

Dhani Ram Vs. Smt. Sushila Devi

Dhani Ram Vs. Smt. Sushila Devi

SooperKanoon Citation : sooperkanoon.com/889766

Court : Himachal Pradesh

Decided On : Oct-30-1976

Reported in : AIR1977HP83

Judge : R.S. Pathak, C.J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 21, 24 and 28

Appeal No. : M.F.A. No. 27 of 1971

Appellant : Dhani Ram

Respondent : Smt. Sushila Devi

Advocate for Pet/Ap. : R.K. Punshi, Adv.

Disposition : Appeal dismissed

Judgement :

R.S. Pathak, C.J.

1. This is a husband's appeal against an order of the learned Senior Subordinate Judge, Bilaspur staying the proceedings in -a petition under Section 13 of the Hindu Marriage Act during the pendency of the wife's application under Section 24 of the Act.

2. The husband, Dhani Ram, filed a petition for divorce under Section 13 of the Hindu Marriage Act. During the pendency of the petition, the wife applied for maintenance and litigation expenses pendente lite under Section 24 of the Act. While that application was pending, she applied for stay of the proceedings in the divorce petition. On July 15, 1971 the learned Senior Subordinate Judge, Bilaspur made an order accordingly. The husband appeals.

3. In my opinion this appeal is not maintainable. In a recent case; Smt. Taranjit Kohli v. Gurbaksh Singh Kohli, ILR (1975) Him Pra 663, a Division Bench of this Court laid down that the decree and orders mentioned in Section 28 of the Hindu Marriage Act, which provides for appeals, are the decrees and orders specifically referred to by the Act itself, such as a decree for restitution of conjugal rights under Section 9, a decree for judicial separation under Section 10, a decree of divorce under Section 13, orders made for maintenance pendente lite and expenses of proceedings under Section 24, and for permanent alimony and maintenance under Section 25. Certain other orders, it was held, were also appealable. Those are orders made under the Code of Civil Procedure by virtue of Section 21 of the Hindu Marriage Act. Those orders are appealable if they have been made appealable expressly under the Code itself. No other order made in the course of trying a petition under the Hindu Marriage Act is appealable. The order impugned in this appeal is an order staying the proceedings in the divorce petition until the application under Section 24 of the Act is disposed of. No appeal lies against such an order. I am obliged to Shri R.K. Punshi learned counsel for the appellant, for placing very fairly the relevant case law before me, and I find from those cases that the Calcutta High Court in Sm. Anita Karmokar v. Birendra Chandra Karmokar AIR 1962 Cal 88, has also come to the view that an application made for stay of further proceedings in a matrimonial action is not an appealable order under the Hindu Marriage Act.

4. In the circumstances, the appeal fails and is rejected. As the respondent has not entered appearance, there is no order as to costs.