

Moideen Bava Vs. Shahida

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Court : Kerala

Decided On : Mar-30-2006

Reported in : AIR2006Ker362; I(2007)DMC116; 2006(3)KLT763

Judge : R. Basant, J.

Acts : [Family Courts Act, 1984](#) - Sections 13; Family Courts (Procedure) Rules, 1989 - Rules 9 to 11 and 239

Appeal No. : W.P.(C) No. 6514 of 2006

Appellant : Moideen Bava

Respondent : Shahida

Advocate for Def. : P. Gopakumaran Nair, Amicus Curiae

Advocate for Pet/Ap. : M. Ramesh Chander, Adv.

Disposition : Petition allowed

Judgement :

R. Basant, J.

1. Is a party to a proceeding before the Family Court entitled to apply for a copy of the order through his counsel when he is unable to appear before the court personally to apply for and receive such a copy? Does Section 13 of the Family

Courts Act or Rule 9 of the Family Courts (Procedure) Rules take away such an option of a party to a proceeding before the Family Court? These are the interesting questions that come up for consideration in this Writ Petition.

2. This is the second time the petitioner is coming before this Court. Against him, his wife has secured an order dissolving the marriage as per an ex parte order passed in O.P. No. 124/05. He applied for a certified copy through his counsel. That application was returned with an endorsement that 'the party must apply directly for the certified copy'. The petitioner is employed abroad. He could not come to India to personally apply for a copy. So, he filed W.P.(c) No. 2725/06 before this Court to direct the Family Court to issue a copy to him through his counsel. WP.(c) No. 2725/06 was disposed of directing the Family Court to consider the application and pass a speaking order.

3. Accordingly, the application was re-presented and Ext.P4 order has been passed wherein the court below placing reliance on Section 13 of the Family Courts Act and Rule 9 of the Family Courts (Procedure) Rules has again returned the application for proper personal presentation by the petitioner.

4. On the face of it the procedure adopted by the learned Judge of the Family Court does not appear to me to be correct, fair and just. The proceedings before the Family Court is already over. All that the petitioner wants is the issue of a copy of the order. Under Rule 10 of the Family Courts (Procedure) Rules, a party is entitled to a free copy of the order. Under Rule 11 of the Family Courts (Procedure) Rules read with Rule 239 of the Rules of Practice, a party is entitled to apply for a copy of an order through his counsel. To insist that a party employed abroad must come all the way to India to apply for and receive a copy of the order certainly appeals to me to be not fair, proper or just.

5. I shall now consider whether the law invariably mandates and demands such a course. If such insistence is not there, certainly a direction to the Family Court to issue the copy must follow as such a direction appears to be fair and just.

6. Section 13 of the Family Courts Act is, in this context, relevant and I extract the same below:

13. Right to legal representation.-- Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner:

Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

Every statutory provision has a laudable motive behind it. Application of the statutory provision without understanding and comprehending the rationale behind the statutory provision would not be proper. Section 13 of the Family Courts Act only says that no party to a suit or proceeding before the Family Court shall be entitled, 'as of right', to be represented by a legal practitioner. Evidently, this stipulation has reasons and principles backing the same. In a proceedings before the Family Court, the court is to make all attempts to conciliate and settle the dispute. Presence of a person alien to the matrimonial relationship may, it is reasonable to assume impede the attempt to conciliate and settle the dispute. Nor that such presence must in every case be counter productive to the journey to the destination of a settlement. But there may be cases in which such presence of a third party to the matrimonial relationship other than Presiding Officer/Conciliator may affect a possible harmonious settlement. That is why the law only insisted that no party to a suit or proceedings before the Family Court shall be entitled as of right to be represented by a legal practitioner.

7. It would appear that there is one more strong reason. In a matrimonial proceeding, embarrassing personal details may have to be revealed. Inter-personal relationship between the spouses, both mental and physical, may have to be revealed to the Family Court. In such proceedings presence of a legal practitioner may impede the process of discovery of truth. A party may be embarrassed and upset and may not be in a position to reveal such intimate details in the presence of a representative of the adversary even if such representative be a member of the noble profession and evidently this is the reason why Section 13 of the Family Courts Act insists and mandates that as of right a party is not entitled to insist on representation by a legal practitioner.

8. So understood, Section 13 of the Family Courts Act should not regulate a formal and impersonal act of application for a certified copy or a request to hand over copy to the representative of any of the litigants. It appears to me to be absolutely clear that the framers of the Statute did not intend that a legal practitioner should not be permitted to receive a copy on behalf of a party to a suit or proceedings before the Family Court. Application of the statutory provision unmindful of the purpose may result in injustice. A reading of the provisions of Section 13 of the Family Courts Act would indicate that no party to a suit or proceeding is entitled to be represented by a legal practitioner as of right. The purpose is not specifically stated in Section 13 of the Family Courts Act. All that is stated is that such party is not entitled to representation by a legal practitioner as of right. I therefore first of all take note of the fact that considering the purpose and object of Section 13 of the Family Courts Act, the relevant act in the instant case - that of applying for a certified copy and obtaining a certified copy must be permitted to be performed through the legal practitioner. The legal practitioner may not be entitled as of right to appear. But in the facts and circumstances of this case, such representation must have been permitted by the court and Section 13 of the Family Courts Act could never be held to bar or proscribe such application by a legal practitioner. Though the respondent has not entered appearance, I have solicited assistance from Mr. P Gopakumaran Nair, Advocate, and the learned Counsel has offered assistance to the court. Mr. P. Gopakumaran Nair points out that a possible argument is that in view of Rule 9 of the Family Courts (Procedure) Rules, an application for permission to appear through counsel may have to be insisted and an order in writing may have to be passed giving reasons. I extract Rule 9 of the Family Courts (Procedure) Rules below:

9. Permission for representation by a Lawyer. --

(a) The Court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated questions of law or fact, and if the court is of the view that the party in person will not be in a position to conduct his or her case adequately or for any other reasons. The reason for granting permission shall be recorded in the order. Permission so granted may be revoked by the Court at any stage of the proceedings if the Court considers it just

and necessary.

(b) Time for making Application.-- An application by a party for being represented by a lawyer in court shall be made by such party to the Court after notice to the other side. Such an application shall be made not less than two weeks prior to the date fixed for hearing of the petition.

(c) Application not to be entertained at the hearing. -- An application shall not be entertained after the petition is placed for hearing on the daily board of the Court, unless there are exceptional circumstances justifying such late application.

9. A careful reading of the Rule clearly indicates that the court has power to permit the parties to be represented by a lawyer. I can see nothing in the language in Rule 9 of the Family Courts (Procedure) Rules which insists that such permission can be given only on application. Ritualistic insistence on an application is not necessary at all, according to me. Rule 9 of the Family Courts (Procedure) Rules does not mandate that such an application must invariably be made. Where the court is satisfied that permission can be granted to a party to be represented by a lawyer, even without such application, it can certainly be granted. Considering the purpose of legal representation in this case such permission can and must be granted also. The language of the Rule makes it clear that such permission can be granted by the court 'for any other reasons'. The reason in this case is very evident and that is the purpose of the representation is only for making a copy application. The court must certainly have granted permission specifying that such permission is being given only for the purpose of applying for a copy.

10. Mr. R Gopakumaran Nair further points out that Rule 10 of the Family Courts (Procedure) Rules only mandates that a free copy of the order must be given 'to the parties'. Rule 10 does not specifically mandate that such copy is to be furnished to counsel for the parties. Here again, answer could only be that for the purpose of receiving copy, the court can permit the counsel to represent the party. Section 13 of the Family Courts Act and Rules 9 and 10 of the Family Courts (Procedure) Rules which are all discussed above do not definitely stand against permission being granted for such representation even without any formal application.

11. The learned Counsel for the petitioner was pointedly requested to explain why a formal application cannot be made by the petitioner. The counsel submits that the petitioner is not available in India. He is working abroad. If it were insisted that he must appear he will have to come all the way only for applying for a copy. He will have to remain in India until the copy application is complied so that he can take it from the court. In these circumstances, it is submitted that unnecessary difficulty, inconvenience and loss would result if personal appearance or an application by him were insisted.

12. I am, in these circumstances, of the opinion that Section 13 of the Family Courts Act read with Rules 9 to 11 of the Family Courts (Procedure) Rules certainly confers discretion on the court to grant permission to a party to be represented by a counsel even without any formal application by the party for the purpose of applying for and receiving a certified copy/free copy of the order passed or proceeding/document in the case. I am of opinion that the Family Court which is a special Tribunal constituted to render rough and ready justice to the parties to a family dispute should not stand on unnecessary technicality and must invoke the powers that are available under Section 13 of the Family Courts Act and Rules of the Family Courts (Procedure) Rules to permit such representation by a lawyer for the limited purpose of applying for and obtaining a copy even without a formal application.

13. This Writ Petition is, in these circumstances, allowed. The petitioner through counsel can re-submit the copy application with a memo by counsel to explain why permission is being sought to represent the petitioner and specifying that such permission is being sought only for the purpose of applying for and obtaining a certified copy/free copy of the order. The court below shall accept the said application and comply with the same.