

Virendra Kumar Vs. Smt. Santoshi Devi

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Court : Rajasthan

Decided On : Sep-17-1987

Reported in : AIR1988Raj127; 1988(1)WLN25

Judge : J.S. Verma, C.J. and; I.S. Israni, J.

Acts : Hindi Marriage Act, 1955 - Sections 9 and 24; Code of Criminal Procedure (CrPC) - Sections 125

Appeal No. : Civil Misc. Appeal No. 271 of 1986

Appellant : Virendra Kumar

Respondent : Smt. Santoshi Devi

Advocate for Def. : P.M. Agarwal and; V.K. Agarwal, Adv.

Advocate for Pet/Ap. : R.P. Garg, Adv.

Disposition : Appeal dismissed

Judgement :

I.S. Israni, J.

1. This D. B. Civil Misc. Appeal under Section 19 of the Family Courts Act, 1984 has been filed against the judgment dt. 18-9-86 passed by the learned Judge, Family Court, Jaipur in Civil Suit No. 422/86. Briefly stated the facts of the case

are that a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed by the respondent in the Court of learned District Judge, Jaipur City, Jaipur. The appellant husband has denied the factum of marriage with the respondent. An application filed by the respondent for restitution of conjugal rights was dismissed by the trial Court. Against this an appeal was filed before the learned single Judge of this Court which was accepted and after setting aside the order of the trial Court, the matter was remanded back for retrial in the light of observations made in it. The appellant filed a special appeal against the decision of learned single Judge which has also been dismissed by this Court.

2. In the meanwhile when the case was remanded by the learned single Judge to the trial Court, the respondent filed an application under Section 24 of the Hindu Marriage Act for maintenance of pendente lite. The learned trial court granted this application and has fixed an amount of Rs. 250/- per month as maintenance.

3. The contention of the learned counsel Shri R.P. Garg appearing on behalf of the appellant is that since the factum of marriage is itself in dispute no order of pendente lite maintenance is justified. It was also urged that the Special appeal before the Division Bench of this Court filed by the appellant against the order of remand was also pending, therefore, also the trial court should not have awarded maintenance to the respondent. It is further contended that since earlier also an application filed under Section 125, Cr.P.C. by the respondent for maintenance was rejected, therefore, no maintenance could now be granted under Section 24 of the Hindu Marriage Act to the respondent. The learned counsel Shri P.N. Agarwal appearing on behalf of the respondent has supported the order of the trial court and has urged that the trial court has rightly exercised its discretion which calls for no interference.

4. It may be pointed out that the Special appeal filed by the appellant against the judgment of learned single Judge remanding the matter for retrial to the trial court has already been dismissed. Therefore, this ground urged by the appellant is no more in existence. The application filed under Section 24 of the Hindu Marriage Act cannot be rejected merely on the ground that an application earlier filed under Section 125, Cr.P.C. for maintenance was rejected. The proceedings under

Section 9 of the Hindu Marriage Act are pending in the trial Court and the petitioner-respondent under Section 24 of the above Act, is entitled to file an application for grant of maintenance of pendete lite. The trial Court has rightly heard the matter and decided the same on merits. The earlier decision under Section 125, Cr. P.C. is no bar in deciding the application under Section 24 filed by the respondent-petitioner in the trial court. It may also be pointed out that the denial of factum of the marriage by the appellant has yet to be proved by him in the trial court and merely because he has denied the factum of marriage, the right of respondent-petitioner to get maintenance of pendente-lite cannot come to an end till the same is finally decided by the trial court.

5. We find no force in this appeal, which is hereby dismissed with no order as to costs.

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