

Nathulal Vs. Smt. Mana Devi

Nathulal Vs. Smt. Mana Devi

SooperKanoon Citation : sooperkanoon.com/753076

Court : Rajasthan

Decided On : Oct-21-1969

Reported in : AIR1971Raj208

Judge : D.M. Bhandari, C.J. and; Sohan Nath Modi, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 25

Appeal No. : Civil Misc. Appeal No. 18 of 1964

Appellant : Nathulal

Respondent : Smt. Mana Devi

Advocate for Def. : A.C. Inani, Adv.

Advocate for Pet/Ap. : Doongar Singh, Adv. for; S.K. Agarwal, Adv.

Disposition : Appeal dismissed

Judgement :

Modi J.

1. This civil miscellaneous appeal before us raises an important question under Section 25 of the [Hindu Marriage Act, 1955](#), hereinafter referred to as the Act, and that question is whether a wife against whom a decree for divorce had been passed on the ground of non-compliance with the decree for restitution of conjugal

rights for a period of two years, is entitled to permanent alimony.

2. The relevant facts of the case are as follows:--

The appellant Nathulal married respondent Mst. Mana Devi at Aimer on 21-4-50. The marriage gave birth to a son. About six months after the marriage, the respondent went away to her parents' house. The appellant made efforts for her return to his house but the respondent refused to live with her husband. On 12-1-53 the appellant sent a notice to the respondent requesting her to return to his house but to no avail. Ultimately, the appellant filed a suit for restitution of conjugal rights in the Court of Additional Munsif, Ajmer, against the respondent.

In her written statement, the respondent contended that she was turned out of the house by the appellant and his parents after giving a severe beating. According to her, she was deserted by the appellant, and, therefore the appellant was not entitled to a decree for restitution of conjugal rights. The learned Munsif decreed the suit on 29-5-58 holding that the respondent had failed to prove that she was subjected to any bodily or mental cruelty at the hands of the appellant. It was further held that though the appellant was desirous that the respondent should live with him but the respondent did not live with him. The suit for restitution of conjugal rights was therefore decreed against the respondent. The appeal filed by the respondent was dismissed.

After the expiry of two years, the appellant moved an application to the Court of District Judge Ajmer under Section 13 of the Act alleging that the respondent had failed to comply with the decree for restitution of conjugal rights for a period of two years, and, therefore, he was entitled to a decree for divorce against the respondent. This application was again contested by the respondent on the ground that she was always prepared to cohabit and live with the appellant but the latter did not allow her to do so. She also alleged that she was turned out by the appellant forcibly out of the house because she objected to the petitioner leading immoral life. The learned District Judge, Ajmer, on 9-12-61 allowed the application holding that the respondent had failed to comply with the decree for restitution of conjugal rights for a period of more than two years after the passing of the decree and as such the appellant was entitled to a decree for divorce.

On 6-2-62 the respondent moved the present application under Section 25 of the Act claiming permanent alimony at the rate of Rs. 30/- per month from, the date of the decree of divorce to the rest of her life. She alleged that she had not remarried and was leading a chaste life and that she had no independent means of income to maintain and support herself. She further pleaded that the appellant earns Rs. 130/- per month and he is in a position to pay Rs. 30/- per month for her maintenance.

The application was opposed by the appellant on the ground that the respondent has been adamant not to live with him from the very beginning, so much so that even after the decree for restitution of conjugal rights, she did not obey it with the result that he was compelled to move an application for divorce which was allowed by the District Judge. The learned District Judge who tried the application came to the conclusion that there was satisfactory evidence on the record to show that the respondent did not possess any property and had no means of income to support herself. It was further held that neither the respondent had re-married nor she was leading an unchaste life. In these circumstances, the learned District Judge thought it proper to allow the application and to grant the respondent a sum of Rs. 15/- per month in the nature of starving maintenance. It is against this order that the appellant has filed this appeal.

3. Section 25 of the Act runs as under:--

'Section 25(1):-- Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the Court to be just and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under Sub-section (1), it may, at the instance of either party, vary modify or rescind any such order in such manner as the Court may deem just

(3) If the Court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman, outside wedlock, it shall rescind the order.'

Sub-section (1) lays down that the order for maintenance may be made by any Court exercising jurisdiction under the Act either at the time of passing any decree or at any time subsequent thereto. The words 'any decree' mean any decree passed by the Court under the Act.

The provisions of the Act contemplate four kinds of decrees -- (1) decree for restitution of conjugal rights under Section 9(2) decree for judicial separation under Section 10(3) decree for dissolution of marriage by divorce under Section 13 and (4) decree for annulment of marriage on the ground of it being void or voidable under Sections 11 and 12.

Sub-section (1) further recognises the right not only of the wife but also of the husband to claim permanent maintenance irrespective of the fact whether the wife or the husband, as the case may be, has been successful or unsuccessful in the matrimonial cause. It further vests discretion in the Court in granting as well as in arriving at the quantum of permanent alimony. In exercising that discretion, the Court is enjoined to have regard to the following circumstances;

(1) income and other property of the applicant.

(2) income and other property of the respondent, and

(3) conduct of the parties. The duration of payment of maintenance under the section is limited to the life of the applicant.

Sub-section (2) empowers the Court to vary, modify or rescind any order for maintenance at any time after it has been made if there is any change in the circumstances of the case. Sub-section (3) lays down that the order for maintenance passed in favour of any party shall be revoked or rescinded (1) if such party has remarried or (2) if such party is the wife, she has remained unchaste, or (3) if such party is the husband, he has had sexual intercourse with any woman outside wedlock.

4. There is no provision under the Act which says that an erring wife who has not complied with the decree of the conjugal rights and against whom a decree for divorce has been passed on that account, is not entitled to receive any permanent alimony from the husband. On the contrary, the language of Section 25 empowers the Court to make an order of permanent alimony in favour of the spouse against whom the decree for divorce has been passed if the Court deems it just having regard to all the relevant factors and circumstances of the case.

In England from where the concept of permanent alimony appears to have been borrowed by our legislators, it has been held that an order for permanent alimony can be made by the Court in favour of the wife even if the marriage has been annulled on the ground of wilful refusal on her part to consummate the marriage. In *Dailey v. Dailey*, 1947-1 All ER 847, the Court allowed the wife maintenance at the rate of 75 less tax even though her marriage was annulled on the ground of her refusal to consummate the marriage. In that case, the husband moved an application for annulment of the marriage on the ground of the wife's refusal to permit sexual intercourse without the use of contraceptives. Again, in *Ashcroft v. Ashcroft and Roberts*, 1902 P 270, the Court made an order for maintenance in favour of the wife proved guilty of adultery.

Under the English Law, the reason for awarding permanent alimony to the wife seems to be that if the marriage bond which was at one time, regarded as indissoluble is allowed to be dissolved in the larger interest of the society, the same consideration of the public interest and social welfare also required that the wife should not be thrown on the street but should be provided for in order that she may not be compelled to adopt a disreputable way of life. On the same reasoning,

we are inclined to hold that the mere fact that the respondent had not complied with the decree for restitution of conjugal rights cannot be regarded as a sufficient ground in itself disentitling her to permanent alimony under this section.

Our attention was drawn to the principles of Hindu Law where it has been held that a wife is not entitled to separate maintenance or residence, unless she proves misconduct on the part of her husband. According to Hindu Law, it is the first duty of the wife to submit herself to the authority of her husband. If the wife resided away from her husband, she was not entitled to any maintenance from him for her maintenance. The appellant, however, cannot take benefit of the provisions of Hindu Law after the coming into force of the Act which repeals all prior laws whether in the shape of enactment or otherwise in so far as they are inconsistent with any of the provisions contained in the Act. It may be mentioned that the Act has brought about fundamental and radical changes in the law relating to marriages. Prior to the Act there was no provision for divorce under the Hindu Law, but, now under the Act a decree for divorce can be passed under certain circumstances. We cannot, therefore, invoke the principles of Hindu Law for determining whether the respondent is entitled to permanent alimony.

5. Lastly, it is argued that the words 'on application made to it for the purpose by either the wife or the husband' appearing in Section 25 of the Act go to show that no application for permanent alimony can be maintained under it after the passing of decree for divorce, for, in that case, there would not exist any longer relationship of husband and wife between the parties to the application. This contention, no doubt, gets supports from the decision of the Gujarat High Court in *Mehta Gunvantray Masanlal v. Bai Prabha Keshavji*, AIR 1963 Guj 242, but we do not think that it is well founded.

According to this argument an application for permanent alimony would be maintainable if it is made after the passing of the decree for restitution of conjugal rights or for judicial separation, but no such application would be maintainable in cases of decrees for divorce and annulment of marriage. A plain reading of Section 25, specially the words 'at the time of passing any decree or at any time subsequent thereto' would reveal that no such distinction was intended by the

framers of the Act. With great respect to the learned Judge, we are of the opinion that the view taken in Mehta Gunvantray Maganlal's case. AIR 1963 Guj 242 (supra) rests on too literal and narrow meaning put on the words 'wife' and 'husband' and it ignores the context in which they are used. These words are used to denote the parties in the main proceedings in which the decree is passed by the Court.

6. We now come to the question about the quantum of permanent alimony or maintenance. Under Sub-section (1) of Section 25, the Court has to determine the amount as 'it may seem to be just' and in so doing, it has to consider the income and other property of the wife, the income and other property of the husband and the conduct of the parties. This section does not lay down any rigid rule or any fixed criteria for assessment of the amount and leaves the matter to the 'discretion of the court while stressing that the means of the parties and their conduct are essential factors to which regard must be had.

It is not disputed before us that the respondent has no sufficient means to maintain herself. As regards the income of the appellant husband, the finding of the lower Court is that he earns Rs. 130/- per month. The respondent herself in her petition alleged that the appellant earns Rs. 130/- per month. This finding, therefore, cannot be said to be wrong. In judging the conduct of the parties, we may mention that under Section 25(3) of the Act, remarriage and unchastity of the wife disentitle her to get permanent maintenance from her husband. As already pointed out above, a wife who has been divorced on account of her having withdrawn from the society of her husband without any just cause, cannot be regarded as a disqualification to claim permanent alimony. But her earlier conduct in not obeying the decree for restitution of conjugal rights cannot be ignored altogether in arriving at the quantum of permanent alimony.

In Ekradeshwari Bahusin v. Homeshwar Singh, 56 Ind App 182 = (AIR 1929 PC 128), their Lordships of the Privy Council pointed out in a different context that maintenance depended upon a gathering together of all the facts of the situation, the amount of free estate, the past life of the married parties and the families, a survey of the condition and necessities and rights of the members of the family,

the scale and mode of living and the age, habits and wants and class of life of the parties. The lower Court keeping in view the circumstances of the case has fixed Rs. 15/- per month in the nature of starving maintenance and we do not consider that amount to be unfair. The respondent has filed cross-objections for increasing the amount Of maintenance, but looking to the income of the husband and the guilty conduct of the respondent, we are not inclined to increase the amount of maintenance.

7. In the result, we dismiss the appeal as well as the cross-objections. We pass no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com