

Sardar Paramjit Singh Vs. Amarjit Kaur

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Court : Jharkhand

Decided On : May-10-2005

Reported in : AIR2006Jhar11; II(2005)DMC299; [2005(3)JCR337(Jhr)]

Judge : Altamas Kabir, C.J. and; R.K. Merathia, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1), 23A, 24 and 25

Appeal No. : F.A. No. 107 of 1999(R)

Appellant : Sardar Paramjit Singh

Respondent : Amarjit Kaur

Advocate for Def. : P.K. Prasad and; V.K. Prasad, Adv.

Advocate for Pet/Ap. : Debi Prasad, Sr. Adv. and; Lalit Kumar Lal, Adv.

Judgement :

1. This appeal has been filed by the Husband Sardar Paramjit Singh against the judgment and decree passed by the learned Principal Judge, Family Court as Dhanbad on 2nd September, 1999 in Title (Matrimonial) Suit No. 289 of 1995 dismissing the plaintiff-appellant's suit being a suit under Section 13(1), (ia) and (ib) of the [Hindu Marriage Act, 1955](#) (hereinafter to be referred to as 'the Act').

2. As will appear from the records, a petition was filed by the respondent-wife in the suit under Section 24 of the Act, and the Family Court, after hearing the

parties, passed the order on 7th February, 1998 directing the appellant-husband to pay a sum of Rs. 5,000/- per month as alimony pendente lite for maintenance of the respondent-wife and her child. The said order was challenged by the husband in a writ petition being C.W.J.C. No. 466 of 1998(R) and the same was disposed of on 29th October, 1998 by reducing the amount of maintenance pendente Ute from Rs. 5,000/- to Rs. 4,000/-. As indicated hereinabove, the suit was disposed of by the Family Court in terms of the judgment dated 2nd September, 1989, dismissing the suit for divorce. While the instant appeal was pending, the respondent-wife entered appearance and filed another application under Section 24 of the Act on 20th February, 2001, claiming alimony pendente lite and the same was placed for hearing before this Court on 22nd March, 2001. It appears that the said application had certain material defects and was allowed to be withdrawn with leave to file a fresh application for the same cause of action and pursuant thereto, another application were Section 24 of the said Act was filed on 15th January, 2002 and was taken up for consideration on 19th March, 2002. After considering the submissions made, the appeal Court was of the view that the maintenance of Rs. 4,000/-per month by way of alimony pendente lite was justified and reasonable and directed that such maintenance should be paid to the respondent at least from 20th February, 2001 when she appeared in the appeal and filed an application for such maintenance. The respondent's application was, therefore, allowed with a direction upon the appellant to pay the entire arrears of maintenance with effect from March, 2001, in three installments. The appellant was directed to go on paying the maintenance every month till the disposal of the appeal.

3. Subsequently the appeal was mentioned on behalf of the appellant for leave to withdraw the same. On 15th April, 2002, this Court took note of the fact that prima facie it appeared that the intention of the appellant was to frustrate the order that was passed on 19th March, 2002. Accordingly, the appellant was given leave to file regular application for leave to withdraw the appeal after complying with the order passed on 19th March, 2002.

4. Being dis-satisfied with the direction given on 19th March, 2002 in the appeal, the respondent-wife moved the Hon'ble Supreme Court by way of Special Leave to Appeal (Civil) No. 11849 of 2002 and the same was disposed of on 11th

November, 2002 with a direction upon the appellant-husband to pay the maintenance as directed by this Court in the appeal.

5. Subsequently, an application appears to have been filed on behalf of the appellant-husband for leave to withdraw the appeal and the same was taken up for consideration on 3rd December, 2002. On the said date. Mr. P.K. Prasad, appearing for the respondent-wife pointed out that two applications on behalf of the respondent-wife under Section 23-A and Section 25 of the Act had been filed in appeal and the same were pending and that the leave sought for on behalf of the appellant to withdraw the appeal was nothing but a strategy to defeat the said applications. On such submission, the Division Bench, by order of even date, allowed the application for withdrawal of the appeal but directed that the application filed by the respondent-wife would remain alive for the purpose of disposal. It is these two applications which have now come up for consideration before us.

6. Appearing in support of the two applications, Mr. Prasad submitted that taking advantage of the order of withdrawal, the appellant-husband had stopped paying the maintenance as directed under Section 24 of the above Act after the appeal was allowed to be withdrawn. Mr. Prasad also urged that in 2002, the respondent-wife, petitioner in those applications, developed a tumour which was ultimately diagnosed as breast cancer for which she had to undergo an operation and thereafter treatment, including Chemotherapy in Sri Ganga Ram Hospital at Delhi, The affidavit affirmed by the father of the respondent-wife has indicated that treatment had to be undertaken in Delhi, since the eldest son of the deponent was in Delhi and it was more convenient and economically viable for her disease to be treated at Delhi. Various documents in support of the contention of Mr. Prasad have been annexed to the applications including the application under Section 24 of the above Act. Although an attempt has been made on behalf of the appellant-husband to question the genuineness and veracity of the documents, we are satisfied that the same are genuine and that the respondent-wife has been suffering from breast cancer for which she has to undergo extensive treatment at Delhi, We are not inclined to disbelieve the various medical prescriptions and other documents annexed in support of the case made out on behalf of the respondent-

wife.

7. Apart from the above, a further attempt has been made by Mr. Lalit Kumar Lal led by Mr. Debi Prasad, Senior Counsel appearing for the appellant-husband to indicate that the applications under Section 23-A and Section 25 of the Act were not maintainable since there was no pending appeal and/or proceedings between the parties and that only the two applications had been kept alive while the appeal itself had been allowed to be withdrawn. Referring to the provisions of Section 23-A of the said Act, Mr. Lal pointed out that such an application could be made in any proceeding for divorce or judicial separation or restitution of conjugal rights but no otherwise and unless that there was any proceeding for divorce or judicial separation or restitution of conjugal rights pending, relief sought for under Section 23-A of the said Act was misconceived and was not available to the respondent-wife.

8. As far as the application under Section 25 of the said Act is concerned, Mr. Lal sought to urge that only when a decree has been passed in a suit under the aforesaid Act, can such an application be maintainable. Mr. Lal contended that in a situation like this, when there is no appeal pending and the two applications filed by the respondent-wife have been kept alive, no relief can be given to the respondent-wife on the said two applications.

9. Mr. P.K. Prasad, on the other hand, contended that since the two applications have been kept alive by the Court intentionally, it was the intention of the Court that upon hearing the parties, appropriate relief should be granted, if it was found that the respondent-wife was entitled to such relief.

10. Having considered the submissions made on behalf of the respective parties, we are unable to appreciate the stand taken on behalf of the appellant-husband. There is no dispute that the suit for divorce ended in dismissal and that the respondent continued to be the wife of the appellant. There is also no dispute that the appeal preferred by the husband was also withdrawn. Notwithstanding the submissions made by Mr. Lal that this client was ready and willing to take back the respondent-wife, we are of the view that it is the duty of the husband to maintain the wife during the subsistence of marriage and particularly when she is suffering

from a disease where huge expenses have to be incurred. Mr. Prasad submitted that out of 16 sessions of Chemotherapy, the respondent-wife has already undergone the 7th session and 8th installment of the said treatment is due. It is also submitted by Mr. Prasad that till date, a sum of Rs. 1,20,000/- has been spent on treatment and another Rs. 80,000/- is still required towards treatment of the wife's Cancer. In other words, in all a sum of Rs. 2,00,000/- is to be expended for treatment of Cancer of the respondent-wife. Apart from the above, from 2nd December, 2002, no maintenance has been paid to the respondent-wife and the same would also amount to Rs. 1,20,000/-.

11. While the amount required for treatment cannot be reduced, having regard to the time which has lapsed, reduction may be made in arrear maintenance, subject to the maintainability of the applications pending before us. While the submissions made by Mr. Lal with regard to the application under Section 23-A of the above Act has some force, we are not inclined to agree with him as far as the maintainability of the application under Section 25 of the said Act is concerned, since in our view, even a decree of dismissal amounts to a decree. Having regard to the above, notwithstanding the order allowing the appellant to withdraw the appeal, the relief sought in the application under Section 25 of the Act would continue to be available to the respondent-wife.

12. We, therefore, dispose of the two applications by directing the appellant-husband to pay to the respondent-wife a sum of Rs. 2,00,000/- towards her medical treatment and a further sum of Rs. 60,000/- towards arrear maintenance and litigation costs. Such payment is to be made in three equal monthly installments. First of such installments will be payable by 31st of May, 2005 and thereafter by the last day of each succeeding month, Apart from the above, the appellant-husband shall also go on paying to the respondent-wife a sum of Rs. 4,000/- every month towards her maintenance and the maintenance of her child with effect from June, 2005. There will be no order as to costs.