

Dilip Kumar Vs. Special Judge, Barabanki and Others

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Court : Allahabad

Decided On : Jul-16-1991

Reported in : AIR1992All167

Judge : S.N. Sahay, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 4, 9, 94 and 151 - Order 39; [Specific Relief Act, 1963](#) - Sections 34; [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 18; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125; [Hindu Marriage Act, 1955](#) - Sections 24

Appeal No. : Writ Petn. No. 2475 of 1990

Appellant : Dilip Kumar

Respondent : Special Judge, Barabanki and Others

Advocate for Def. : Chief Standing Counsel, B. Singh and ;Umesh Chandra, Adv.

Advocate for Pet/Ap. : H.S. Sahai, Adv.

Judgement :

ORDER

1. This writ petition is directed against the concurrent orders of the Courts below directing the petitioner to pay maintenance allowance to respondent No. 3 during

the pendency of the suit.

2. The petitioner Dilip Kumar has instituted a suit for declaration against Smt. Vimla Devi respondent No. 3 in the Court of Civil Judge Barabanki. The relief which has been claimed by the petitioner in the suit is that it may be declared that there is no relationship of husband and wife between the parties with effect from July 29, 1987. The suit has been brought on the allegations that the marriage between the parties has been dissolved by mutual agreement according to custom. This allegation is denied by respondent No. 3. During the pendency of the suit respondent No. 3 moved an application dated November 16, 1988 that the petitioner may be directed to pay her a sum of Rs. 1,000/- as expenses for litigation and Rs.500/- per month as maintenance pendente lite. The petitioner filed objection against the said application. The learned Civil Judge partly allowed the application of respondent No. 3 by order dated July 17, 1989. He rejected the prayer for expenses but he directed payment of a sum of Rs. 200/- per month as maintenance during the pendency of the suit. The learned Civil Judge took the view that since the suit involves the determination of marital rights the Court has jurisdiction to grant pendente lite maintenance in exercise of its inherent powers under Section 151 CPC. The petitioner filed a revision against the aforesaid order. The learned Civil Judge, Bara-banki affirmed the above view and dismissed the revision by order dated January 25, 1990. This writ petition has been filed by the petitioner for quashing the orders dated July 17, 1989 and January 25, 1990 which are respectively contained in Annexures 4 and 5 to the writ petition.

3. The question arising for determination in this writ petition is whether in a suit for declaration that the relationship of husband and wife does not exist between the parties, the Court has jurisdiction under Section 151 CPC to pass an interim order directing payment of maintenance during the pendency of the suit. At the very outset, it may be observed that my attention has not been drawn to any case in which this point has been specifically decided by this Court or the Supreme Court. The judgments of the Courts below contain a reference to certain cases which were cited by the counsel for the parties in support of their respective contentions. Among those cases in *Sivankutty v. S. Komalakumari*, AIR 1989 Kerala 124 and *Khandal Penthi v. Hulash Dei*, AIR 1989 Orissa 137 (FB) it has been held that an

order for interim maintenance may be passed in favour of the wife in a suit for maintenance brought by her against the husband. These cases are not very apposite because the matter was considered in relation to a suit for maintenance which is different in nature from a suit for declaration.

4. The right of a Hindu wife to claim maintenance from her husband is a statutory right which owes its existence to Section 18 [Hindu Adoptions and Maintenance Act, 1956](#). This right was also available to her under the old Hindu Law. But the rules of the old Hindu Law ceased to have effect by virtue of Section 4 of the said Act. The right to maintenance is, therefore, a statutory right now. There is no provision in the said Act the enforcement of the said right and so the right is indisputably enforceable by filing a suit in the Civil Court under Section 9 CPC. Neither the said Act nor the CPC contains any provision for the grant of interim maintenance during the pendency of the suit; there is no prohibition either. It is, however, recognised that the power to grant interim maintenance is in the nature of an implied power, as held in *Tarini Gupta Chowdhury v. Gouri Gupta Chowdhury*, AIR 1968 Cal 567 and is implicit, ancillary and necessary corollary to the power to entertain the suit and pass final orders as held in *Indar Mal v. Babu Lal*, AIR 1977 Raj 160 and flows from the very status of the parties as contemplated by Section 18 of the Act. In view of these considerations, it has been held that the absence of specific provision for grant of interim maintenance is immaterial and in the Orissa case cited above it has been decided that mere denial of marital relationship by the defendant would not disentitle the plaintiff and the Court would have jurisdiction under Section 151 CPC to grant interim maintenance in such suits. In the Kerala case cited above the same view has been taken and the plea has been upheld that if there is a right and if that right is invoked in a suit, it flows that pending determination of the suit the Court could make interlocutory orders in aid of the suit.

5. Section 125 of the Code of Criminal Procedure also secures to a Hindu woman the right to claim maintenance from her husband during subsistence of the marriage and even after dissolution of the marriage subject to certain conditions. That section provides a summary remedy to the woman and is intended to fulfil a social purpose. It is the mode of preventing vagrancy or at least preventing its

consequences and the object to compel a man to perform the moral obligation which he owes to the society in respect of his wife and children. In *Savitri v. Govind Singh Rawat*, (1985) 4 SCC 337 : AIR 1986 SC 984 it has been held that the Court has jurisdiction to grant interim maintenance also and in support of this view the doctrine of implied power has been invoked. It has been also observed in that case that the Civil Courts have inherent power to grant maintenance pending disposal of the suit for maintenance. This observation, although being in the nature of obiter dictum, declares the law and is binding on all Courts and shuts out the search for any other case on the point.

6. The law relating to inherent power of the court, which is referred to in Section 151 CPC, is well settled. The inherent powers of the Court are in addition to the powers specifically conferred on the Courts by the Code. They are complementary to those powers and the Court is free to exercise them for the purposes mentioned in Section 151 of the Code. The power is inherent in the Court by virtue of its duty to do justice between the parties before it. Every Court must be deemed to possess as inherent in its very constitution all such powers as are necessary to render justice to the cause. However, there are certain well recognised limitations upon the exercise of that power, as held in *Padam Sen v. State of Uttar Pradesh* AIR 1961 SC 218 and *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 SC 527. The inherent powers are not powers over the substantive rights which any litigant possesses. Such power is not to be exercised when it is in conflict with what has been expressly provided in the Code or is against the intention of the legislature. The inherent power is to be exercised in exceptional circumstances for which the Code lays down no procedure. And the power cannot be exercised in an arbitrary or capricious manner, but its exercise is dictated by sound judicial discretion. In the case of *Padam Sen* it has been laid down that specific powers have to be conferred on the Courts for passing such orders which would affect the substantive rights of a party and the inherent power is to be exercised with respect to matters of procedure.

7. The order for payment of interim maintenance is in the nature of a temporary mandatory injunction. It has been held in the case of *Manohar Lal*, (AIR 1962 SC 527) that a temporary injunction may be issued by the Court in the exercise of its

inherent jurisdiction under Section 151 CPC apart from the provisions of Section 94 and Order 39 of the Code. But no party has a right to insist on the Courts exercising that inherent jurisdiction and the Court exercises its inherent jurisdiction only if considers it absolutely necessary for the ends of justice to do so. The jurisdiction to issue temporary injunction is also a limited one. It has been held in *Cotton Corporation of India Ltd. v. United Industrial Bank Ltd.* (1983) 4 SCC625 : (AIR 1983 SC 1272) that it is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting the final relief the Court is not to face the situation that the reliefs became infructuous and that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But the power to grant temporary injunction has been conferred in aid of or as ancillary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly, if ever be granted. In this connection an earlier case reported in *State of Orissa v. Madan Gopal Rungta*, AIR 1952 SC 12 was also referred.

8. Turning to the present writ petition it will appear that the petitioner has filed a suit for declaration under Section 34 Specific Relief Act read with Section 9 CPC. It is not a proceeding under the Hindu Marriage Act 1955 and Section 24 thereof which provides for grant of maintenance pendente lite or expenses of litigation admittedly does not apply. The relief claimed by the petitioner is with regard to the present status of the parties and although it involves determination of question whether or not dissolution of marriage has taken place between them according to custom, the matter relating to the payment of maintenance by the petitioner to respondent No. 3 does not arise. The payment of interim maintenance in exercise of the implied powers or in aid of suit or as ancillary to the main relief does not arise and is not related to procedure as to the determination of rights of the parties which are in issue in the suit. It may be argued that the burden lies on the petitioner to prove that the marriage between the parties has been dissolved and if the petitioner fails to discharge that burden, and it is held on final adjudication of the suit that the marriage subsists, he would be liable to pay maintenance to respondent No. 3 under S. 18 of the aforesaid Maintenance Act by reason of her status as wife. But that would be an indirect effect of the failure of the petitioner in

the suit brought by him and would involve an adjudication of different issues all together, unconnected with issues in the suit, in respect of the conditions for grant or refusal of maintenance under S. 18 of the said Act. The Court has inherent power to pass an order for the ends of justice and for preventing abuse of process of the Court in relation to the suit which is before it and not generally, on a consideration of the circumstances of the parties, for doing justice to them for the enforcement of their supposed rights and liabilities. Therefore, it appears to me on a consideration of the principles as discussed above that the Court has no inherent power under S. 151 C.P.C. to pass an order for payment of interim maintenance in a declaratory suit. It follows from this conclusion that the impugned orders are without jurisdiction and so null and void.

9. For the above reasons the writ petition is allowed and the impugned orders dated July 17, 1989 and January 25, 1990 contained in Annexures-4 and 5 to the writ petition are hereby quashed. No orders as to costs.

10. Petition allowed.