

Bharati Bhau Vs. Bhau

Bharati Bhau Vs. Bhau

SooperKanoon Citation : sooperkanoon.com/382399

Court : Karnataka

Decided On : Feb-25-1992

Reported in : II(1992)DMC23; ILR1992KAR1319

Judge : K.A. Swami and ;L. Sreenivasa Reddy, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13 and 23(2)

Appeal No. : M.F.A. No. 1518 of 1987

Appellant : Bharati Bhau

Respondent : Bhau

Advocate for Def. : B.V. Jigjinni, Adv.

Advocate for Pet/Ap. : K.I. Bhatta, Adv.

Disposition : Appeal allowed

Judgement :

K.A. Swami, J.

1. This Appeal by the respondent in the original proceeding is preferred against the Judgment and decree dated 12th December 1985 passed by the learned First Additional Civil Judge, Belgaum in M.C. No. 23/1982.

2. The respondent/petitioner filed that application under Section 13 of the Hindu Marriage Act (Hereinafter referred to as 'the Act') for a decree of divorce by dissolving the marriage between him and the appellant on the grounds that the marriage was performed according to Hindu customs on 21.5.1979 and thereafter the appellant lived with him for a couple of months and picked up quarrels with him and left his company on 12.5.1980 and thereafter she did not return inspite of the fact that the petitioner requested her to return to his residence. He has also further alleged that even though appellant lived with him for a period of two months she did not allow him to co-habit and did not allow consummation of the marriage to take place.

3. The respondent appeared and filed the written statement denying the petition allegations.

4. The Trial Court framed the following issues for consideration:

'1. Whether the respondent-wife, has withdrawn from the society of the petitioner-husband without any reasonable grounds?

2. Is petitioner-husband entitled for a decree of divorce?

3. What order?'

5. The Trial Court has recorded findings on Issues 1 and 2 in the affirmative and has accordingly passed a decree for divorce.

6. Before this appeal was taken up for hearing we directed the parties to be present so that we can make efforts of reconciliation. For this purpose, the appeal was adjourned more than once. But, none of the parties appeared before us. Therefore, reconciliation did not take place.

7. Before the Appeal is a taken up for hearing, today Sri Jigjinni, learned Counsel appearing for the respondent has filed a Memo dated 24.2.1992 seeking permission to retire from the case for want of instructions. He has also stated that he has sent a registered notice with acknowledgment. The postal acknowledgment is also enclosed to the Memo. However, we are not inclined to permit him to retire

as the Appeal can be argued on the basis of the records that have been received. Hence, the Memo is rejected.

8. The learned Counsel appearing on both sides are heard on the merits of the Appeal.

9. In the light of the contentions urged on both sides, the following points arise for consideration:

1) Whether the Trial Court was justified in law in proceeding with the trial of the case without ensuring that the interim alimony and court costs which were ordered to be paid by the order dated 25-1-1983 had been paid to the appellant/respondent?

2) Whether the findings recorded by the trial Court on points 1 and 2 raised by it are sustainable in law and on facts?

10. POINT NO. 1: The appellant/respondent appeared in the case before the trial Court and filed her written statement. Thereafter, she also filed an application for interim alimony on 3-12-1982 under Section 24 of the Act. In that application she sought for maintenance pendent elite at the rate of Rs. 200/- per month from 1-10-1982 and also Rs. 600/- to meet the expenses of the Court proceedings. The trial Court on hearing both the sides by a considered order passed on 25-1-1983 allowed the application and directed the respondent/ petitioner to pay the maintenance pendent elite at the rate of Rs. 50/-per month from the date of the application i.e., 3-12-1982 and further directed him to pay a lumpsum of Rs. 250/- towards the expenses of the litigation.

11. No doubt the respondent/petitioner challenged the aforesaid order before this Court in CRP 1382/1983. But, this Court did not interfere with the order of the trial Court except permitting the respondent/petitioner to pay the amount as ordered by the Trial Court in three instalments. The operative portion of the order passed by this Court on 15th April 1983 in C.R.P. 1382/1983 reads thus:

'The only grievance of Sri C.R. Patil, learned counsel for the petitioner, is that the failure of the petitioner to pay the above amount in one lumpsum would entail in

the dismissal of the main petition itself, as per the direction of the Lower Court. His request is that the petitioner may be permitted to pay the maintenance upto date and the litigation expenses of Rs. 250/- in three instalments so that he may proceed with the main proceedings. I find his request is reasonable and the petitioner herein is permitted to pay the arrears of maintenance and the litigation expenses in three equal instalments, the first of which shall be paid by the end of April, 1983, the second instalment by end of May 1983 and the third installment by the end of June 1983.

With the above modification in the order of the Lower Court, this revision petition is disposed of.'

Thus it is clear that this Court only permitted the respondent to pay the amount as ordered by the Trial Court on 25.1.1983 in three instalments. The first instalment was to be paid by the end of April, 1983, the second instalment by the end of May, 1983 and the third instalment by the end of June 1983.

12. The records reveal that the respondent did not comply with the aforesaid directions in as much as he did not deposit the entire amount by the end of June 1983. He deposited a sum of Rs. 200/- on 19.8.1983, another sum of Rs. 150/- on 16.11,1983 and a further sum of Rs. 1,300/- on 21.11.1985, whereas, the Trial Court proceeded with the trial on 31.8.1985 inasmuch as on that date the Trial Court recorded the evidence of P.W.1 and again on 25.9.1985 it recorded the evidence of P.W.2. Then ultimately, it passed the order on 12.12.1985. Thus, it is clear that the trial Court proceeded with the trial without ensuring that the amount as ordered on 25.1.1983 on the application filed by the appellant had been paid to her. The order dated 25.1.1983 specifically made it clear that payment of these amounts shall be condition precedent for the further prosecution of the main proceeding. This Court did not set aside that direction. It only permitted the respondent/petitioner to deposit the amount in three instalments. The respondent/petitioner did not comply with those directions also.

13. The very purpose of directing payment of interim maintenance and court costs to a party to the proceeding under the Act in a petition for divorce is to enable the party to participate in the proceeding. Therefore, such a condition was imposed

while passing an order on 25.1.1983. That being so, the trial Court was required to satisfy itself before it proceeded with the trial of the case as to whether the amount ordered on 25.1.1983 had been paid to the appellant or not. On the contrary, the Trial Court after recording the evidence and hearing the arguments posted the case on 9.10.1985 to find out about the payment of interim maintenance. Thus, it adopted a reverse procedure thereby it made it impossible for the appellant to appear before the Trial Court and participate in the proceedings. Hence, Point No. 1 is answered in the negative.

14. POINT NO. 2:- As the Court costs and interim maintenance were not paid to the appellant, she could not appear before the Court and participate in the proceeding. The evidence of P.Ws. 1 and 2 recorded by the Trial Court has not been subjected to cross examination. For this situation the Trial Court has to be blamed for not ensuring that the amount ordered on 25-1-1983 had been paid to the appellant well within time. Therefore, the finding recorded by the trial Court on points - 1 and 2 on the basis of the evidence recorded in the absence of the appellant cannot be held to be valid in as much as it is based on the evidence which has been recorded in the absence of the appellant for which she cannot be blamed. The absence of the appellant was due to the fact that she was not paid the interim maintenance, and also the Court costs and without such payment she was not in a position to attend the Court. Hence, the finding recorded by the Trial Court on points - 1 and 2 cannot be held to be valid. Point No. 2 is answered accordingly.

15. For the reasons stated above, the Appeal is entitled to succeed. It is accordingly allowed. The Judgment and decree of the Trial Court are set aside. The case is remanded to the Trial Court with a direction to try the case afresh and in accordance with law and in the light of the observation made in this Order and decide it within six months from 30-3-1992.

16. To avoid further delay in service of notice the parties are directed to appear before the trial Court on 30th of March 1992. On the date fixed for appearance i.e., on 30th March 1992, the respondent shall deposit all the arrears of interim maintenance upto the date of deposit as ordered by the Trial Court on 25-1-1983

with Court costs. The Trial Court shall also ensure that the same is paid to the appellant.

17. Before parting with the case we must observe that there is a great responsibility cast on the Court trying the Matrimonial Cases. Marriage among Hindus is not a contract. It is sacrosanct. It is not easy to bring into existence marital ties. Similarly it is more difficult to break it. When once the marital relationship is annulled it cannot be restored. Therefore, before annulling the marital relationship, the Court has to take every precaution to ensure just and proper trial of the case and shall also make efforts of reconciliation to see that the parties come together. We find from the Judgment, of the Trial Court that it has taken least precaution to ensure this. The order sheet does not disclose that at any time the case was posted for reconciliation. In fact under Sub-section (2) of Section 23 of the Act, it is incumbent upon the Court to make endeavour to bring about reconciliation between the parties. No such effort appears to have been made by the Trial Court as the case was not posted at any time for reconciliation as it is revealed from the order sheet.

18. In the facts and circumstances of the case, there will be no order as to costs.

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