

Dinesh Kumar Vs. Smt. Santosh Devi

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Court : Allahabad

Decided On : Oct-06-2006

Reported in : AIR2007All30

Judge : Umeshwar Pandey, J.

Appellant : Dinesh Kumar

Respondent : Smt. Santosh Devi

Disposition : Appeal dismissed

Judgement :

ORDER

Umeshwar Pandey, J.

1. Heard learned Counsel for the parties.
2. This appeal arises out of the judgment and order dated 5-8-2006 whereby the decree of divorce passed by the trial Court in favour of the appellant has been set aside and the case has been remanded for further hearing and disposal.
3. Learned Counsel for the appellant has tried to impress upon the fact that the respondent defendant in the divorce petition did not file her written statement to contest it and as such, the suit had to be decreed ex parte under Order 8, Rule 10, CPC. The respondent was obliged to file written statement after she had put in

appearance in the case but since she failed to do the same, the trial Court has very rightly pronounced the ex parte judgment in the case and decreed the suit as such. Learned Counsel has further submitted that there was no Justification on the part of the lower appellate Court to have set aside that judgment simply because there was non-compliance on the part of the appellant, of the directions given under Section 24 of Hindu Marriage Act.

4. A perusal of the impugned judgment shows that the order under Section 24 of Hindu Marriage Act was passed by the trial Court on 24-12-2004 directing the appellant to deposit the litigation expenses amounting to Rs. 2,000/- and pay the maintenance of Rs. 5,000/- per month to the respondent-wife but admittedly that order had not been complied with. In the revision filed against that order no stay order was obtained. Therefore, there has been obvious non-compliance of the said order throughout. In case, such litigation expenses are not paid to the wife, the Court cannot compel her to file the written statement or to pronounce ex parte judgment under Order 8, Rule 10, CPC in the suit. On the contrary what was legally required for the trial Court was that it should have dismissed the divorce petition itself for non-compliance of its order dated 24-12-2004. The defendant-wife is not supposed to be in a position to file the written statement and contest the suit in such circumstances when the litigation expenses, as directed by the Court, had not been paid to her by the petitioner-husband. In such situation, if the Court proceeds to pronounce ex parte judgment under Order 8, Rule 10, CPC against the wife, it would be nothing but doing mockery with the procedure provided for that purpose. In this view of the matter alone the lower appellate Court has interfered with the order of the trial Court and has validly set aside the judgment and decree of the trial Court. I do not find any infirmity in the order passed by the Court below as to occasion interference against the same by this Court.

5. The appeal is without substance and is hereby dismissed.