SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Balbir Singh Vs. Prem Wati

Balbir Singh Vs. Prem Wati

SooperKanoon Citation : sooperkanoon.com/690255

Court : Delhi

Decided On : Mar-05-1970

Reported in : 1970CriLJ1302

Judge : S. Rangarajan, J.

Appellant : Balbir Singh

Respondent : Prem Wati

Judgement :
ORDER

S. Rangarajan, J.

1. The learned Additional Sessions Judge has recommended that this Court may quash the order of the Sub-Divisional Magistrate, Delhi (Shri K. K. Bhaain) dated 23rd January 1969 dismissing the application made by the husband dated 6th December 1963, praying to set aside an ex parte decree of maintenance under Section 488 of the Code of Criminal Procedure in favor of his wife and child, on the ground that the same had not been filed within three months of the date of the ex parte decree as required by Section 488 (6) of the Code of Criminal Procedure. Sub-section (6) of Section 498 reads as follows:

All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in

the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons cases.

'Provided that if the Magistrate is satisfied that he is willfully avoiding service, or willfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case ex parte. Any orders so made may be set aside for good cause shown, on application made within three months from the date thereof.

2. It was stated by the husband that he came to know of process issued by the Court under Section 488 of the Code of Criminal Procedure from his relations arid when he inspected the Court records on the 4th December 1968, he came to know that an ex parte order for maintenance under Section 488, Criminal P. C. had been passed against him on the basis that he had refused to receive the notice sent from the Court. He alleged that this endorsement of refusal of notice by him was not true. The learned Magistrate did not go into this question of the time at which the husband came to know of the passing of the said decree, because in his view no application for setting aside an ex parte order made under Section 488, Criminal P. C. could be made after three months from the date of the said order. In other words, this view totally eliminated any reference to the knowledge of the person against whom such an order was made.

Shri Chander Bhan, learned Counsel for the husband, has very fairly, in the absence of the respondent or her counsel, drawn my attention to the view of the Punjab High Court in Hari Singh Ishar Singh Jat v. Mst. Dhanno Hari Singh 1962 (2) Cri LJ 581, Gurdev Singh J., following the decision of Somaaundaram J., in A. S. Govindan v. Mrs. Margaret Jayammal : AIR1950 Mad158 ,' held that the three months' period mentioned in Section 483 (6), Criminal P. C., did not mean three months from the date of the knowledge of the order. Support was derived for this view on the basis of the legislature not mentioning the knowledge of the person affected (if that was the case) as it did in some other statutes. In a different context, Raja. manner C. J., observed in O. A. O. A. M. Muthiah Chettiar v. Commr. of Income-tax : [1951]19ITR402(Mad) that if a person is given a right to resort to the remedy of getting rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party

aggrieved, actually knew of the order or had an opportunity of knowing the order. Since this is the basic approach to a period of limitation of this description I respectfully disagree with the view taken by Somasundaram J. in A. S. Govindan : AIR1950 Mad158 and also by Gurdev Singh J, in Hari Singh Ishar Singh, 1962 (2) Cri LJ 581.

3. That limitation in such a case commences to run only from the date of the knowledge of the order to the aggrieved party and not from the date of the passing of the order is a principle of general application. It would be need. less to multiply authorities on this question. Reference, however, can be made to the decision of the Supreme Court in Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer : [1962]1SCR676 , That was a case under the Land Acquisition Act. The expression 'the date of the award' used in proviso (b) to Section 18(4) of the Land Acquisition Act was held to mean the date when the award was either communicated to the party or was known by him either actually or con-structively.

Jagaamohan Reddy J, (as his Lordship then was) held in Zohra Begum v. Mohamed Ghose Qadri Qadeeri : AIR 1966 AP50 in a case arising under Section 488 (6) of the Criminal P.C., itself, following the above said decision of the Supreme Court, that the date of the ex parts order referred to in the said provision would take in oases where the aggrieved party had knowledge of the said order at a later date. The decision of Somasundaram J. in A. S. Govindan : AIR1950 Mad153 was not followed; that of Rajamannar C.J., in Muthiah Chettiar : [1951]19ITR402(Mad) Was followed, 4. I, thereforee, hold that a person aggrieved by an ex parte order made under Section 488 of the Criminal P.C., can apply even more than three months after the date of the ex parte order if he can show good cause why the said order has to be set aside. On this question, namely, as to when the husband came to know of the said order, there has been no determination by the trying Magistrate. The trying Magistrate would, thereforee, go into the question as to when the husband came to know of the proceedings under Section 489, Criminal P.C. and of the passing of the ex parte order and whether the said knowledge was obtained by the husband within three months of the filing of the said application to set aside that order. The trying Magistrate will also go into this question whether there is good cause to set a side the ex parte order. The

reference of the learned Additional Sessions Judge is accordingly accepted.

5. The parties will appear before the trying Magistrate on 24th March 1970. Since neither the wife not her counsel is present during the hearing of this petition consider it necessary to direct that if the wife does not appear before the learned trying Magistrate on that date he will issue notice to the wile for the hearing of this application by the husband for an actual date to be fixed by him thereafter.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com