

G. Gowri Vs. B. Ganesan

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Court : Chennai

Decided On : Jul-06-1994

Reported in : (1994)2MLJ485

Appellant : G. Gowri

Respondent : B. Ganesan

Advocate for Def. : Mr. K.P. Gopalakrishnan

Judgement :

ORDER

Pratap Singh, J.

1. This civil revision petition, filed under Article 227 of the Constitution of India is directed against the order passed in I.A. No. 4 of 1993 in O.P. No. 97 of 1991 on the file of Family Court, Pondicherry.

2. Short facts are: The revision petitioner had earlier filed suit in O.S. No. 34 of 1984 for maintenance against the respondent and the trial court ordered maintenance at the rate of Rs. 350 p.m. Aggrieved by the quantum of maintenance, the revision petitioner filed A.S. No. 732 of 1984 on the file of this Court and this Court had allowed her appeal and enhanced the maintenance at the rate of Rs. 550 p.m. Aggrieved by the said judgment, the respondent had filed appeal in L.P.A. No. 123 of 1991 and it is pending. While so, the revision petitioner

filed O.P. No. 97 of 1991 for enhancement of maintenance before the Family Court, Pondicherry. While so, the respondent had filed petition under Section 10, C.P.C in I.A. No. 4 of 1993 praying for stay of the trial of the Original Petition in O.P. No. 97 of 1991. That was opposed by the revision petitioner. After hearing both sides, the learned judge of the Family Court, Pondicherry, had allowed the application. Aggrieved by the same, the respondent in I.A. No. 4 of 1993 has filed this revision petition.

3. Mr. V. Radhakrishnan, learned Counsel for the revision petitioner would submit that the claim for maintenance in the earlier suit was at the rate of Rs. 550 p.m. and that was based on cost of living and other circumstances which were prevalent at that time and now in view of the steep increase in the cost of living, another suit was filed for enhancement of maintenance under common law and it cannot be stated that the subject-matter of the earlier suit and the subject-matter of the present suit are one and the same so as to call for the application of Section 10, C.P.C.

4. Per contra, Mr. K.P. Gopalakrishnan, learned Counsel for the respondent, would submit that in L.P.A. No. 123 of 1991, this Court had stayed the proceedings and that decision in L.P.A. No. 123 of 1991 has got a direct bearing to the subject matter in O.P. No. 93 of 1991 and hence the order of the court below is correct. He would further submit that if the revision petitioner is aggrieved, she ought to have filed regular revision and the present case would not fall within the scope of Article 227 of the Constitution of India.

5. I have carefully considered the submissions made by learned Counsels. To consider the submissions, Section 10, C.P.C. needs extraction. It reads as follows:

No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed, or in any court, beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court

The plain language of the section would show that Section 10, C.P.C. can be invoked only in a case where the matter in the earlier suit is directly and substantially in issue in the later suit. In the instant case, the wife and the children have filed the suit for maintenance against the husband. Regarding quantum of maintenance, earlier suit was filed on the circumstances and cost of living which were prevalent at the time of filing of earlier suit. The wife and the children are entitled for the enhanced quantum of maintenance, in case of change of circumstances. The change of circumstances is the sine quo non for the subsequent suit claiming enhancement of maintenance. The very nature of the claim is not the issue directly and substantially in the earlier suit. The circumstances and cost of living that were prevalent at the time of filing of earlier suit are not the relevant factors for the subsequent suit. The cost of living available in the latter suit can by no stretch of imagination, be said to be directly and substantially in issue in the previously instituted suit. While so, the court below is thoroughly wrong in ordering the application by invoking Section 10, C.P.C. and it calls for interference by exercising powers of jurisdiction under Article 227 of the Constitution of India. From the affidavit filed by the respondent in I.A. No. 4 of 1993 I find that the court had directed him to continue to pay Rs. 550 p.m. to the petitioner. That is the amount awarded by this Court in A.S. No. 732 of 1984. So it cannot be said that there was a wholesome stay of the proceedings in O.S. No. 34 of 1984. In view of what I have stated above, I am clear that the order of the court below is liable to be interfered with and set aside by virtue of Article 227 of the Constitution of India. The civil revision petition is allowed and the order passed in I.A. No. 4 of 1993 in O.S. No. 97 of 1991 on the file of Family Court, Pondicherry, is set aside. No costs.