

Jai Shanker Vs. Chandresh

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Court : Rajasthan

Decided On : Mar-05-1980

Reported in : 1980WLN(UC)82

Judge : C.M. Lodha, C.J. and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Civil Special Appeal No. 4 of 1979

Appellant : Jai Shanker

Respondent : Chandresh

Judgement :

C.M. Lodha, C.J.

1. The appellant was directed by this court on November 6, 1979 to pay to the respondent Rs. 330/- as lawyer's fee for opposing the appeal and Rs. 120/- as incidental expenses, total Rs. 450/- and one month's time was granted to the appellant for making the payment. The aforesaid amount has not been paid though the case was adjourned more than once to enable the appellant to comply with the aforesaid order of the court.

2. Learned Counsel for the appellant submits that the appeal may be heard and the respondent may be directed to take out execution of the order of this court regarding grant of expenses In the alternative it is submitted that further proceedings in the appeal may be ordered to be stayed till the order is complied

with. In support of his contention he has placed reliance on Malkan Rani v. Krishan Kumar , Smt. Anita v. Birendra Chandra : AIR1962 Cal88 , Ram Chandra Rao v. Kowsalya AIR 1969 Mysore 76 and Anuradha v. Santosh Nath AIR 1976 Delhi, 246.

3. On the other hand, learned Counsel for the respondent has urged that the appellant is not entitled to be heard in support of his appeal, when he is wilfully and deliberately flouting the order of this court dated November 6, 1979 directing payment of Rs. 510/- to the respondent. He has also submitted that stay of appeal would only result in prolonged agony to the respondent, and looking to the attitude of the appellant an order of stay would only result in prolonging the matter indefinitely. It is urged that in order to prevent abuse of the process of the court, in a matter like this, the proper course would be to dismiss the appeal. In support of his contention he has relied upon Shri Ram Swaroop v. Janak and Jaisingh v. Khimi Bhiklu AIR 1978 Himachal Pradesh 45.

4. Having regard to the circumstances of the case we are inclined to think that no useful purpose will be served by directing stay of hearing of the appeal on the ground of non compliance with the order of this Court. The intention of the Legislature behind enacting Section 24 is clear and it is this that if one of the spouses deserves to be awarded necessary expenses for defending a matrimonial matter the court should make an order to that effect so that the affected spouse may plead its case effectively. We are consequently of opinion that the only just and proper course would be to grant one more opportunity to the appellant in the interest of justice to comply with the order of this court and make it the last opportunity on the pain of dismissal of the appeal in case the order is not complied with.

5. Accordingly we hereby direct that the appellant shall deposit in court or pay to the respondent against her receipt a sum of Rs. 450/- (Rupees Four Hundred Fifty) as ordered by this court on November 6, 1979 on or before Tuesday, the 15th April, 1980 failing which the appeal shall stand dismissed.

6. Put up the case on April 15, 1980.

