

Devinder Singh Vs. Jaspal Kaur

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Court : Punjab and Haryana

Decided On : Sep-29-1998

Reported in : AIR1999P& H229; (1998)120PLR753

Judge : V.S. Aggarwal, J.

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

Appeal No. : Civil Revn. No. 431 of 1998

Appellant : Devinder Singh

Respondent : Jaspal Kaur

Advocate for Def. : B.S. Bhasaur, Adv.

Advocate for Pet/Ap. : J.C. Nagpal, Adv.

Judgement :

ORDER

V.S. Aggarwal, J.

1. The present revision petition has been filed by Devinder Singh petitioner directed against the order passed by the learned Addl. District Judge, Sangrur, dated 21-11-1997. By virtue of the impugned order, learned Addl. District Judge awarded Rs. 1500/- per month as maintenance and Rs. 3000/- as litigation

expenses to the respondent.

2. The relevant facts are that respondent Jaspal Kaur had filed an application under Section 24 of the Hindu Marriage Act along with Section 25 of the said Act. She had contended that she has no movable or immovable property or any other source of income to keep her soul and body together. The petitioner was stated to be running an electrician shop and earning Rs. 10,000/- per month. He is an able bodied person and the respondent claimed Rs. 5000/- per month as maintenance allowance and Rs. 8000/- as litigation expenses.

3. Notices of the petitioner had been issued to the petitioner. He opposed the application contending that there is no relationship of husband and wife between the parties. An objection was taken that the marriage took place on 30-7-1989. It was in contravention of the mandatory provisions of Section 5 of the Hindu Marriage Act. The marriage was declared null and void by a decree of nullity passed by the learned Additional District Judge, Patiala. The said judgment and decree has been confirmed by this Court on 25-9-1996. Furthermore, it was pointed out that the respondent had sufficient means. It was denied that the petitioner is earning Rs. 10,000/- per month.

4. Learned Addl. District Judge held that irrespective of the fact that marriage was declared to be null and void, the respondent is entitled to file an application under Section 25 of the Hindu Marriage Act. Accordingly, the impugned order was passed. Aggrieved by the same, present revision petition has been filed.

5. The main argument advanced by the learned counsel for the petitioner is that the marriage between the parties was declared to be a nullity and consequently the respondent is not entitled to invoke Section 25 of the Hindu Marriage Act.

6. The answer to the said question is provided by Section 25(1) of the [Hindu Marriage Act, 1955](#), which reads as under :--

'25. Permanent alimony and maintenance :--(1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application to it for the purpose by either the wife of the husband, as

the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant, as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [the conduct of parties and other circumstances of the case], it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.'

7. A perusal of the above said provision clearly shows that Section 25(1) of the Hindu Marriage Act comes into play the moment there is a decree. At any time the application can be filed even after the said decree. It is not confined to any decree for divorce. The expression 'any decree' would include when the marriage has been declared to be a nullity. Earlier there was some controversy between different High Courts on this question. But it is no more subsisting.

8. A Division Bench of Bombay High Court in the case of Shantaram Tukaram Patil v. Dagubai Tukaram Patil, (1987) 2 Hindu LR 343 : (AIR 1987 Bom 182) held as under :--

'In regard to a woman whose marriage is void or declared void under the provisions of the Hindu Marriage Act :

1. Section 25 of the Hindu Marriage Act confers upon a woman, whose marriage is void or is declared to be void, a right to maintenance against her husband;
2. The right of maintenance can be enforced by her not only in proceedings under Section 25 of Hindu Marriage Act but also in any other proceedings where the validity of her marriage is determined ;
3. This right can be enforced by her not only during the time of her husband but also after his death against the property of her husband after his death ;
4. Of course, this right of maintenance is available only during her lifetime and ceases if remarriage.'

9. A learned single Judge of this Court in one of the earlier decisions rendered in the case of Dayal Singh v. Bhajan Kuar, AIR 1973 Punj and Har 44, also considered the same question. It noted that the Hindu Marriage Act has not been carefully drafted. The language of Section 25 has to be liberally construed. Even if the marriage was void. She was lawfully wedded for the purpose of Section 25 to be a wife to be entitled to claim maintenance.

10. The Supreme Court has set this controversy at rest in the decision rendered in the case of Smt. Chand Dhawan v. Jawaharlal Dhawan, (1993) 2 Hindu LR 203 : (1993 AIR SCW 2548). In paragraph 23 of the judgment, it has been held as under :--

' and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has strained or affected, by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the Court does so by passing a decree for or against her. On or at the time of the happening of that event, the Court being seized of the matter, invokes its ancillary or incidental power to grant permanent alimony.

11. In other words, even when marriage is dissolved by a decree passed that it was a nullity, the right to claim maintenance under Section 25 of the Act is not defeated. The said argument of the learned counsel, is, therefore, totally devoid of any merit and it must be concluded that irrespective of the decree passed by the Court that marriage was a nullity, the respondent could claim maintenance.

12. Confronted with that position, it has been urged that the maintenance awarded is excessive. Reliance was placed on the fact that in proceedings under Section 125 of the Code of Criminal Procedure, the maintenance awarded was Rs. 250/- per month, Indeed, that could not be a good precedent because under Section 125 of the Code of Criminal Procedure the purpose of awarding maintenance is in the form of a succour with a outer limit of Rs. 1500/- per month. This is not so in a petition under Section 25 of the Hindu Marriage Act. So far as litigation expenses are concerned, the amount of Rs. 3000/- is not excessive. But monthly

maintenance allowance is, indeed, excessive which has to be awarded keeping in view all facts and circumstances. The marriage has been declared to be a nullity and taking note of the status of the petitioner who is running only a shop Rs. 1000/- per month as maintenance allowance must be taken to be reasonable. To that extent the order of learned trial Court is modified.

Subject to the aforesaid, the revision petition is dismissed.

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