

Kamlesh Vs. Virendra Kumar Uiks

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Court : Madhya Pradesh

Decided On : Aug-07-1991

Reported in : I(1992)DMC67

Judge : Faizanuddin, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 14, Rule 2;
[Hindu Marriage Act, 1955](#) - Sections 9 and 24

Appeal No. : Civil R. No. 256 of 1990

Appellant : Kamlesh

Respondent : Virendra Kumar Uiks

Advocate for Def. : Umesh Trivedi, Adv.

Advocate for Pet/Ap. : K. Pathak, Adv.

Disposition : Petition allowed

Judgement :

Faizanuddin, J.

1. This revision under Section 115 of the Civil Procedure Code (hereinafter referred to as the 'Code') has been directed against the orders dated 25.1.1990 and 12.2.1990, by the applicant, who is the wife of the- non-applicant and

contesting the petition under Section 9 of the Hindu Marriage Act, filed against her by her husband, the non-applicant, herein.

2. The husband non-applicant filed a petition under Section 9 of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as the Acts) against his wife, the applicant herein, for restitution of conjugal rights. In her written statement, the applicant took the plea that the parties to the proceedings are Gonds Adivasi by casts and belonged to schedule tribe and as such the provisions of Hindu Marriage Act are not applicable to them. On these pleadings, it has been averred that the trial Court has no jurisdiction to entertain and try the same. The applicant wife also made an application under Section 24 of the Act for grant of maintenance pendente lite and expenses of the proceedings as she has no independent income sufficient for her support and the necessary expenses to defend herself in proceeding initiated against her. The learned trial Judge by his order dated 5.1.1989 allowed the applicant's application under Section 24 of the Act directing the husband-non-applicant to pay maintenances pendente lite at the rate of Rs. 150/- per month as well as Rs. 200/- towards the expenses of the proceedings. Later on, the applicant made an application under Order 14 Rule 2(2) of the Code before the Trial Court with a prayer to decide the issue regarding the maintainability of the suit as a preliminary issue, the learned trial Judge took the view that the applicant after accepting the jurisdiction of the trial Court, has taken advantage of the provisions of Section 24 of the Act, Secured the order for maintenance and expenses and has actually received the payment and therefore, unless the applicant returned the amount obtained by her to the non-applicant, her application under Order 14 Rule 2(2) of the Code could not be entertained decided. The trial Court, therefore, by order dated 25.1.1990 directed the applicant to refund all the amounts to the non-applicant received by her. On 12.2.1990 the Counsel for the applicant expressed the inability of the applicant to refund the amount paid to her and, therefore the learned trial Judge rejected the applicant's application under Order 14 Rule 2(2) and, therefore, this revision against the aforesaid two orders.

3. Learned Counsel appearing for the wife applicant assailed the orders by contending that the trial Court committed a grave error in directing the refund of

the maintenance allowance and expenses of the proceeding as a condition precedent for the entertainment of applicant's application to decide the jurisdictional issue as a preliminary issue. Hg submitted that the wife-applicant was entitled for the benefit of Section 24 of the Act as long as the proceedings under Section 9 of the Act were pending and as the issue regarding the maintainability of the suit and jurisdiction of the trial Court could be decided without recording the evidence, the trial Court was duty bound to allow the applicant's application and the refund of the amount of maintenance could not be made a condition precedent to the entertainment and decision of the application. After hearing, the learned Counsel for the parties and on perusal of the impugned orders, this Court finds that there is sufficient force in the arguments advanced by the learned Counsel for the applicants.

4. At the very outset, it may be pointed out that the doctrine of alimony and the maintenance allowance due to the wife from her husband finds its root in the economic and social conditions under which normally most of the married women have to live and depend upon the income of their husband, who holds the position like that of a guardian of his wife. The provision for allowance is intended to secure justice to the wife who has no independent income sufficient for her support and necessary expenses of the proceedings while prosecuting or defending any proceedings under the matrimonial law. It is on this principle that the law relating to the matrimonial causes provides for rules for payment of maintenance pendente lite and expenses of the proceedings by the husband to the wife. These are the principles which have been incorporated in Section 24 of the Act which further lays down that any order for pendente lite maintenance and expenses for the proceedings can be made not only in favour of the wife but also in favour of the husband who has no independent income sufficient for his/her support and necessary expenses of the proceedings. Thus, the very object and purpose of the provisions contained in Section 24 is to provide immediate relief to the wife or the husband, as the case may be, in any proceedings initiated under the Hindu Marriage Act.

5. It may also be pointed out that the mere fact that there is a pre-existing order for maintenance against the husband under Section 125 of the Code of Criminal

Procedure would not preclude the Court from making an order under Section 24 of the Act in exercise of its discretion. But of course, the Court shall take into consideration all the facts and circumstances of the case; including the factum of grant of rejection under any other Law, while determining the quantum of allowance to be awarded to the wife under Section 24 of the Act.

6. It has to be remembered that the ground of maintenance pendente lite and expenses of the proceeding does not depend on merits of the case nor the jurisdiction of the Court is controlled by the defences raised by the respondent is the substantive matter before the Court. It is, however, circumscribed only of the condition laid down in Section 24 itself as regards the sufficiency or otherwise, of the income of the party applying for the benefit of Section 24. In a case where the factum of marriage is acknowledged or proved the allowance necessarily follows subject to the discretion of the Court in the matter having regard to the means of the parties. The subsequent dismissal of the substantive or main petition does not absolve a party from the liability already incurred under an order made under Section 24. Normally, the Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for maintenance pendente lite and would not allow its discretion to be fettered by the nature of the allegations made by the parties in their respective pleading and, therefore, the Court is not supposed to examine the merits and demerits of the main petition while deciding the application under Section 24. The question, therefore, that the petition under Section 9 of the Act is maintainable or not or the question, whether the Court has jurisdiction to entertain and try the same, would not be a determining factor in passing an order under Section 24. If the wife is made to defend herself in any proceedings under the Act, for example, restitution of conjugal rights, judicial separation, divorce or nullity of void and voidable marriage, the benefit of provisions of Section 24 may be extended if the wife had no independent income sufficient for her support and the necessary expenses of the proceedings, irrespective of the fact that the Court ultimately found that it had no jurisdiction to entertain and try the substantive petition which may ultimately result a dismissal on that Court. In view of these facts and circumstances, the trial Court committed an error in direction the applicant for refund of the entire amount of maintenance and expenses for the suit paid to her.

7. Shri Umesh Trivedi, learned Counsel appearing for the husband- respondent, candidly admitted that the parties to the proceedings belonged to schedule tribe and on that basis, had no hesitation to admit that the proceedings under Section 9 of the Act pending before the trial Court, are incompetent and the petition is not maintainable under Section 9 of the Act. He, however, urged that if the order for refund of the pendente lite maintenance and expenses is not maintained, the amount paid to the applicant be directed to be adjusted in the proceedings pending between the parties under Section 125 of the Code of Criminal Procedure. In this connection, it may be pointed out that if any proceedings under Section 125 of the Criminal Procedure Code are pending between the parties; the non-applicant may place the facts regarding payment of maintenance pendente lite in these proceedings before the learned Magistrate trying maintenance petition under Section 125 of the Criminal Procedure Code who shall take into consideration the quantum of maintenance to be awarded for the period for which the applicant has already obtained maintenance allowance from the non-applicant.

8. In the result, the revision succeeds and is hereby allowed. The impugned orders of the trial Court dated 25.1.1990 and 12.2.1990 are set aside but without any order as to costs of this revision.