

Ashokkumar Vs. Sangitabai

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Court : Madhya Pradesh

Decided On : Oct-06-1987

Reported in : AIR1988MP59; 1988MPLJ344

Judge : V.D. Gyani, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 26; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : C.R. No. 205 of 1987

Appellant : Ashokkumar

Respondent : Sangitabai

Advocate for Def. : Garg, Adv.

Advocate for Pet/Ap. : K.L. Goyal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.D. Gyani, J.

1. Heard Shri Goyal, learn(sic) counsel for the petitioner and Shri Ga(sic) learned Counsel, who appears on show cau(sic) notice of I.A. No. 2332/87.

2. The question which arises (sic) consideration in this revision petition (sic) whether an interlocutory order made in (sic) proceeding under Section 9 of the Hindu Marriage(sic) Act, can be executed on withdrawal a(sic) termination of the proceedings. The petitioner(sic) filed a suit under Section 9 of the Hindu Marria(sic) Act for restitution of conjugal-rights. In (sic) course of proceedings, an application un(sic) Section 26 of the Hindu Marriage Act, for entrust(sic) the custody of her son, Pawankumar, ag(sic) about 4 years, was made. By order dt. 8-5-1(sic) the trial Court directed that custody(sic)(sic)awankumar be restored to the respondent, (sic)angita, mother of the child. After this order (sic)as made on 18-6-87, the petitioner proved In application under Order 23, C.P.C. for (sic)withdrawal of the suit. Trial Court permitted (sic)he withdrawal on 14-7-87.

3. On 22-7-87, the respondent made an (sic)application for execution of the interim order (sic) custody of Pawankumar, her son, passed (sic) 8-5-87. It was registered as execution case (sic). 3/87. Trial Court on 25-7-87, passed the (sic)pugned order issuing a warrant against the (sic)petitioner. Shri Goyal, learned counsel (sic)pearing for the petitioner, contended that (sic)terim order for custody could not be (sic)forced after withdrawal of the case. He (sic)so pointed out that even according to the (sic)ppndent, the custody prayed for, was only (sic)terim till the decision of.the suit and the (sic)lit having been withdrawn, the trial Court (sic)ould not have passed the impugned order, (sic) Garg, learned Counsel appearing for the spondent, on the other hand, submitted (sic)at interlocutory orders made in such (sic) pceedings can be executed even after their (sic)mination in withdrawal.

4. Reading Section 26 of the Hindu Marriage (sic)ct, (hereinafter referred to as 'the Act') it (sic)ves ample powers to the Court to pass (sic)terim orders from time to time and even to (sic)ake such provision in thedecree as it deems (sic)st and proper, with respect to the custody, (sic)aintenance and education of the minor (sic)lildren. The Court has power to alter the (sic)cree and make such orders with respect to (sic)stody, maintenance, and education of the lildren. Although, the proceedings were (sic)nding' even after passing of the decree, the (sic)urt has power to revoke or suspend any (sic)der previously made.

5. Needless to add that in all (sic) circumstances, the paramount consideration (sic) as it ought to be the welfare of the child, it (sic) could not be proper nor desirable to view (sic) is essentially humane matter in the iron (sic) me work of law. The wording of Section 26 of (sic) the Hindu Marriage Act is so widely worded (sic) to take care of such a situation as arising in (sic) is case.

6. Section 115, C.P.C, has been invoked by the petitioner. He must, therefore, show that if the impugned order is allowed to stand, how would it occasion failure of justice or cause irreparable injury to the petitioner. In absence of any such allegation, this revision petition cannot stand. The Madras High Court in P. P. Krishnan v. 3. Thailambal (M.L.J. Vol. 1, 1969, p. 328) has held that the husband against whom an order Under Section 24 of the Hindu Marriage Act has been made for payment of interim maintenance and necessary expenses cannot be allowed to wipe his liability after passing of the order by choosing to withdraw the petition. Such an order Under Section 24 of the Hindu Marriage Act does not become inexecutable, but as stated above, Section 26 of the Act is wide in its import and does not admit of a narrow construction so as to render inexecutable the interim orders made during the proceeding or the proceeding itself, being withdrawn or otherwise, came to an end. Shri Goyal, learned counsel appearing for the petitioner submitted that prayer for custody of Pawankumar was intended for interim period during pendency of the petition and not beyond that. As the Court has power to modify any interim order made under Section 26 of the Act, even after passing of the final order the fact that custody as prayed for was only up to the pendency of the petition, is of no consequence. This petition fails and is accordingly dismissed.