

A. Dasa Kumar Vs. Smt. A. Sunanda

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Court : Andhra Pradesh

Decided On : Nov-09-2000

Reported in : 2001(1)ALT447; II(2001)DMC229

Judge : S.R. Nayak, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 2 and 24

Appeal No. : C.R.P. No. 993 of 2000

Appellant : A. Dasa Kumar

Respondent : Smt. A. Sunanda

Advocate for Def. : R. Ananda Mohan Rao, Adv.

Advocate for Pet/Ap. : P.V. Vidyasagar, Adv.

Judgement :

ORDER

S.R. Nayak, J.

1. Heard. Perused the order under revision.

2. By the order under revision passed by the Principal Senior Civil Judge, Chittoor, LA. No. 1 of 1999 filed by the respondent/wife under Section 24 of the [Hindu Marriage Act, 1955](#) (for short 'the Act') for interim maintenance pending disposal of

the O.P. and to pay a sum of Rs. 5,000/- towards litigation expenses is partly allowed and the petitioner/husband is directed to pay a sum of Rs. 1,500/- per month to the respondent /wife for maintaining herself and her children from the date of petition, and to pay a sum of Rs. 2,000/- to the respondent/wife towards litigation expenses. O.P. No. 63 of 1994 was filed by the petitioner/husband, wherein he prayed for decree of divorce against the respondent/wife on the ground of cruelty. The learned Judge by his judgment and order dated 21.12.1999 dismissed the O.P. on the ground of non-maintainability after having come to the conclusion that the petitioner/husband is a Christian and he married the respondent/wife in a Church and, therefore, the Hindu Marriage Act is not applicable to the parties in view of the provisions of Section 2(i)(a) of the Act. It is stated that the said order made by the learned Judge in O.P. No. 63 of 1994 is not assailed by the petitioner/ husband, and it has become final. The impugned order is also made on the same day i.e., on 21.12.1999. The contention of the learned Counsel for the petitioner is that the impugned order is ex facie one without jurisdiction on the very touchstone of the finding recorded by the learned Judge himself in the O.P. that Hindu Marriage Act is not attracted by force of provisions of Section 2(i)(a) of the Act. It is true that Section 24 of the Act enables the Court to grant interim maintenance if 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. But it is trite to state that this power could be exercised by the Court only in a proceeding maintainable under the Act. This legislative intendment is writ large in Section 24 of the Act itself. Section 24 begins with the words 'Where in any proceeding under this Act'. The learned Judge having held that O.P. which is undoubtedly a proceeding filed by the husband under the provisions of the Act is not maintainable, ex facie committed an apparent illegality in ordering the application even if one goes by his own finding.

3. On that short ground, C.R.P. is allowed and the order under revision is set aside. I.A. No. 1 of 1999 is dismissed. No costs. However, this order shall not come in the way of the respondent/wife seeking maintenance in accordance with appropriate law applicable to the parties before, the appropriate Court, or the Forum.

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