

C.B. Joshi Vs. Smt. Ganga Devi

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Court : Allahabad

Decided On : Jul-27-1979

Reported in : AIR1980All130

Judge : Deoki Nandan, J.

Acts : Hindu Marriage and Divorce Rules, 1956 - Rule 17; [Hindu Marriage Act, 1955](#) - Sections 24

Appeal No. : Civil Revn. No. 260 of 1979

Appellant : C.B. Joshi

Respondent : Smt. Ganga Devi

Advocate for Def. : Rajesh Tandon, Adv.

Advocate for Pet/Ap. : L.M. Pant, Adv.

Judgement :

ORDER

Deoki Nandan, J.

1. This is an application for revision of an order dated 28th October, 1976 of the court of the District Judge, Nainital directing the applicant-husband to pay Rs. 600/- for the expenses of the proceedings and Rs. 300/- per month as

maintenance pendente lite from 12th September, 1978 (sic) when the application for the same was made, under Section 24 of the Hindu Marriage Act. The applicant-husband had filed the petition for divorce under Section 13 of the Hindu Marriage Act, in which the application for maintenance pendente lite and expenses of the proceedings was made by the wife under Section 24 of the Act.

2. Mr. L. M. Pant, learned counsel for the applicant-husband, has raised the point that no affidavit was filed in support of the application nor did the application contain the necessary particulars as prescribed by Rule 17 of the Hindu Marriage and Divorce Rules, 1956. It appears from a reading of the order that while the wife examined her father as a witness, the husband filed an affidavit but led no oral evidence in the proceedings under Section 24 of the Act. It does not appear from the judgment of the learned District Judge that the said point was raised before him. If the husband had raised the point before the learned District Judge, the wife would have had an opportunity to remove the alleged defect in the application. Even so, learned counsel for the husband-applicant in this court urged that the order of the learned District Judge was without jurisdiction inasmuch as the requirements of Rule 17 of the Hindu Marriage and Divorce Rules, 1956 are mandatory. This is however not a case where the order of maintenance pendente lite and expenses of the proceedings is based on no evidence. The wife did examine her father as a witness who was cross-examined by the husband. The husband also filed an affidavit. Leading of oral evidence by the wife was better than filing an affidavit. The learned District Judge has on a consideration of the evidence led before him come to the conclusion that the wife had no independent income sufficient to support her and for meeting the necessary expenses of the proceedings, and in consideration of the fact that the husband's income was admitted to be at least Rs. 1,300/- per month, he passed the impugned order directing the husband to pay Rupees 300/- per month as maintenance pendente lite and Rs. 600/- as expenses of the proceedings. It is not possible to say in these circumstances, that the non-compliance of Rule 17 that has been alleged in this case rendered the order to be one without jurisdiction. The object of the rule is to give at the time of filing of the application full notice of the case of the applicant for maintenance and expenses to the opposite party and to save the time of the court by curtailing oral evidence. The husband having had full notice of the wife's case

for maintenance and expenses, when she led her oral evidence and even before that when she filed her application, and the husband having joined issue by filing an affidavit without raising any objection to the procedure adopted, it cannot be said that he was in any manner prejudiced by the technically strict non-compliance of Rule 17. Even so, if the objection had been taken before the District Judge the only result would have been to give the wife an opportunity to remove the defect in the application. That does not affect the substance of the matter and it is not possible to hold in the circumstances of the present case that the order of the learned District Judge suffers from any error of jurisdiction or was in any sense without jurisdiction. Another point raised by the learned counsel for the husband-applicant in this court was that the wife's father had sufficient means to support her and the father's capacity to support her should have been taken into account in deciding whether she had sufficient means to support herself. It is not the law that an indigent wife when turned out of the house by the husband must starve on the streets. In such a situation she could certainly go and live with her father but that does not mean that she cannot claim maintenance against the husband. Moreover the language of Section 24 of the Hindu Marriage Act is clear. It speaks of the 'wife having no independent income sufficient for her support.' The income has to be independent and must be sufficient for her support. This language shows that the income must be the wife's own. Learned counsel relied on certain observations made by A. Banerji, J. in *Smt. Preeti Archana Sharma v. Ravind Kr. Sharma* (AIR 1979 All 29 at p. 31) which run as under :--

'If the court comes to the conclusion that even if she has no income but she has the support of her parents or such others, the court may award a nominal monthly amount towards maintenance and a sufficient sum for meeting the expenses for the legal proceedings. As seen above, these are relative terms and would depend on the facts and circumstances of each case,'

Be that as it may, it is not necessary for me to decide the question finally one way or the other for as observed by A. Banerji, J. himself, these are relative terms and would depend on the facts and circumstances of each case. Moreover, the learned District Judge in exercise of his judicial discretion in the matter fixed the maintenance at Rs. 300/- per month on the clear finding that the wife had no

independent income of her own sufficient for her support or the necessary expenses of the proceedings. It is not possible to interfere with that finding or the quantum of the maintenance and the expenses of the proceedings fixed by the learned District Judge, in the exercise of revisional jurisdiction by this court.

3. The revision fails and is dismissed with costs.

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