

Renu Dhingra Vs. Vijay Dhingra

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Court : Delhi

Decided On : Jan-18-2001

Reported in : 2001IIIAD(Delhi)700; 90(2001)DLT155; I(2001)DMC476

Judge : S.K. Mahajan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10 and 151; [Hindu Marriage Act, 1955](#) - Sections 13(1) and 24; Hindu Adoption and Maintenance Act

Appeal No. : C.R. No. 752/2000 and CM 2634 of 2000

Appellant : Renu Dhingra

Respondent : Vijay Dhingra

Advocate for Def. : Geeta Luthra, Adv.

Advocate for Pet/Ap. : C.M. Chopra, Adv

Disposition : Petition dismissed

Judgement :

S.K. Mahajan, J.

Admit.

1. With the consent of the parties, I have heard arguments in this case and the petition is being disposed of finally.

2. The respondents filed a petition being HMA 574/97 for the grant of decree of judicial separation on the ground that the petitioner had treated him with cruelty. That petition is being contested by the petitioner. The petitioner also filed a suit as an indigent person in this Court under the Provisions of Hindu Adoption of Maintenance Act for the grant of separate residence and maintenance to her and the children. The petition for the grant of maintenance was filed subsequent to the petition seeking decree of judicial separation filed by the respondent. While the petition for grant of decree of judicial separation is pending in the Court of the Additional District Judge, the suit for maintenance under the Hindu Adoption & Maintenance Act is pending in this Court.

3. The petitioner filed an application under Section 10 read with Section 151, CPC in the Court of the Additional District Judge in HMA Case No. 574/97 for stay of those proceedings till the decision of her petition being IPA 15/97 pending in this Court. The contention of the petitioner in that application was that the facts and issues that arise in the case for judicial separation and in the suit for grant of maintenance were the same and it would therefore be appropriate that the petition for judicial separation was stayed. The learned Trial Court by the impugned order dated 29th may, 2000 held that under the provisions of Section 10 of the Code of Civil Procedure with a view to stay the proceedings in one of the two suits, the matter in issue in the subsequent suit must be directly and substantially in issue in the previously instituted suit and it is the subsequent suit which can be stayed and not the previous suit. The Court further held that the matter in dispute in IPA 15/97 was neither directly nor substantially in issue in the petition for judicial separation pending in that Court and the provisions of Section 10 of the code of Civil Procedure were, therefore, not applicable. Court dismissed that application. Being aggrieved by the order of the Additional District Judge dismissing the application of the petitioner, present revision petition has been filed by the petitioner.

4. It is contended by the petitioner that since she is a woman, she is entitled to a separate residence after she has been deserted by her husband and she is also entitled to maintenance for herself and for her children. It is submitted that since these reliefs cannot be granted by the Court of the Additional District Judge, she was compelled to file her suit for the grant of maintenance and separate residence. It is further submitted by her that the respondent has filed the petition under Section 10 of the Hindu Marriage Act for judicial separation on the ground that the petitioner had treated her with cruelty. It is her submission that in case, Additional District Judge holds that the petitioner has treated the respondent with cruelty, the petitioner may not be entitled to the grant of maintenance in the proceedings pending in this Court. According to her, therefore, it is in the fitness of things that the petition pending in the Court of the Additional District Judge is stayed. It is also her submission that even if the provision of Section 10 of the code are not applicable, the Court by invoking its inherent power under Section 151, CPC can stay the proceedings in the petition pending before the Additional District Judge. Learned Counsel for the petitioner in support of her contention that previously instituted suit can also be stayed under the provision of Section 151, CPC has relied upon a judgment of the Orissa High Court reported as *Banshidhar Naik and Ors. v. Laxmiprasad Patnaik*, : AIR1966 Ori53 .

5. I have given my thoughtful consideration to the arguments advanced by learned Counsel for the petitioner, but I have not been able to pursue myself to agree with the same. Under Section 10 of the code of Civil Procedure, it is the subsequently instituted suit that can be stayed and not the previously instituted suit and the learned Trial Court has, therefore, rightly held that the suit pending in his Court cannot be stayed merely because a petition for the grant of maintenance has been filed by the respondent. Moreover in the suit filed as an indigent person in this Court by the petitioner, she has already been provided a separate residence by an order of this Court and she is also getting maintenance by virtue of the orders of the Court.

6. Even the Matrimonial Court where the petition for the grant of decree for judicial separation is pending, the petitioner can file an application under Section 24 of the Hindu Marriage Act for the grant of maintenance and litigation expenses. That

being the position, in my view, no prejudice will be caused to the petitioner in case the petition filed by the husband is not stayed. On the other hand it is the respondent who will suffer in case his petition for judicial separation is stayed. The judgment cited by the petitioner, in my view, is not applicable to the facts of the case inasmuch as in that case one of the two Courts did not have jurisdiction to grant the reliefs claimed by the parties.

7. I have carefully gone through the orders of the Trial Court and I do not find any jurisdictional error therein nor the Trial Court has acted illegally or with material irregularity so as to necessitate that interference by this Court. In my view, there are no merits in this petition and the same is accordingly dismissed. The interim orders passed earlier stand vacated.

8. Petition dismissed.

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