

Sunita Vs. Ram Pal

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Court : Punjab and Haryana

Decided On : Sep-27-2002

Reported in : (2003)134PLR25

Judge : J.S. Narang, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151; [Hindu Marriage Act, 1955](#) - Sections 28A

Appeal No. : Civil Misc. No. 14084-CII of 2002 and First Appeal from Order No. 149-M of 1998

Appellant : Sunita

Respondent : Ram Pal

Advocate for Pet/Ap. : R.N. Moudgil, Adv.

Disposition : Appeal dismissed

Judgement :

J.S. Narang, J.

1. This application has been filed under Section 151 C.P.C. with a prayer to strike off the defence of the respondent-husband on account of his failure to pay maintenance pendente lite every month in pursuant to order dated February 22,

2001 passed in C.M. No. 75-M of 1998. It is averred that the maintenance has been paid upto September 15, 2001 but thereafter the respondent has stopped making payment in pursuant to the aforesaid order.

2. Learned counsel for the applicant has argued that in view of the law laid down by this Court, in the event of non-compliance of such aforesaid order, the defence of the respondent deserves to be struck off. It has been argued that this Court can exercise inherent powers under Section 151 C.P.C. to enforce the orders passed by this Court and can also strike off defence for non-compliance. Reference has been made to a Single Bench Judgment of this Court in re: Shri Ram Swaroop Amritsar v. Smt. Janak w/o Shri Ram Swaroop. AIR 1973 Punjab and Haryana 40 and in re: Ram Narain v. Smt. Daropdi Devi and another, AIR 1983 Delhi 346. In the aforesaid decisions, the appeal of the appellant had been dismissed for not making compliance of the order passed under Section 24 of the Hindu Marriage Act. However, in both the cases, reference has not been made to Section 28A of the Hindu Marriage Act which was incorporated by way of amendment enforced on May 27, 1976, wherein, it has been provided that every order passed by the Court is executable like a decree. If a specific provision is available for seeking execution of the order, no such situation arises for invocation of the inherent powers of the Court under Section 151 C.P.C.

Reference has also been made to a judgment of Rajasthan High Court in re: Bhan-war Lal v. Smt. Kamla Devi, AIR 1983 Rajasthan 229. I am afraid this judgment is not applicable to the case at hand as the question which had arisen in the aforesaid case is : Could the Court pass an order regarding payment of arrears of interim maintenance after the petition for divorce filed by the husband is conditionally withdrawn? However, a reference has been made to the amended provision i.e. Section 28A of the Hindu Marriage Act and it has been categorically observed that by virtue of the aforesaid provision any order passed under Section 24 of the act can be enforced as a money decree and the question of striking off defence was not required to be resorted to. An observation has been made that in the given circumstances of the case, the Court may pass an order for striking off the defence of the defaulting party or dismiss the main petition but only in the eventuality when the order cannot be enforced or executed in pursuant to Section

28A of the Act. The Hon'ble Judge dissented from the judgment rendered by this Court in Shri Ram Swaroop's case (supra). It is not appreciated that the counsel has not even examined the effect of the aforesaid judgments but has placed reliance thereon.

Reference has also been made to a judgment of this Court rendered in re: Amarjit Kaur v. Sohan Singh, (1979)81 PLR 749. I am afraid this judgment again is not applicable as the question regarding enforcement of an order under Section 28A, has neither been discussed nor referred to. Preference has also been made to a judgment of this Court rendered in : Rani v. Parkash Singh, 1997(1) ILR (Punjab and Haryana) 118. I am afraid this judgment again is not applicable as the enforceability/execution of the order by way of invocation of the aforesaid provision has not been referred to nor discussed.

3. The arguments are totally misconceived. It has been specifically provided under Section 28A that an order passed by this Court under the Act shall be enforced like a decree. Since a specific remedy is available for seeking enforcement of the order, thus, the relief by way of striking off defence for non-compliance of the order is not at all justifiable. However, if by pursuing the aforesaid remedy, the order is not enforceable for any reason, the inherent powers by the Court may be adhered to and exercised accordingly. This would be dependent upon the facts and circumstances of each case and not to be applied as a rule. There is no doubt that the Courts are not powerless but when specific provisions are provided for enforcement of the orders of the Court, the invocation of inherent powers should not be exercised.

4. The applicant has not filed any execution application as envisaged under Section 28A of the Act, thus, non-compliance of the order is not discernible. Thus, striking of defence is an extreme penal step which is being asked to be taken. I am afraid, perusal of the facts of this case, the circumstances do not warrant striking off the defence, admittedly, the husband had paid maintenance pendente lite upto September 15, 2001. Thus, the remedy by way of seeking execution of the order under Section 28A of the Act, is available.

5. The Legislature had been seized of the circumstances which may or could arise culminating into 'striking off defence', such situations have been dealt with under Section 35B and rule 5 of C.P.C. (State Amendments) promulgated and enforceable in Punjab, Haryana and Chandigarh under order XV. It shall be apposite to refer to both the aforesaid provisions which read as under:

'S. 35B. Costs for causing delay :- (1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party, to the suit -

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of-

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs;

(b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation : Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.'

Order XV Rule 5 of CPC, (State Amendments) reads as under:-

'5. Striking off defence for failure to deposit admitted rent :- (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall at or before the first hearing of the suit, deposit the entire, amount admitted by him to be due together with interest thereon at the rate of nine percent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of the default in making the deposit of the entire amount admitted by him to be due or monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2) strike off his defence.

Explanation 1. - The expression 'first hearing' means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2. - The expression 'entire amount admitted by him to be due' means the entire gross amount whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any Court.

Explanation 3. - The expression 'monthly amount due' means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any paid to a local authority, in respect of the building on lessor's account.

(2) Before making an order for striking off defence, that Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days, of the first hearing or, of the expiry of the week referred to in sub-section (1) as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible or any amount, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same.'

6. However, the inherent powers of the Court as envisaged under Section 151 C.P.C. should not be normally invoked for striking off the defence but this shall not mean that the Court is powerless and that invocation of such power would depend upon the facts and circumstances of each case. The Courts must function with a restraint wherever a specific provision has been provided for enforcement/execution of an order passed by the Court.

7. For the reasons recorded above, I find no merit in this application and the same is dismissed with no order as to costs.

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