

Asha Bhatia Vs. V.L. Bhatia

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Court : Delhi

Decided On : Nov-17-2004

Reported in : 116(2005)DLT191; I(2005)DMC191; 2005(79)DRJ192

Judge : Mukul Mudgal, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 1 and 2; Hindu Marriage Act; Hindu Law; [Constitution of India](#) - Article 336(25)

Appeal No. : I.A. No. 7655/2004 in CS(OS) 298/2001

Appellant : Asha Bhatia

Respondent : V.L. Bhatia

Advocate for Def. : Rajiv Nanda, ; Ramani Taneja, ; Mukesh Tyagi and ;

Advocate for Pet/Ap. : Y.P. Narula, Sr. Adv. and; S. Musharaff, Adv

Disposition : Application dismissed

Judgement :

Mukul Mudgal, J.

1. This application on behalf of the defendant under Order VII Rule 11 [a] and [d] read with Section 151 of the Code of Civil Procedure, 1908(in short the `CPC') seeks rejection of the plaint in which the defendant claims that the suit is barred by

`law' on the ground that the parties though married in India under Hindu law were settled in Dubai where there were some settlement terms arrived at between the parties and consequently the plaint deserves to be rejected at the threshold.

2. The defendant, who has taken these pleas in his written statement has nevertheless pressed this application for decision and is seeking the dismissal of the suit on the ground of its being barred by `law'. For this purpose, Mr. Nanda, the learned counsel, appearing on behalf of the defendant/applicant has submitted that the Section 1 & 2 of the [Hindu Adoptions and Maintenance Act, 1956](#) (in short the `HAMA') indicate that the Act applies to whole of India and, therefore, its operation cannot travel beyond India and apply to a cause of action which has arisen in Dubai. He has relied upon a judgment of the Hon'ble Supreme Court in *Badat & Co. v. East India Trading Co.* : [1964]4SCR19 and in particular has relied upon the following paragraph at Page 60 wherein cause of action has been defined by the Hon'ble Supreme Court as under:-

'....When he sues upon the original cause of action, no doubt, the court within whose jurisdiction the cause of action arose would be entitled to entertain the suit. But, if on the other hand, he chooses to sue upon the judgment, he cannot found the original cause of action because once he chooses to rest himself on the judgment obtained by him in a foreign court, the original cause of action will have no relevance whatsoever even though it may not have merged in that judgment.'

I am unable to appreciate the relevance of the aforesaid judgment of the Hon'ble Supreme Court in the present proceedings under Order VII Rule 11 CPC. In any event the plaintiff is not resting her claim on the judgment of a foreign court.

3. The facts may be noted in brief. The plaintiff and the defendant married in India and were later on settled in Dubai. In January, 1999 certain proceedings took place in Dubai which were filed by the defendant/husband originally under the Hindu Marriage Act which in April, 1999 were converted to a Shariat proceedings upon the conversion of the defendant/husband to Islam during such proceedings.

4. The learned counsel for the defendant/applicant, Shri Rajiv Nanda, who has moved this application under Order VII Rule 11 [a] and [d] CPC, has contended

vehemently that the operation of Section 1 sub-section (2) of the HAMA cannot apply beyond India and the cause of action having arisen beyond the territorial jurisdiction not only of this Court but in fact this country, this Court has no jurisdiction to entertain the suit. The position of law in relation to Order VII Rule 11 is well settled and has been laid down by the Hon'ble Supreme Court in Saleem Bhai v. State of Maharashtra : [2002]SUPP5SCR491 which reads as follows:-

' 9. A perusal of O. VII, R 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application there under are the averments in the plaint. The trial Court can exercise the power under O VII R 11 C.P.C. at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of R.11 of O. VII, C.P.C., the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under O. 7 R. 11, C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising the jurisdiction vested in the Court as well as procedural irregularity. The High Court, however, did not advert to these aspects.'

5. This position of law is not disputed by the learned counsel for the defendant/applicant, who has relied upon the Paras 23 and 25 of the written statement to contend that the cause of action did arise in Dubai. The said paragraphs 23 & 25 of the written statement read as follows:-

'23) In reply to the contents of paragraph 23, it is denied that the cause of action arose in favor of the Plaintiff and against the Defendant on the various dates mentioned therein. It is denied that the Plaintiff withdrew from the proceedings on 4th October, 2000. It is also denied that the Settlement Agreement dated 19th June 2000 and the Consent Terms dated 27th June 2000 are totally inadequate and it is also denied that the same have not been acted upon.

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25. It is denied that this Hon'ble Court has jurisdiction to hear and adjudicate upon the present Suit. It is reiterated that this Hon'ble Court has no jurisdiction to hear and adjudicate upon the present Suit. The Defendant relies on the contents of the preliminary Objections and Submissions which form an integral part of the paragraph under reply.'

6. He has further submitted that the paragraph 25 of the written statement clearly avers that the cause of action has not arisen in India and in fact it arose in Dubai. In my view in view of the position of law laid down by the Hon'ble Supreme Court in Saleem Bhai's case (supra) only the averments made in the plaint are required to be considered under Order VII Rule 11 CPC. The plaint avers that the cause of action has arisen in India. The plaint also avers that the marriage took place in India.

7. Mr. Y.P. Narula, the learned senior counsel, appearing on behalf of the plaintiff has also submitted that Section 2(a) of the HAMA applies to any person who is Hindu. He has also relied upon Section 18 and 23 of the HAMA to contend that the plaintiff is entitled to claim maintenance in this Court. He has also submitted that under Section 25 of the HAMA the right of maintenance may be altered or changed under the circumstances.

8. The relevant provisions of Order VII Rule 11 CPC and Section 1, 2, 18 & 23 of the HAMA read as follows:-

'Order VII Rule 11.....

11. Rejection of plaint : The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued by the plaintiff is written upon paper insufficiently stamped and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court failed to do so.

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9.'

HAMA

'1. Short title and extent.__(1) This Act may be called the [Hindu Adoptions and Maintenance Act, 1956](#).

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Application of Act.__(1) This Act applies__

(a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

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x x x x x x x x

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

[2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.]

(3) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

18. Maintenance of wife.__(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance__

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish or willfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

23. Amount of maintenance.__(1) It shall be in the discretion of the Court to determining whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the Court shall have due regard to the

considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to__

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to__

(a) the net value of the estate of the deceased after providing for the payment of his debts;

(b) the provision, if any, made under a will of the deceased in respect of the dependent;

(c) the degree of relationship between the two;

(d) the reasonable wants of the dependent;

(e) the past relations between the dependent and the deceased;

(f) the value of the property of the dependent and any income derived from such property, or from his or her earnings or from any other source;

(g) the number of dependents entitled to maintenance under this Act.'

Mr. Narula thus submitted that Sections 2,18 and 23 clearly gave rights to the plaintiff enforceable under HAMA in this Court.

9. In my view, it is unnecessary to consider these pleas advanced by the learned counsel for the plaintiff/wife in determining an application made under Order VII Rule 11 CPC and this Court is only required to consider the averments made in the plaint which clearly aver that the cause of action arose in India. The defendant will have to rely upon the pleas raised in the written statement in order to contend to the contrary. It cannot be, however, said on a bare perusal of the provisions of the HAMA that the aforesaid sections indicate in any manner that this suit is barred.

10. At this stage, Mr. Nanda has raised another plea regarding Section 20 of the CPC and stated that the Section 20(a) of the CPC clearly indicates that the cause of action could only arise where the defendant resides. This argument of Mr. Nanda has not taken stock of sub-section (3) of Section 20 CPC which states that the jurisdiction for a suit is available where the cause of action wholly or in part arises. Section 20 also shows that it is subject to the foregoing restrictions and that includes Section 19 of the CPC which includes a suit for compensation for wrongs to person or movables. It is not in dispute that the plaintiff has averred whether rightly or wrongly, that the cause of action is based on a wrong to her person which has resulted in the claim of maintenance which has arisen within the jurisdiction of this Court. Thus there is no merit in this plea also. Consequently the same is rejected.

11. Accordingly, the application is dismissed in liming with costs quantified at Rs. 10,000/- payable to the Delhi High Court Legal Services Committee, Room No. 36(LCB), Delhi High Court, New Delhi within four weeks from today.

CS(OS) No. 298/01

On joint request, list the matter on 28th January, 2005 for framing of issues.

In the meanwhile, parties to exchange the draft issues within six weeks from today.