Soni Vs. Dhannaram

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Court : Rajasthan

Decided On : Aug-06-1980

Reported in : 1981CriLJ547; 1980()WLN421

Judge : S.N. Deedwania, J.

Appellant : Soni

Respondent : Dhannaram

Judgement :
ORDER

S.N. Deedwania, J.

1. This revision is preferred by petitioner Smt. Soni wife of Dhannaram against the order, dated June 9, 1976 of learned Munsif and Judicial Magistrate. Jodhpur District, Jodhpur dismissing her application for maintenance.

2. Briefly stated the facts are these. Smt. Soni was legally wedded wife of non-petitioner Dhannaram. In the month of Jan., 1968 Dhannaram turned her out from his house and she had to live with her parents. The petitioner, thereafter, moved an application for maintenance under Section 488, Cr. P.C. in the Court of Sub-Divisional Magistrate, Jodhpur on 4-6-1968 on the ground that she was unable to maintain herself. The petition was contested and the defence was that according to the custom, the petitioner was divorced on 11-3-1968 and a divorced wife could

not claim maintenance. Somehow, the petition dragged on and in the meantime Cr, P. C, 1973 came into force. The case was, thereafter, transferred to the Court of Munsif and Judicial Magistrate, First Class, Jodhpur District, Jodhpur, The learned Magistrate arrived at the finding that the petitioner was divorced by her husband and, therefore, she was not entitled to maintenance under Section 488, of the Code. She could not get the benefit of Section 125 of the new Code, wherein a divorced wife also entitled to claim maintenance.

3. I have heard the learned Counsel for the parties and perused the record of the case carefully.

4. It is argued by the learned Counsel for the petitioner that under Section 125 of the Code, a wife who has been divorced before or after the new Code came into force is entitled to claim maintenance from her husband. The learned trial Court was in error in not considering the effect of change in law while deciding her application. On the contrary, it is argued by the learned Counsel for the non-petitioner, that as Section 125 of the new Code affects the substantive rights of the husband, it could not apply to the proceeding, which has been commenced, before the Code came into force. As a general rule, the change in law does not affect the rights of the parties in pending proceedings. I have considered the rival contentions carefully.

5. It cannot be seriously disputed that a wife who has been divorced before the new Code came into force is entitled to maintenance under Section 125 of the new Code. Explanation 1 (b) to this section says that wife includes a woman, who has been divorced by or has obtained a divorce from her husband and has not remarried. Obviously, this explanation includes every wife, who has been divorced either before or after the new Code came into force. It was thus observed in the case of Ladhuram v. Smt. Rukma Devi 1976 Raj LW 62 : 1977 Cri LJ NOC 202)-

The contentions of the learned Counsel for the parties have been considered and the record of the case perused. In the new Code of Criminal Procedure, provision has been made under Section 125, Cr. P.C. to do better justice to women. Under the old Code, a woman who had been divorced could not claim any maintenance from her ex-husband. The explanation added to Section 125, Cr. P.C. clearly

indicates that by a legal fiction for the purpose of getting maintenance, even a woman who has been divorced, has been included in the definition of the word 'wife'. The contention of the learned Counsel for the applicant that the new Code of Criminal Procedure cannot have any retrospective applicability, is without any substance with relation to the facts of the present case.

I, am, therefore, of the view that even a wife who has been divorced before the new Code came into force is entitled to claim maintenance under Section 125 of the Code. The words 'who has been divorced by or has obtained a divorce from her husband' clearly denote the events happening before or after the new Code came into force. All that is necessary is that the claimant should be a divorced wife, who has not re-married.

6. The question for determination, therefore, is what is the effect of this change of law on the adjudication of pending proceedings under Section 488 when the new Code came into force and were decided thereafter. No doubt, the golden rule of the construction is that in the absence of anything in the new enactment to indicate to the contrary, it cannot be so construed as to alter the law which was applicable when the action was commenced. This is the proposition enunciated in the following two authorities relied upon by the learned Counsel for the non-petitioner (1) Jose Da Costa v. Bascora Sadasive Sinai Narcornirn : AIR 1975 SC1843 -

Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well-established principles. The first is that while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.

(2) Katikara Chintamani Dora v. Guatreddi Ammamanaldu : [1974]2SCR655 -

It is well settled that ordinarily, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action was begun unless the new statute shows a clear intention

to vary such rights, Maxwell on Interpretation, 12th Edn, 220. That is to say, in the absence of anything in the Act, to say that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act is passed.

7. However, this principle is subject to certain exceptions as observed in the aforesaid authorities, the power of the legislature to affect such rights even in pending proceeding can hardly be disputed. There is no absolute rule of inviolability of substantive or vested rights. If new law expressly or by clear intend-inent takes away such rights or creates new obligations, then it can even affect the right even in pending proceedings. It is evident from a bare perusal of Section 125 of the Code that a wife includes a woman, who has been divorced, even before the Code came into force. That is the significance of the words, 'who has been divorced.' Such a wife, therefore, can claim maintenance at least from the date, the Code came into force and initiate a cause for the enforcement of her claim. It, therefore, does not stand to reason that such a wife should not be allowed to enforce her claim in a pending case and should be driven to file a new application. I am, therefore, of the view that such a wife can also claim maintenance in a pending case. The view, which I propose to take, is supported by a wealth of case law, to cite a few, it was thus observed in the following two authorities: -

(1) Shyabuddinsab v. Municipality of Gadeg Batgeri : [1955]1SCR1268 -

But it was argued on behalf of the appellant that in terms the amendment had not been made applicable to pending litigation and that therefore this Court should hold that the amendment did not have the effect of validating the elections which were already under challenge in a Court.

No authority has been cited before us in support of the contention that unless there are express words in the amending statute to the effect that the amendment shall apply to pending proceedings also, it cannot affect such proceedings. There is clear authority to the contrary in the following dictum of Lord Reading, C.J. in the case of - King v. Southampton Income-tax Commer; Ex Parte W. N. Singer' 1916-2 KB 249 at p. 259:

I cannot accept the contention of the applicant that an enactment can only take away vested rights of action for which legal proceedings have been commenced if there are in the enactment express words to that effect. There is no authority for this proposition, and I do not see why in principle it should be the law. But it is necessary that clear language should be used to make the retrospective effect applicable to proceedings commenced before the passing of the statute'. That it was a case in which the Act in question had validated assessments made by Commissioners for wrong parishes. It was held by the Court that the retrospective effect of the relevant section extended to proceedings for a prohibition commenced before the Act came into force and the rule 'nisi' for a prohibition was, therefore, discharged. In every case the language of the amending statute has to be examined to find out whether the legislature clearly intended even pending proceedings to be affected by such statute. A number of authorities were cited before us but it is only necessary to refer to the decision of their Lordships of the Judicial Committee in 'K. C. Mukerjea v. Mt. Ramratan Kuer AIR 1936 PC 49, which is clearly in point. In that case while an appeal had been pending before the Judicial Committee the amending Act had been passed clearly showing that the Act was retrospective in the sense that it applied to all cases of a particular description, without reference to pending litigation. In those circumstances their Lordships pointed out that if any saving were to be implied in favour of pending proceedings, then the provisions of the statute would largely be rendered nugatory. Those observations apply with full force to the present case, inasmuch as if any saving were to be implied in favour of cases pending on the date of the amendment, the words 'all elections to the office of the President or Vice-President, held on or after the said date and before the coming into force of this Act, shall be deemed to be valid' could not be given their full effect.

As there are no such saving clauses in express or implied terms, it must be held that the amendment was clearly intended by the legislature to apply to all cases of election of President or Vice-President, whether or not the matter had been taken to Court. It is the duty of Courts to give full effect to the intentions of the Legislature as expressed in a statute. That being so, it must be held that the amending Act had the effect of curing any illegality or irregularity in the elections in question with reference to the provisions of Section 19 of the Act.

(2) Dayawati v. Inderjit AIR 196fi SC 1423-

Now as a general proposition, it may be admitted that ordinarily a Court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke, whose maxim - a new law ought to be prospective not retrospective in its operation - is oft-quoted. Courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the court of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the Court is invited by law to take away from a successful plaintiff, what he has obtained under a judgment. See Quilter v. Mapleson (1882) 9 QBD 672 and Stovin v. Fairbrass (1919) 88 LJKB 1044, which are instances of new laws being applied. In the former the vested rights of the landlord to recover possession and in the latter the vested right of the statutory tenant to remain in possession were taken away after judgment. See also Maxwell Interpretation of Statutes (11th Edn.) pp. 211 and 213, and K.C. Mukherjee v. Mst. Ramratan Kuer 68 Ind App 47 : AIR 1936 PC 49, where no saving in respect of pending suits was implied when Sections 26(N) and (O) of the Bihar Tenancy Act (1934) were clearly applicable to all cases without exception.

8. Of course, it is open to the learned Magistrate to order that such maintenance allowance shall be payable from the date of the order or from 1st Apr, 1974.

9. I, therefore, accept the revision petition and set aside the order of the learned Munsif and Judicial Magistrate Jodhpur and direct him to decide the application for maintenance in the light of the observations made above. The parties are directed to appear before the trial Court on 5-9-1980.