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Court : Karnataka

Decided On : Sep-24-1956

Reported in : AIR1957Kant44; AIR1957Mys44; ILR1956KAR317

Judge : Sreenivasa Rao, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 10, 11, 12, 13, 14, 19, 20, 23, 24 and 25; [Divorce Act, 1869](#) - Sections 36; Bombay Hindu Divorce Act, 1947 - Sections 6

Appeal No. : Civil Revi. Petn. No. 389 of 1956

Appellant : Nanjappa

Respondent : Vimala Devi

Advocate for Def. : K. Nanjundiah, Adv.

Advocate for Pet/Ap. : V. Vasanth, Adv.

Judgement :

ORDER

1. The Petitioner before this Court filed an application under Section 13 of the Hindu Marriage Act against the Respondent praying for a decree for divorce. The Respondent who is the wife filed an application under Section 24 of the Act claiming interim maintenance and expenses of the proceedings. This has been

granted and the Petitioner has been. directed to pay her Rs. 15/- per month towards maintenance and Rs. 50/- towards her expenses.

2. The main ground urged against this order is that the order is not warranted by Section 24 of the Act which provides for grant of maintenance pendants life and expenses of proceedings only against a respondent and not against a petitioner and that the terms petitioner and respondent relate to the substantive petition and not to any ancillary application. On the other hand it is contended for the Respondent that the words 'Petitioner' and 'Respondent' are intended to apply to the applicant under Section 24 and the opposing party in respect of such application.

3. It has to be noticed that under Sections 24 and 25 of the Act payment by way of maintenance and expenses of proceedings or permanent alimony and maintenance may be ordered either against the wife or the husband. This appears to represent a departure from similar provisions under other enactments which only provide for such payments to the wife and not to the husband. The intention undoubtedly is to place husband and wife on a footing of equality in regard to the liability for making such payments if other requisite conditions are established.

This is made clear by the language of both the sections which enable either the wife or the husband on application to obtain an order against the respondent for such payment. The question, however, is whether the order under Section 24 could be made against the petitioner in the main proceedings whether such petitioner is the husband or the wife. The section provides only for an order directing the respondent to make such payment to the petitioner.

It is urged for the present respondent that if it was the intention of the Legislature (Parliament) to confine such reliefs only to the petitioner in the main proceedings the language in the relevant portion would have been 'where..... it appears to the Court that the petitioner has no independent income for her or his support and the necessary expenses of the proceedings.....' and not 'where.....it appears to the Court, that either the wife or the husband as the case may be has no independent income.....' On the other hand, it is urged for the present petitioner that both in Sections 24 and 25 the word 'application' is used in regard to a claim for payment

and in Section 25 the word 'applicant' is used when referring to the person making such an application, while the word 'petition' is used throughout the Act in regard to the substantive application, e.g. See Sections 9, 10, 11, 12, 13, 19, 20 and 23.

It may also be added that in Section 14 of the Act, the word 'application' is used in the context of seeking permission to present a petition for divorce within three years of marriage. It seems to me, however, that the use of the words 'petitions', 'application', 'petitioner, or 'applicant' is not in itself conclusive. It may for instance be observed that in Section 28 of the Act which provides for custody of children, the language employed is "upon application by petition for the purpose", which would indicate that an interlocutory application can also be a petition.

It is well known that the two words 'petition' and 'application', are used interchangeably and the party ranged on the opposite side is variously called 'opponent', 'counter-petitioner', 'non-applicant' or 'respondent'. Unless there is some demonstrable reason there appears to be no warrant for confining the meaning of the words 'petitioner' and 'respondent' to the parties to the main petition and to hold that they do not apply to parties to interlocutory applications.

4. As stated above, the provision for an order for payment of interim maintenance or of alimony to the husband represents a departure from similar provisions under other enactments. They permit such an order to be made only in favour of the wife and against the husband. But they also permit such an order to be made in favour of the wife whether she figures as the petitioner or the respondent in the main petition. For example, Section 36 of the Divorce Act (IV of 1869) reads:--

'In any suit under this Act, whether it be instituted by a husband or a wife.....the wife may present a petition for alimony pending the suit.'

Section 6 of the Bombay Hindu Divorce Act (XXII of 1947) reads:--

'In any suit under this Act.....the Court, on the application of the wife, may order the husband to pay her the expenses of the suit and monthly during the suit such sum not exceeding....."

There is no reason to think that the Legislature in making provision for maintenance pendente lite and expenses of the proceedings under the Hindu Marriage Act wished to depart from the principle that it should be open to the Court to make such provision in favour of a needy spouse whether such spouse figured as the initiator of the main proceedings or not. It is possible that circumstances compel one of the parties to a marriage to initiate a petition for dissolution of the marriage bond and circumstances may also exist which make it just and equitable that such a party should be enabled to obtain interim maintenance and expenses of the proceedings from the other party.

But it may occur with equal frequency that one of the parties to a marriage seeks the assistance of the Court to put an end to the relationship leaving the other party in a difficult situation in regard to that party's maintenance or in regard to meeting the expenses of the proceedings. It is even possible that if a provision for interim maintenance and payment of expenses of proceedings is not available, the party who unwarrantedly initiates proceedings may be placed at an unfair advantage leaving the other party without recourse to maintain himself or herself or to meet the expenses of the proceedings.

From all these circumstances it would appear that unless there is something compelling in the language of Section 24 of the Hindu Marriage Act which confines such relief only to the petitioner it should not be restricted to one party or the other and I find no warrant for such a construction in the wording of Section 24. The only departure clearly intended by the Legislature appears to be to place husband and wife on the same footing and make it possible to grant such a relief against the wife also. The word 'Respondent' appearing in Section 24, seems to me to indicate the party against whom the application is directed and not the party arrayed as the opponent to the main petition.

5. I, therefore, confirm the order of the learned District Judge and dismiss this Revision Petition. In the circumstances of the case, there will be no order as to the costs of this petition.

6. Revision dismissed.

