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Vinodini Vs. Gopinathan

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Court : Kerala

Decided On : Apr-05-2006

Reported in : 2006(2)KLT602

Judge : R. Basant, J.

Acts : Hindu Marriage Act - Sections 13, 14 and 24; Code of Criminal Procedure (CrPC) - Sections 125

Appeal No. : W.P. (C) No. 9850 of 2006

Appellant : Vinodini

Respondent : Gopinathan

Advocate for Def. : Biju Abraham, Adv.

Advocate for Pet/Ap. : Lekha Suresh. Adv.

Disposition : Petition allowed

Judgement :

R. Basant, J.

1. The petitioner/wife has come to this Court aggrieved by Ext. P4 order. Her husband, the respondent herein has filed an application for divorce under Section 13 of the Hindu Marriage Act against her. In as much as the period of one year

prescribed under Section 14 of the Act has not elapsed from the date of the marriage, he has filed an application for leave to entertain the petition even before the lapse of the period of one year.

2. While that petition was pending, the petitioner herein filed an application under Section 24 of the Hindu Marriage Act. She prayed that she may be awarded maintenance pendente lite and expenses of the proceedings. By the impugned order, a copy of which is produced as Ext. P4, the court below has not considered the prayer under Section 24 on the short ground that no proceedings are pending to justify invocation of the provisions of Section 24. The Family Court it would appear did not reckon the proceedings under Section 13, while a petition for leave under Section 14 is pending, as a proceedings to which the provisions of Section 24 would apply.

3. From principle, precedent or statutory provisions, I am unable to accept the view taken by the court below. The expression 'proceedings' in language and considered in the context, according to me, must certainly include proceedings initiated under Section 13 along with an application for leave under the proviso to Section 14. I am unable to accept the argument that such proceedings cannot be reckoned as proceedings to which the provisions of Section 24 would apply. The claim is for divorce. The claim for divorce cannot be entertained unless leave under the proviso to Section 14 is granted. In the petition under Section 13 and in the petition under Section 14 for leave, the petitioner that is the respondent in the O.P (HMA) js entitled to be heard. The court is bound to consider the submissions of both sides and pass orders. In these circumstances, the contention of the counsel for the respondent and the conclusion of the court below that proceedings under Section 24 would not include such proceedings under Section 13, where there is a petition under the proviso to Section 14 also, cannot be accepted,

4. This Writ Petition is, in these circumstances, allowed, Ext. P4 order is set aside. The court below shall consider the application under Section 24 afresh on merits and pass appropriate orders.

5. The learned Counsel for the respondent submits that an application for maintenance wider Section 125 Cr.P.C has also been filed by the petitioner herein.

Needless to say that the respondent shall be at liberty to bring these facts to the notice of the Family Court. Counsel, for the petitioner prays that there may be a direction for expeditious disposal of application under Section 24. The learned Judge of the Family Court must imbibe the statutory rationale and purpose underlying Section 24 of the Hindu Marriage Act and proceeded to pass orders on merits expeditiously - at any rate, within a period of 30 days from the date on which a copy of this Judgment is placed before the learned Judge.

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