

Mukan Kunwar Vs. Ajeetchand

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Court : Rajasthan

Decided On : Mar-19-1958

Reported in : AIR1958Raj322

Judge : Jagat Narayan, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : Civil Revn. No. 58 of 1958 (Civil Misc. Appeal No. 5 of 1957)

Appellant : Mukan Kunwar

Respondent : Ajeetchand

Advocate for Def. : Guman Mal, Adv.

Advocate for Pet/Ap. : Navratan Mal, Adv.

Disposition : Application allowed

Judgement :

ORDER

Jagat Narayan, J.

1. This revision application was filed as a civil miscellaneous first appeal purporting to be against an order of the learned District Judge, Jodhpur, refusing

to grant maintenance pendente lite and expenses of proceedings to the applicant under Section 24 of the [Hindu Marriage Act, 1955](#). It was treated as a revision on the application of the applicant since an order passed under Section 24 of the [Hindu Marriage Act, 1955](#), is not an appealable order. The application has been contested on behalf of the respondent.

2. The facts giving rise to the present application are these. Smt. Mukan Kunwar applicant is the legally wedded wife of Ajeetchand, who filed a petition against her under Section 12 of the [Hindu Marriage Act, 1955](#), for the annulment of their marriage on the ground that the wife was impotent at the time of marriage and continued to be so until the institution of the proceeding. The applicant filed an application under Section 24 for maintenance pendente lite & expenses of proceedings. The learned District Judge found that the applicant had no independent income at all and the nett monthly income of the respondent was Rs. 107/- per month.

Yet he declined to grant any maintenance pendente lite and expenses of proceedings on the ground that the wife had refused to go and live with the husband, that an attempt to bring about reconciliation between the two had failed, that prior to the husband's petition for divorce the applicant took no steps to claim maintenance from him and that she was being maintained by her parents. On behalf of the applicant it is urged that the reasons given by the learned District Judge are no reasons at all for depriving her of maintenance pendente lite and expenses of proceedings and that the order is arbitrary and capricious. On behalf of the respondent it was contended that the order passed by the learned District Judge was within his jurisdiction and there can be no interference with the exercise of his discretion under Section 115, C. P. C.

3. Section 24 of the [Hindu Marriage Act, 1955](#), runs as follows :

'Maintenance pendente lite and expenses of proceedings.

Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the

application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly, during the proceeding such sum as having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable.'

4. The award of maintenance pendente lite and expenses of proceedings under the above provision is no doubt in the discretion of the Court. But this discretion must be a judicial one, exercised on sound legal principles and not by caprice or chance or humour. No hard and fast rule can however be laid down, the exercise of the discretion depending upon the circumstances of each particular case.

5. First the Court has to consider whether or not it should grant maintenance pendente lite and expenses of proceedings under this section at all. The leading principle to remember in this connection is that if the applicant has no independent means he or she is entitled to maintenance and expenses under this section, unless good cause is shown for depriving him or her of it. What can be a good cause for this purpose has also been the subject of a series of decisions in matrimonial cases and Courts have held that the matters that may properly be considered are (1) whether the applicant is being supported by an adulterer, and (2) whether the respondent has not sufficient means. (See Manchanda's Commentary on Section 36 of the Indian Divorce Act).

6. If the Court comes to the conclusion that the applicant is entitled to maintenance and expenses then it has to consider their quantum. As for maintenance pendente lite Courts generally allow it at one-fifth the income of the respondent after deductions on account of income-tax and provident fund. Under the Indian Divorce Act the maximum alimony pendente lite has been fixed at one-fifth the nett income. In the Hindu Marriage Act no such limit has been prescribed. In the absence of special circumstances maintenance should be allowed at one-fifth the nett income of the respondent. As for expenses of litigation there should be no difficulty in assessing what the reasonable expenses should be.

7. Coming now to the facts of the present case and the order of the learned District Judge four reasons have been given for depriving the applicant of the maintenance and expenses altogether.

8. The first reason is that the wife had refused to go and live with the husband. This is no reason for depriving her of maintenance pendente lite and expenses of litigation as the allegation made in the plaint is not that the wife has wilfully refused to consummate the marriage; but it is that the wife is incapable of the sexual act and abhors it on account of some physical or psychological defect. That means that the respondent does not allege that the wife is in any way to blame for refusing to live with him. The next reason given in the judgment is that an attempt to bring about reconciliation between the two had failed. The learned Judge does not say that the wife was responsible for the failure in bringing about reconciliation in any way. The wife is prepared to go and live with the husband. It is the husband who does not wish to keep her with him as he alleges that she is incapable of consummating marriage. This is also therefore no reason for depriving her of maintenance and expenses.

9. The third reason given in his judgment is that prior to the husband's petition for divorce the applicant took no steps to claim maintenance from him. That is also no reason for depriving her of maintenance for if she had been getting maintenance from him from before, she would not be entitled to claim maintenance under Section 24. It is only when a wife is not receiving maintenance from the husband that an application for maintenance under this provision lies. If the applicant had applied for maintenance under the Code of Criminal Procedure and had been refused or if she had brought a suit for maintenance and it had been dismissed that may be a relevant consideration in depriving her of maintenance under Section 24. The last reason given by the learned District Judge is that the applicant is being maintained by her parents. That also is no reason for not granting maintenance under Section 24.

A wife has a right to be maintained by her husband and the fact that her father is supporting her is no ground for depriving her of maintenance. Section 24 of the Hindu Marriage Act 1955 also makes this clear. It is provided in it that where the wife has no independent income sufficient for her support and the necessary expenses of the proceeding she may maintain an application under it. If the object of the Legislature had been to deprive the wives who were being maintained by their parents of maintenance and expenses the word 'independent' would not have

been used in this section.

10. I therefore hold that the order of the learned District Judge depriving the applicant of maintenance and expenses is one without reason. It is therefore an arbitrary order based on his personal whims.

11. It is settled law that when the discretion is exercised perversely so as to cause serious prejudice to a party, the High Court will be justified in interfering with it under Section 115, C. P. C. The following are instances in which such interference was made:

Chunialal v. Deoram, AIR 1948 Nag 119 (A);

Harprasad v. Shankarlal, AIR 1933 All 957 (B);

Mathura Prasad v. Deputy Commissioner, Kheri, AIR 1937 Oudh 282 (C);

Surendra Narain Singh v. Lal Bahadur Singh, AIR 1935 All 705 (D);

Mst. Uma Salama Bibi v. Hasan Imam, AIR 1937 Pat 21 (E).

12. I accordingly allow the application with costs, and set aside the order of the learned District Judge refusing to grant maintenance pendente lite and expenses of proceedings to the applicant. The net income of the respondent is Rs. 107/- p.m. I grant maintenance pendente lite to the applicant at Rs.21/- per month from the date of the application. As for the expenses of litigation the applicant wishes to examine a gynecologist from Ajmer or Jaipur in her defence as Dr. Jacob, the gynecologist of Jodhpur has already given evidence for the respondent. In the circumstances I consider a sum of Rs. 150/- reasonable as expenses of litigation and order that the respondent shall pay this sum to her. So long as the maintenance pendente lite which has already fallen due and the expenses of proceedings are not paid to her, the petition for annulment of marriage shall not proceed.