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

P.S. Devarajan Vs. R. Geetha

P.S. Devarajan Vs. R. Geetha

SooperKanoon Citation : sooperkanoon.com/813260

Court : Chennai

Decided On : Feb-29-2000

Reported in : AIR2000Mad440

Judge : S.S. Subramani, J.

Acts : Hindu Marriage Act, 1955- Sections 24

Appeal No. : C.R.P. No. 427 of 2000 and C.M.P. No. 2182 of 2000

Appellant : P.S. Devarajan

Respondent : R. Geetha

Advocate for Pet/Ap. : B. Dayalan, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

S.S. Subramani, J.

1. Judgment-debtor, who is the husband in H.M.O.P. No. 53 of 1986 on the file of the Subordinate Judge's Court at Poonamallee, is the revision petitioner.

2. Petitioner moved an application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. In that application, respondent herein filed I.A. No. 210

of 1986, seeking interim maintenance and litigation expenses. On 30-9-1989, Court directed the petitioner to pay Rs. 500/- per month as interim maintenance and litigation expenses of Rs. 1,000/-. Petitioner was directed to pay interim maintenance from 26-6-1986. Though the matter was challenged in C.R.P. No. 3037 of 1989, the same was dismissed by this Court on 30-3-1992. Thereafter, the matter was taken before the trial Court and since it was represented that the order has not been complied with, on 4-12-1992, it stayed all the further proceedings in the case. The order reads thus :

(Vernacular matter omitted ...Ed.)

3. Respondent filed E.P. No. 44 of 1999. seeking execution of order. She claimed that a sum of Rs. 75,700/- is due to her till 23-5-1999 i.e. the date of E.P. She wanted to realise the amount by arrest and detention of the judgment-debtor. Petitioner filed serious objections to the E.P. and by order dated 19-11-1999, it was found that the petitioner is liable to be arrested.

4. After the order was passed on 19-11-1999 and before the C.R.P. was filed on 1-12-1999, the petitioner paid an amount of Rs. 10,000/- towards arrears of mainte-'nance and on 6-12-1999, a further amount of Rs. 26, 867/- was paid.

5. According to the petitioner, once the proceedings have been stayed as per order dated 4-12-1992, he is not liable to pay interim maintenance and the amount already paid by him would satisfy the claims of the respondent. According to the petitioner, once the Court orders, stay of proceedings, for all practical purposes, the proceedings under Section 9 comes to an end and when there is no order under Section 25 of the Hindu Marriage Act, the respondent is not entitled to recover any amount after the order of stay.

6. This argument was not put forward before the lower Court and Executing Court found that the petitioner is bound to pay the entire amount of Rs. 75,700/- till the date of E.P. The only question that requires consideration in the E.P. Is, whether the petitioner is bound to pay interim maintenance even during the period while the proceedings have been stayed:

7. Counsel for the petitioner relied on the Judgment of a learned single Judge of Delhi High Court reported in : AIR1984 Delhi301 (Jai Rani v. Om Prakash) in support of his contention. It is true that the said decision supports the case of the petitioner. In para 8 of the Judgment, the learned Judge held thus :

'Where on a petition under Section 9 by the husband for restitution of conjugal rights an application under Section 24 was made by the wife for maintenance pendente lite and litigation expenses the husband was ordered to pay a certain sum as litigation expenses and maintenance and on failure of the husband to pay the amount the proceedings were stayed the wife would be entitled to recover from the husband monthly maintenance allowance only up to the date of the stay was ordered but not after that. It could not be said that the wife can claim maintenance allowance as long as the husband's petition is not dismissed or decreed.

8. Before considering the said judgment, let us consider what Section 24 of the Act provided. Section 24 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 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.'

9. It is admitted by the petitioner himself that when he complies with the direction of paying maintenance, the stay stands vacated and the original petition gets revived. When the application is kept pending, the effect of the stay is only that the petitioner will not be entitled to proceed with the matter till be complies with the direction and the application filed by him still continues on the file. What is the difference between quashing an order and staying an order, came up for consideration before the Hon'ble Supreme Court in a decision reported in : [1992]2SCR999 (Shree Chamundi Mopeds Ltd. v. Church of South India Trust). In paragraph 10 their Lordships held thus :

'10.....While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order or and it does not mean that the said order, has been wiped out from existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so Long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.'

By ordering a stay of proceedings, the application filed by the petitioner is not terminated and there is a possibility of getting it revived, once the petitioner complies with the direction. I have already extracted Section 24 of the Act. The liability to pay interim maintenance subsists 'during the proceeding.' What is meant by the words 'during proceeding.' The word 'during' has been defined in short in Oxford English Dictionary to mean 'throughout the whole continuance of.' Therefore, the word 'during' has to be understood as 'throughout the continuance of.' in Ramanatha lyer's Law Lexicon, the word 'during' has been.explained 'in the course of .....throughout the whole continuance; in the course of.' Once it is found that the proceedings have not come to an end and the Court has ordered only slay of proceeding, the application filed by the petitioner is kept on the file. Where Court orders that no orders will be passed thereon, it is not terminating the proceeding. It is also well settled that once the petitioner complies with the direction, the order of stay also gets automatically vacated and the application also gets revived. In the decision relied on by the learned counsel, the effect of stay has also been stated in para 7 of the judgment. Learned Judge has held thus :

'.....The Judge has therefore stayed the proceedings, with the stay of the proceedings, the operation of the order under Section 24 is suspended. This means that the husband will be liable to pay maintenance allowance for the period up to stay of proceedings but not beyond that. In case he revives the proceedings he will of course be liable to pay all arrears of maintenance which will be due during this period of stay and revival. The proceedings remain in a state of animated suspension. Maintenance peudente lite is pending adjudication, it is true, but if the spouse ordered to pay main-tenance is in default the Court stays the proceedings. The defaulting spouse is not allowed to use the judicial process because of non-compliance. The proceedings by staying them are brought to an end capable of being revived only on condition that the defaulting spouse submits to the unques-tioned authority of the Court which he once refused to recognise. This is the sanction Judges have in their hands to see that no one flouts their orders with impunity.'

10. From this decision, it is clear that the proceedings remain in state of animated suspension. I do not agree with the learned Judge when it is said that by passing an order of stay, the proceedings were brought to an end capable of being revived only on condition that the defaulting spouse submits to the unquestioned authority of the Court which he once refused to recognise. A proceeding which has come to an end cannot be revived. An order of stay will not put an end to the litigation. It only suspends the proceedings. Since the word used under Section 24 is, 'during proceedings' and since the stay did not put an end to the proceedings and no final orders have been passed on the same, even during the period of stay, the petitioner will be liable to pay the amount. The learned Judge has held that in case, the proceedings revived, the party will be liable to pay all arrears of maintenance which will be due during this period of stay and revival. If the proceedings have come to an end, there is scope for paying maintenance during the period of stay.

11. Section 25 of the Hindu Marriage Act provides for permanent alimony. If the interpretation as put forward by the learned Judge is accepted, no order under Section 25 also could be passed though there is a termination of proceeding. That means, even though the proceedings have come to an end, the parties are

prohibited from getting any permanent alimony also. There is no final orders passed in the proceeding and only the word used is, 'at the time of passing a decree or at the time subsequent thereto.' On a joint reading of Ss. 24 and 25. the question is irresistible that during the pendency of the proceeding, the petitioner is bound to pay Interim maintenance. The word 'during the proceeding' means, during the pendency of the proceeding. A stay will not put an end to the litigation. The application is still pending and the petitioner will be bound to pay interim alimony even during that period and the order of the lower Court, holding that the petitioner is liable to be arrested for non-paying the amount is therefore, correct.

12. C.R.P. is without merit and consequently, the same is dismissed. C.M.P. No. 2182 of 2000 is also dismissed.

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