independent income sufficient for his or her maintenance or for him the expenses of any legal proceeding under the Act to obtain maintenance and the expenses pendente lite, so that the proceeding may be conducted without any hardship.

6. I wish to first discuss the point raised by Mr. Farooque Ahmad Khan learned counsel for the opposite party-husband that by reason of the disposal of the main suit, the petition claiming maintenance pendente lite and, legal expenses does not survive and has become infructuous. The learned counsel submitted that the plaintiff opposite party filed the suit for decree of restitution of conjugal right and in the event of failure on the part of the petitioner-wife to, resume conjugal life, marriage was dissolved by decree of divorce and in the conciliation proceeding the petitioner refused to live with him on the ground that her husband was not in service. According to the learned counsel, the suit has been ultimately disposed of by the judgment whereby a decree for restitution of conjugal right has been passed in favour of the opposite party husband and the petitioner was directed to

resume matrimonial cohabitation. Under sick circumstances, the petitioner would not be entitled to pendente lite alimony and legal expenses. I have occasion to go through a copy of the judgment passed in the suit which was supplied by the counsel. From perusal of the judgment, it appears that the learned Principal Judge, Family Court has considered the evidence in detail and came to the finding that the respondent wife failed to return back to her in-laws' home despite repeated requests and even after legal notice. The reason for not coming back to her husband's house is obvious from the order passed by the Court below on the date when the suit was fixed for reconciliation. The order passed by the Court below on 8-12-1995 is worth to be quoted hereunder:-

'8-12-95. Since the suit is fixed for reconciliation and the parties are present, I took up reconciliation matter. The petitioner-husband is ready to keep the respondent-wife but the latter says that since the petitioner is not doing any service, she does not want to live at her Sasural and that she will not live with the petitioner until he does some job. The petitioner says that he is a student and the respondent should cooperate with him so that he may prosecute, his study properly but this entreaty of the petitioner did not seem to have any effect on the respondent. It is, therefore, obvious that the reconciliation has failed.'

7. From the aforesaid order, it is clear that since beginning, the petitioner wife was not ready to live with her husband as he is not doing any service and is having no independent income. The Court below while passing the impugned order held that the opposite party husband has no

independent source of income and is still prosecuting his study and is dependent on his father. 'It is true that even the husband has no independent source of income or earning, but is capable of earning being an able-bodied person fit enough to work is liable to maintain his wife and cannot deny payment of maintenance pendente lite. But in my considered opinion, in the facts and circumstances of the present case, this civil revision application is not fit to be allowed. As noticed above knowing fully well that the opposite party husband was prosecuting his study, the marriage was solemnized, but the petitioner refused to live in the matrimonial House on the ground that the opposite party husband is not

doing any service. It is also evident that the opposite party repeatedly requested the petitioner to live with him in his parents house, but she refused to do so. Ultimately, the opposite party instituted the suit for restitution of conjugal right and the suit was decreed, but even then the petitioner did not resume conjugal right. In such circumstances, the decisions upon which the petitioner put reliance does not apply.

8. It is well settled that the allowance of temporary alimony is not regarded as a matter of right, but is a matter within the judicious discretion of the Court and this Court in revision interferes only when the discretion has been perversely exercised by the Court below.

9. Having regard to the facts and circumstances of the case, and particularly the finding arrived at by the Court below while disposing of the suit finally, I do not find any reason to interfere with the impugned order passed by the Court below.

10. This civil revision application is,

accordingly, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com