

C. Sannaiah Vs. Padma

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Court : Karnataka

Decided On : Oct-21-1981

Reported in : AIR1983Kant114; ILR1982KAR816

Judge : K.A. Swami, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 23-A and 25; ;[Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 1

Appeal No. : Civil Revn. Petn. Nos. 1530 and 1531 of 1981

Appellant : C. Sannaiah

Respondent : Padma

Advocate for Def. : B.N. Dayananda, Adv.

Advocate for Pet/Ap. : M. Dasappa, Adv.

Judgement :

ORDER

1. At the stage of admission the respondent is notified. Accordingly she has put in appearance through a counsel. Hence, these Civil Revision petitions are taken up for final hearing itself.

2. These two civil revision petitions are preferred by the petitioner in M. C. No. 12 of 1980. The Respondent in these civil revision petitions is also the respondent

therein. C. R.

P. No. 1530/81 is directed against the order rejecting I. A. IV filed by the petitioner for withdrawing the petition (M. C. 12/80) filed by him for restitution of conjugal rights under Section 9 of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as the Act). C. R. P. No. 1531/81 is preferred against the order passed on I. A. I granting interim maintenance of Rs.100/- per month and Rs. 250/- towards the expenses of the proceedings to the respondent. Hence, these two civil revision petitions are heard together and are decided by a common order.

3. The learned trial Judge has rejected I. A. IV on the grounds that the respondent - wife has made a counter - claim under Section 25 of the Act for permanent alimony to herself and also to the minor child (sic) that the relationship of the petitioner and the respondent as husband and wife is not disputed.

4. The contention of Sri Dasappa, learned counsel for the petitioner is that since the

petitioner wants to withdraw the petition, without reserving liberty to institute a fresh suit in respect of the same cause of action under Order 23, Rule 1 of the Civil Procedure Code (hereinafter referred to as the Code) the Court has no discretion, but to permit the petitioner to withdraw the suit. Of course, if there would not have been a provision like S. 23-A of the Act, there was no difficulty whatsoever in accepting this contention. Section 23-A of the Act specifically provides as follows : -

'23 - A. Relief for respondent in divorce and other proceedings . - In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she has presented a petition seeking such relief on that ground.'

5. From the aforesaid provision it is clear that in a proceeding filed under the Act for divorce or judicial separation or restitution of conjugal rights the respondent in

addition to opposing the claim made by the petitioner is entitled to make a counter - claim for any relief under the Act on the ground of petitioner's adultery, cruelty or desertion. Now the relief claimed by the respondent -wife is permanent alimony for herself and for the minor child. This claim falls under Section 25 of the Act. The contention of Sri. Dasappa is that the claim made in the application I. A. III for permanent alimony cannot be considered to be a counter - claim. According to the learned counsel the counter - claim must be for either divorce or judicial separation or for restitution of conjugal rights and not for any other relief. It is not possible to accept this contention because Section 23-A of the Act, clearly provides that in a proceeding for divorce judicial separation or restitution of conjugal rights, the respondent can make a counter - claim for any relief under the Act on the ground of the petitioner's adultery, cruelty or desertion. The contention raised in the application is that the petitioner - husband has treated her with cruelty. Therefore the claim made in I. A. 3 satisfies the requirement of Section 23-A of the Act. That being so, when there is a counter - claim and that counter - claim falls within the scope of Section 23-A read with Section 25 of the Act, in such a situation, if the petitioner is allowed to withdraw the main petition it will seriously affect the counter - claim made by the respondent because the counter - claim can be entertained only when there is a proceeding for divorce or judicial separation or restitution of conjugal rights. Therefore the trial Court cannot either be said to have acted illegally or exercised the discretion arbitrarily in refusing to permit the petitioner to withdraw the petition. The learned counsel for the petitioner has placed reliance on a decision of the Supreme Court reported in M/s. Hulas Rai v. Firm K. B. Bass & Co. : [1967]3SCR886 . That is a case which relates to Order 23, Rule 1 of the code and in that case the scope and effect of S. 23-A of the Act have not been considered. Therefore, I do not think the enunciation made in that decisions is of any help to the petitioner in this case.

6. As far as the order passed on I. A. I. is concerned the interim maintenance awarded is only Rs. 100/- per month and Rs. 250/- are awarded towards expenses of the proceedings. It is not disputed that the take home salary of the petitioner is more than Rs. 500/-. That being so what is awarded to the respondent is less than 1/5th of the salary of which the petitioner gets. Therefore, I do not think that there is any justification for this Court to interfere with the order of the trial Court

awarding interim maintenance of Rs. 100/- per month and Rs. 250/- towards the expenses of the proceeding.

7. For the reasons stated above these civil revision petitions fail and the same are dismissed.

8. Revised petition dismissed.

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