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Dharmendra Kumar Vs. Smt. Pushpa Devi

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Court : Madhya Pradesh

Decided On : Nov-26-1994

Reported in : AIR1995MP210; II(1995)DMC461; 1995(0)MPLJ555

Judge : U.L. Bhat, C.J. and ;Tejshankar, J.

Acts : Hindu Marriage Act, 1955 - Sections 23(2), 24, 25, 26 and 27

Appeal No. : Cr. Revn. No. 189 of 1994

Appellant : Dharmendra Kumar

Respondent : Smt. Pushpa Devi

Advocate for Def. : R.N. Sharma, Adv.

Advocate for Pet/Ap. : B.D. Jain, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

1. Revision petitioner is the husband of the respondent. They are governed by the provisions of the Hindu Marriage Act, 1955 (hereinafter called 'the Act' for short). Revision petitioner filed an application in the lower Court under Section 13 of the Act for dissolution of marriage on the ground of cruelty and desertion. Respondent herein appeared in Court in response to notice and filed an application under

Section 24 of the Act seeking interim maintenance and provision for expenses. The application was opposedbut was allowed directing the revision petitioner to pay interim maintenance at the rate of Rs. 250/- per month and to pay Rs. 500/- to enable the wife to meet the expenses of litigation. This order is now being challenged. We have heard learned counsel on admission.

2. Learned counsel for the revision petitioner submitted that he is not challenging the quantum of the award of the right of wife to make such a claim and he is confining his arguments only to one aspect, namely that since the lower Court did not make any effort for reconciliation under Section 23(2) of the Act, it had no jurisdiction to pass an order under Section 24. Learned counsel relied on a decision of a learned single Judge of this Court in Jagdish Chandra Kulshrestha v. Pramod Kumari (1993 (1) MPJR 455) holding that the requirement in Section 23(2) is mandatory and no relief, interim or final, can be granted by the Court without endeavouring reconciliation between the spouses.

3. In Jagdishchandra Kulshrestha's case, the learned Judge sought to understand the provisions of Section 23(2) of the Act keeping in view the Hindu point of view of marriage being indissolvable sacrament. The learned Judge took the view that there is no ambiguity in the provision which is mandatory and if this mandatory provision requiring endeavour to be made to bring about reconciliation is not followed, order granting relief under Section 24 is without jurisdiction and is liable to be set aside. The learned Judge also understood the words 'before the Court proceeds to grant any relief under the Act' occurring in Section 23(2) as taking in relief under Section 24 also. The attention of the learned Judge was not drawn to the observation of Sohani, J. (as he then was) in Gopal v. Dhapubai (C.R. No. 348 of 1983) reported in 1986 (2) MPWN (N) 76 to the effect that 'S. 24 of the Act is not controlled by Section 23 of the Act.'

4. The Act, as indicated in the Preamble, is intended to amend and codify the law relating to marriage among Hindus. Some of the provisions of the Act have altered and modified several aspects of Hindu Law relating to marriage. Section 4 confers overriding effect to the provisions of the Act overany rule of Hindu Law or custom or usage. The Act confers right to seek restitution of conjugal rights, judicial

separation, declaration of nullity of marriage, and dissolution of marriage, rights which are almost novel in character and unknown to pristine Hindu Law. The Act was subsequently amended to provide even for divorce by mutual consent. At the same time, the legislature took care to discourage spouses from rushing to Court and to encourage reconciliation to preserve the marital relationship. Section 14 bars entertainment by Court of any petition for dissolution of marriage by a decree of divorce unless the petition is presented after the lapse of a particular period after the marriage. Subsection (1) of Section 23 prescribes conditions for grant of decree. Sub-section (2) of Section 23 enjoins the Court to endeavour to bring about reconciliation.

5. Sub-section (2) of Section 23 reads as under:

'Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.'

This salutory provision has been introduced to preserve the marriage for the benefit of the spouses, the offspring, if any, the family and the society. The importance of the duty cast on the Court, to endeavour to bring about reconciliation between spouses cannot be over-emphasised.

6. Section 24 provides for maintenance pendente lite and expenses of proceedings. Where it appears 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, the Court may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceedings and monthly maintenance having regard to the income of both parties. The interim arrangement contemplated under Section 24 is to be replaced bya permanent arrangement under Section 25 of the Act. Section 26 enables the Court to issue directions regarding custody of children and Section 27 enables the Court to issue directions regarding disposal of property.

7. The scheme and the provisions of the Act would indicate that the dominant legislative purpose underlying the Act is to bring about certain desirable reforms in the Hindu Law relating to marriage. The provisions reflect the concern of the legislature to promote and preserve the institution of marriage and at the same time liberalise the scope for securing matrimonial reliefs. The legislature while providing for matrimonial reliefs, has taken care to ensure that the marital tie is not impulsively or indiscriminately severed. The matrimonial Court has been invested with manifold powers, duties and functions which are necessary to effectuate the legislative purpose. The legislature has also shown concern to ensure that the forensic fight should be between equals since any fight between unequals is likely to lead to a distorted or unfair verdict. This is sought to be achieved by Section 24 providing for maintenance pendente lite and expenses of litigation.

8. The order which the Court passes under Section 24 is not an order granting relief in the matrimonial cause. It is an order incidental to the matrimonial cause. The order for permanent alimony and maintenance under Section 25, order for custody under Section 26, and for disposal under Section 27 are also not substantive orders in the matrimonial cause; they are incidental orders in the cause.

9. The right of a party which is effectuated by the Court under Section 24 cannot, except for serious and congent reasons, be allowed to be frustrated. A proceeding under Section 24 is of a summary nature and the scope of the enquiry is limited. The end sought to be achieved is the removal of the disability of the party without sufficient income. The purpose of Section 24 will be frustrated by any unreasonable postponement of the decision thereunder. The purpose can be attempted to be frustrated by the opposite party dragging on the reconciliation attempt. If the spouses are unequal in the economic sense, the inequality may itselfstand in the way of reconciliation. Reconciliation Shall also be based on mutuality, mutual respect and dignity. The party who has no adequate means may feel compelled to agree to a reconciliation which may not be based on mutual respect and dignity. The legislative purpose is not to compel the spouses to come together at any cost. Even to achieve such reconciliation, certain degree of balance between the parties at least in the economic sense is necessary.

10. Section 23(2) makes it the duty of the Court in the first instance to make every endeavour to bring about reconciliation before proceeding to grant 'any relief under this Act'. This duty is subject to the qualification 'where it is possible so to do consistently with the nature and circumstances of the case'. The words 'relief under this Act' can be understood only in the light of the scheme and purpose of the Act. The reliefs under the Act, of restitution of conjugal rights, judicial separation, and divorce are substantive reliefs which can be secured by the aggrieved spouse who approaches the Court or by respondent under Section 23A. Relief under Section 24 is an interim relief, incidental to the cause and intended only to enable the spouse in a disadvantageous position to survive during the duration of litigation and meet expenses of litigation. Section 23(2) and Section 24 have to be read harmoniously. So read, Section 24 cannot be regarded as controlled by Section 23(2) and Section 23(2) cannot be regarded as applying to the interim relief under Section 24. This is not to say that the Court is disabled from attempting reconciliation before passing an order under Section 24 if it appears to the Court that the position of the parties is such that it would be appropriate to attempt reconciliation at that stage. It is well to remember that even before these provisions were incorporated, in all matrimonial cases, the Courts as a matter of practice were making earnest efforts to bring the parties together. Section 23(2) is only a statutory adoption of this worthy practice. Where one of the spouses has no means to maintain herself or himself or has no wherewithal to conduct the case, it would be unfair to attempt reconciliation without securing interim succour to her or him underSection 24. In such a case, reconciliation effort cannot be made consistently with the nature and circumstances of the case. These aspects which are not considered in Jagdishchandra Kulshrestha's case appear to be strong and cogent enough to hold that interim relief under Section 24 is not barred by Section 23(2) of the Act.

11. It is also not possible to understand the requirement of Section 23(2) to be mandatory in the sense that non-conformity with the requirement would render the proceedings or the order illegal or without jurisdiction. The requirement of Section 23(2) is not absolute. It is only in a case where it is possible to do so consistently with the nature and circumstances of the case that the Court is required to endeavour to bring about reconciliation. In such cases, power and duty are no

doubt vested in the Court. The language of Section 23(2) confers discretion on the Court to determine which are the cases in which reconciliation should be allowed, that is, consistently with the nature and circumstances of the case. This is not to say that we do not want to underline the imperative necessity for every Court to make an endeavour in appropriate cases. The duty of the Court has to be discharged and the power has to be exercised consistently with the nature and circumstances of the case. The provision is not absolute in terms. It does not provide for the consequences of non-adherence to the provision. Even where the Court ultimately allows a petition for restitution of conjugal rights or judicial separation or divorce and the same is challenged in appellate Court, it is open to the appellate Court also to exercise the power under Section 23(2). The failure to observe the requirement of Section 23(2) is an irregularity, albeit of a serious nature; it cannot be said to be an illegality; an order passed without following the requirement cannot be regarded as vitiated by want of jurisdiction. The purpose sought to be subserved by Section 23(2) itself will be frustrated if every decree of judicial separation or divorce has to be reversed on the sole ground that the trial Court did not make any endeavour to bring about reconciliation.

12. We will now advert to decisions having bearing on the controversy. A learnedsingle Judge of the Orissa High Court in Anupama Mishra v. Bhagaban Mishra (AIR 1972 Orissa 163) has taken the view that even an ex parte relief granted would be illegal if endeavour for reconciliation is not made. Learned single Judge of Jammu and Kashmir High Court in Ram Kumar v. Kamla Dutta (AIR 1981 J&K; 9) has held that the Court cannot require the respondent to file objections without endeavouring to bring about reconciliation. A similar view has been taken in Smt. Manju Singh v. Ajay Bir Singh (AIR 1986 Delhi 420). The language of the provision does not support these decisions. A contrary view has been taken by the Division Bench of Mysore High Court in Veerabhadrappa v. Lingappa (AIR 1963 Mysore 5), by the Allahabad High Court in Smt. Leelawati v. Ramsewak (AIR 1979 All 285), by the Bombay High Court in Dilipbhai Chhaganlal Patel v. State of Maharashtra (AIR 1983 Bom 128) and by the Madras High Court in S. Thanikodi v. Ramuthayee (AIR 1986 Mad 263). With great respect, we are inclined to agree with the view taken by High Courts of Mysore, Allahabad, Bombay and Madras referred to above and disagree with the view taken by the

High Courts of Orissa, Jammu and Kashmir and Delhi. We hold, with respect, that Jagdishchandra Kulshrestha has not laid down the correct law.

13. We hold that the failure of the Court below to endeavour to bring about reconciliation of parties before passing an order under Section 24 does not make the order illegal. There is no error of jurisdiction; much less can it be said that any such error has caused any irreparable injury to the revision petitioner or that interests of justice demand interference. The revision petition is accordingly dismissed.

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