

Aruna Madan Vs. Subhash Madan

Aruna Madan Vs. Subhash Madan

SooperKanoon Citation : sooperkanoon.com/699780

Court : Delhi

Decided On : Dec-15-1993

Reported in : 1994IAD(Delhi)189; 53(1994)DLT253; I(1994)DMC59; (1993)105PLR48

Judge : V.B. Bansal, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 27

Appeal No. : Criminal Appeal No. 726 of 1993

Appellant : Aruna Madan

Respondent : Subhash Madan

Advocate for Pet/Ap. : Geeta Luthra and; S. Bazaz, Advs

Judgement :

V.B. Bansal, J.

(1) Smt. Aruna Madan has filed this revision petition against the order dated 20.10.1993 of Shri J.D. Kapoor, learned Additional District Judge, Delhi, vide which he directed that an application under Section 27 of the Hindu Marriage Act (hereinafter referred to as the 'Act') moved by the petitioner would be disposed of independently and fixed 9.11.1993 for final disposal of the petition for divorce filed against her by her husband Shri Subhash Madan, respondent herein.

(2) Briefly stated, the facts leading to the filing of this revision petition are that Subhash Madan (hereinafter referred to as the 'husband') filed a petition for divorce against Smt. Aruna Madan (hereinafter referred to as the 'wife') on 25.9.85. The proceedings continued for a long period and ultimately the evidence of the parties was closed and the case came up for final arguments for the first time on 29.5.1991. A number of applications were moved by the wife. An application under Sections 24/26 of the Act was moved by the wife for enhancement of the maintenance. This application was disposed of by the Trial Court on 26.5.1992, which order was challenged in the High Court wherefrom the stay was ultimately vacated on 2.4.1993 in Civil Revision No. 409 of 1992. The case came up for final arguments before the learned Trial Court on 20.11.1993 when an application under Section 27 of the Act was filed by the wife in which it was inter alia pleaded that after her marriage she was taken to his house by the husband and the attitude of the husband and his family members was not cordial towards her since their expectation of dowry was much more than what was given. It was also pleaded that she was deserted by the husband and all her ornaments, clothes, valuable household goods, gifts and presents belonging to her, which formed her Istitidhan, have been retained by the husband with him and the details were mentioned in the annexure. A prayer was, thus, made that the husband be directed to return the items of the Istitidhan belonging to her. The learned Trial Court passed the impugned order and fixed the case for final arguments.

(3) I have heard Ms. Geeta Luthra, Counsel for the petitioner/wife, as also Dr. S. Bazaz, Counsel for the respondent/husband. I have also perused the file.

(4) Learned Counsel for the petitioner has submitted that a bare reading of Section 27 of the Act makes it incumbent on the Trial Court that this application has to be disposed of while disposing of the petition for divorce and the learned Trial Court has gravely erred in directing the same to be disposed of independently. It would, at this stage, be appropriate to quote Section 27 of the Act, which reads as follows:

'27. Disposal of property : In a proceeding under this Act, the Court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the

husband and the wife.'

(5) There is no doubt that Section 27 does provide that a provision can be made in the decree in any proceedings under the Act but that does not show that such a provision cannot be made after the main case is decided. It would at this stage be appropriate to refer to the case *Smt. Surinder Kaur v. Madan Gopal Singh and Gurcharan Singh v. Ajmer Kaur* 2 (1983) Dmc 128

(6) Learned Counsel for the petitioner has placed reliance on the judgment of the Punjab & Haryana High Court in the matter of *Dr. Suraj Prakash v. Mohinder Pal Sharma* 1 (1988) Dmc 104. There is no doubt that in this judgment it has been held that the Trial Court could not pronounce order on an application filed under section 27 of the Act after the main petition is decided. A perusal of this judgment shows that two earlier judgments of the Punjab & Haryana High Court, referred to earlier, have not been referred to. Learned Counsel for the respondent has submitted that the provisions of Section 27 of the Act are not attracted in the instant case since this Section applies to the property which may belong jointly to the husband and the wife, while the claim of the petitioner has been that this property belongs to her, being her *Istridhan*. I am afraid it is not open to this Court to give any finding on this question since it is a matter which may have to be gone into by the learned Trial Court. The submission of the learned Counsel for the petitioner that no appeal or revision would be competent because it may not be possible to make a provision in the decree or order which may be passed by the learned Trial Court while disposing of the petition for divorce, is not tenable. There can possibly be no difficulty in entertaining a revision petition against the order which may ultimately be passed by the Trial Court in disposing of the application under Section 27 of the Act moved by the petitioner/wife.

(7) As already referred to, the proceedings have been pending for over eight years and there appears to be no justification for delaying the disposal of the petition for divorce. I do not find any infirmity or jurisdictional error in the impugned order. In these circumstances, the revision petition stands dismissed.