Deviden Chenaji Vs. Mankibai Devideen

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Court : Madhya Pradesh

Decided On : Jan-08-1963

Reported in : 1966CriLJ1089

Judge : S.B. Sen, J.

Appellant : Deviden Chenaji

Respondent : Mankibai Devideen

Judgement :
ORDER

S.B. Sen, J.

1. For disposing of this reference it is necessary to give out the facts which are not disputed.

2. An application was made by Nankibai w/o. Devidelen under Section 488, Criminal P.C. An order for maintenance was passed some time in 1953 (31.7.53) for payment of Rs. 14 per month to her. On the basis of this order payments were made by the husband for some months but he soon made some defaults. So an application was made by Nankibai on 26.7.59 for recovery of arrears due then. This application was resisted by the husband on various grounds including his offer to maintain his wife on condition of her living with him and also his inability to pay the maintenance amount. The matter dragged on for a long time and

ultimately this application was decided against the husband on 25.2.59. In the said order recovery for the seven months which was due on the date of the application was passed. A fresh application was moved on 11.6.59 but the same was dismissed for default on 21.7.59. Nankibai however made further application on 22.8.59 for recovery of the arrears of maintenance till then and also granting maintenance allowance pendent lite. This application was granted by the Magistrate who ordered Devideen to pay sums of Rs. 490 and Rs. 364 for the period covering up to 27.7.61. The Magistrate also ordered in case default is made by the husband Nankibai should move the Court to take proper steps.

3. The husband Devideen filed an application before the Sessions Court against this order. The Sessions Judge is of the view that Nankibai is not entitle to arrears for the period in excess of one year preceding the date of the application viz. 22.8.59. He therefore recommended for revising the order of the Magistrate accordingly.

4. I am afraid I cannot accept the reference. Nankifyai filed an application on 26.7.56. This application dragged for no fault of Nankibai. Various questions were raised by the husband Devideen including his offer to maintain her This matter was decided on 25.2.59. Unless therefore this matter is decided the wife is not entitled to her maintenance. It she had made an application for recovery of the arrears during the pendency of these proceedings it would have been thrown away on the ground that similar application was pending and her right to, recover the amount was in jeopardy. As soon as that matter was decided she made an application on 11.8.59 which was unfortunately dismissed for default. We may however ignore this application. The next application was made on 22.8.59. Question therefore is whether this application dated 22.8.59 can be said to be an application made within one year.

5. The proviso on which reliance has been placed by the learned Counsel for the husband reads as follows:

Provided further that no warrant shall be issued for the recovery of any amount due under this Section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.

6. The moot question therefore is whether the application was made within a period of one year after it become due. Apparently arrears for more than three years cannot be said to be an amount due within one year. But law has always taken into consideration the delays on account of Court proceedings.

7. I had an occasion to deal with a similar matter in Kanchanbai v. Nanuram Cri. Revn. No 218 of 1962, D/- 16.11.1962 (Madh Pra). Though the facts were slightly different but I have held therein that though Section 15(1) of the Limitation Act does not apply but its anology should be made applicable, as proceedings under Section 488, Criminal P.C., are quasi judicial proceedings. Similarly in my view when it is apparent that an application for recovery cannot be cranted forthwith and another application between the same parties is pending, on the decision of which depends the success or failure of the latter application, the period required for decision of that application should be excluded for computing the period of one year mentioned in the proviso, Section 488 has been enacted for the maintenance of wives and children. The wife cannot be expected to carry on the litigation without any money which she legitimately claims from the husband. It was no fault of the wife that she was not getting any money from the husband. She had made an application and had that application decided earlier she could have got a regular maintenance It is therefore not proper to punish her for the delay. It is ludicrus to think that she could make continuous applications for keeping them pending till the decision of another case.

8. The words 'from the date on which it became due' should be interpreted to mean from the date on which she could successfully make an application i.e., from the date when the Court holds she his entitled to recover. If the Court had not passed an order that she was entitled to get the amount, the application would be in fructuous. On 25.2.59 the Court finally decided that she was entitled to recover rejecting all the pleas raised by the husband. When the husband raises a plea to maintain his wife on condition of her living with him, the previous order passed under Section 488 is substituted by the subsequent order. The period of one year is therefore to be calculated from the date when the subsequent order is passed under the proviso.

9. For the reasons stated above the order of the trial Court for granting the arrears of maintenance as well as maintenance pendente lite are justified. The reference is therefore rejected.