

Raj Bala Vs. Pramod Kumar

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Court : Delhi

Decided On : Jul-24-1978

Reported in : 15(1979)DLT153

Judge : Avadh Behari Rohatgi, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 28; [Limitation Act, 1963](#) - Sections 5

Appeal No. : First Appeal No. 16 of 1978

Appellant : Raj Bala

Respondent : Pramod Kumar

Advocate for Pet/Ap. : S.P. Mahajan and; Prem Lal, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) This is a wife's appeal under Section 28 of the [Hindu Marriage Act, 1955](#), (the Act). On 14th May, 1976, the husband Promod Kumar brought a petition against his wife Raj Bala under Section 10 of the Hindu Marriage Act 1955 for judicial separation. While the petition was pending the Parliament passed the Marriage Laws (Amendment) Act 1976 (Amendment Act) which came into force on 27th May, 1976. This Act amended the Hindu Marriage Act of 1955. Section 39 of the Amendment Act provides : Special provisions as to pending cases.

'(1)All petitions and proceedings in causes and matters matrimonial which are pending in any court at the commencement of the Marriage Laws (Amendment) Act, 1976, shall be dealt with and decided by such Court:-

(I)if it is a -petition or proceeding under the Hindu Marriage Act, then so far as may be as if it had been originally instituted therein under the Hindu Marriage Act, as amended by this Act;

(II)if it is a petition or a proceeding under the Special Marriage Act, then so far as may be, as if it had been originally instituted therein under the Special Marriage Act, as amended by this Act;

(2)In every petition or proceeding to which sub-section (1) applies, the court in which the petition or proceeding is pending shall give an opportunity to the parties to amend the pleadingsi in so far as such amendment is necessary to give effect to the provisions of subsection

(1),within such time as it may allow in this behalf and any such amendment may include an amendment for conversion of a petition or proceeding for judicial separation into a petition or proceeding, as the case may be, for divorce.'

(2) Taking advantage of Section 39(2) the husband made an application for amendment of the pleadings on 27th September, 1976. The amendment was allowed. The petition for judicial separation was converted into one of divorce on the ground of desertion under Section .13 (1) (i) (b). Then the trial started. The husband succeeded. The court granted him a decree of divorce on 12th October 1977.

(3) On 7th January 1978 the wife appealed to this court. She also made an application under Section 5 of the Limitation Act for condensation of delay in filing the appeal. Section 28 (4) of the amendment Act 1976 provides:

'EVERY appeal under this section shall be preferred within a period of 30 days from the date of the decree or order.'

(4) Counsel for the husband contends that the appeal is barred by time. He also opposes the application for condensation of delay. On behalf of the wife Mr. Mahajan has argued that to his case, the Amendment Act does not apply and that the wife was entitled to file an appeal within 90 days of the decree as was the law under Section 28 of the Act, 1955 prior to the Amendment Act of 1976. It is not disputed that if that were so the appeal is within time. But if to this case provision of Section 28 (4) of the Amendment Act applies it is not denied that the appeal is barred by time as it was filed much after the expiry of 30 days, after excluding the time spent in obtaining the certified copy of the decree.

(5) The question is this : Will the Amendment Act apply to this case? Will the period of 30 days prescribed for appeals by Section 28 (4) of the Amendment Act govern the Limitation for this appeal? A reading of Section 39 makes it clear that proceeding pending at the time when the Amending Act came into force is to be dealt with and decided as if it has been originally instituted under the Hindu Marriage Act amended by the Amending Act. thereforee, a proceeding which had commenced prior to the enforcement of the Amending Act shall be treated to have been instituted under the Amendment Act of 1976. It is under the prosion of Section 39 that a party is given benefit of the provisions of the Amendment Act. Under this provision a party was entitled to seek amendment for conversion of a petition or a proceeding for judicial separation into petition or proceeding for divorce as was done in this case. Section 39 further provides that a pending proceeding at the commencement of the Amendment Act shall be dealt with and decided by the court 'as if it had been originally instituted therein under the Hindu Marriage Act, as amended by this Act.' These keys words in the section make it abundantly clear that the provision of Section 28 of the amendment Act shall apply.

(6) Mr. Mahajan has argued that the wife acted on his advice and his advice was that the Amendment Act did not apply to this case and that she was entitled to file an appeal within 90 days. He has referred me to cases where counsel's mistaken advice was held to be sufficient ground of condensation of delay. He has invited me to follow those rulings and condone the delay.

(7) I regret my inability to agree with him. Under the Amendment Act the period of limitation was cut down to 30 days. This was well known to the members of the Bar. On a reading of Section 39 and 28 of the Amendment Act it was no possible to take a contrary view. There is no room for doubt or debate. The Amendment Act is quite clear. In these circumstances no ground is made out for condensation of delay in filing the appeal. The view take here has also been taken in two decisions-Gurbaksh Singh v. Smt. TaranJit (1), and Surjit Singh v. Pushpinder Kaur (2).

THE application under Section 5 is accordingly dismissed. Consequent upon the dismissal of this application the main appeal is also dismissed as barred as barred by time. No costs.

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