

Vedantham Vs. Nirmala

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Court : Chennai

Decided On : Feb-19-1990

Reported in : II(1991)DMC236

Judge : Bakthavatsalam, J.

Acts : [Constitution of India](#) - Article 227; [Family Courts Act, 1984](#) - Sections 7(1); [Hindu Marriage Act, 1955](#) - Sections 9 and 24

Appeal No. : C.R.P. No. 491 of 1990

Appellant : Vedantham

Respondent : Nirmala

Advocate for Def. : J.R.K. Bhavanantham, Adv.

Advocate for Pet/Ap. : P.S. Venkatasubramaniam, Adv.

Disposition : Petition dismissed

Judgement :

Bakthavatsalam, J.

1. The petition is filed under Article 227 of the Constitution against an order of the Family Court granting interim maintenance to the petitioner's wife and son under Section 24 of the Hindu Marriage Act pending proceedings for restitution of

conjugal rights filed under Section 9 of the Hindu Marriage Act.

2. The respondent has preferred an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and the petitioner has filed a counter statement. Pending disposal of the main case, a petition was filed by the respondent herein under Section 24 of the Hindu Marriage Act. The lower Court has awarded Rs. 750 for interim maintenance for the wife and Rs. 350 to the son from 24 1-1989, till the disposal of the main petition. The petitioner seeks to attack that order by way of this revision petition.

3. Mr. P.S. Venkatasubramaniam, learned counsel for the petitioner questions the very jurisdiction of the Family Court to grant interim maintenance pending proceedings. Under [Family Courts Act, 1984](#) (Act 66 of 1984) there is no provision for granting interim maintenance. Learned counsel points out Clause (f) of Section 7 and states that the maintenance referred to there is only in a suit or proceedings for maintenance and as such the family Court has no jurisdiction to grant interim maintenance pending the proceedings under Hindu Marriage Act. Learned counsel also refers to Sub-section (2) Section 7 and contends that a reading of Section 24 of the Hindu Marriage Act and a separate provision ought to have been inserted by the Parliament to meet the contingency and as such there is a lacuna in the enactment.

4. I am not able to agree with learned counsel for the petitioner. The Family Court exercises the jurisdiction under Section 7 of the Act. Section 7(1) of the Family Courts Act reads as follows :-

'Jurisdiction.-(1) Subject to the other provisions of this Act a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any District Court or any Subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be such Subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.'

5. The Explanation to Section 7 is very important. Sub-clause (a) of Explanation to Section 7 states as follows ;-

'a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights of judicial separation or dissolution of marriage.'

6. Under sub-clause (a) it is very clear that the Family Court can exercise its jurisdiction in a suit or proceedings between parties to a marriage for a decree for restitution of conjugal rights. When such is the case, it cannot be disputed that it is governed by Section 9 of the [Hindu Marriage Act, 1955](#). When a petition under Section 9 of the Act is pending, Section 24 of the Act can be invoked automatically for grant of interim maintenance. It is not necessary that there should be a separate provision for this purpose in the Family Courts Act. Section 24 of the Hindu Marriage Act reads thus-

'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 proceedings 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 proceedings 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.'

A reading of Section 24 of the Hindu Marriage Act and the explanation (a) to Section 7 of the Family Courts Act in my view, answers the points raised in this case. Otherwise, it would be meaningless to leave the parties without any remedy. When a Family Court has been constituted under the Act and jurisdiction has been conferred on it, in my view, it has got the power to grant maintenance pendente lite and expenses of proceedings as provided from Section 24 of the Act. In the view I take that the Family Court has got jurisdiction to pass an order which is questioned before me, I do not think it is necessary to interfere with the quantum awarded by the Family Court Mr. P.S. Venkatasubramaniam, learned counsel for the petitioner, also is not questioning the quantum granted. Assuming that it is also

questioned, I do not think this Court can interfere under Article 227 of the Constitution as I do not find any special case for exercising this extraordinary power under Article 227 of the Constitution. The civil revision petition is therefore dismissed.

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