

Anish Bhan Vs. Sonika Bhan

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Court : Jammu and Kashmir

Decided On : Mar-23-2004

Reported in : 2004(2)JKJ481

Judge : S.N. Jha, C.J.

Acts : Hindu Marriage Act - Section 28(2)

Appeal No. : C. Revision No. 6/2004

Appellant : Anish Bhan

Respondent : Sonika Bhan

Advocate for Def. : U.K. Jalali, Sr. Adv. and; Ruchi Bhakhri, Adv.

Advocate for Pet/Ap. : Ashok Parihar, Adv.

Judgement :

S.N. Jha, C.J.

1. The Civil revision by the husband-respondent of the matrimonial case in the court below, is directed against an order by which the court below directed the husband to file objections, that is, proceeded with the suit.

2. The case of the petitioner is that in terms of Section 28(2) of the Jammu and Kashmir Hindu Marriage Act, 1980, it is incumbent upon the court to bring about

reconciliation between the parties and such endeavour has to be made in their personal presence. In the instant case, the parties were asked to appear in person. Whereas the husband appeared, the wife did not. Accepting the statement of the counsel for the wife that she is not agreeable for reconciliation, the court directed the husband to file objections. According to the petitioner the endeavour to bring about reconciliation is to be made at the very first instance and in the presence of the parties in person. Representation by the counsel is not enough in coming to the conclusion that reconciliation is not possible. Reliance is placed on Ram Kumar v. Kamla Dutta, AIR 1981 J&K; 9 and Chhote Lal v. Kamla Devi and Ors., AIR 1967 Patna 269.

3. On behalf of the wife-respondent, it was submitted that while it is true that the court is under obligation to make endeavour to bring about reconciliation, and it may also be true that such endeavour is to be made in personal presence of the parties, it is not the requirement of Section 28 of the Act that endeavour should be made at the beginning of the proceeding. Counsel pointed out that the proceeding in the court below is in the preliminary stage and by the impugned order the husband has merely been asked to file objections. The endeavour to bring about reconciliation can be made at later stage also, before passing the decree. The submission appears to be well founded.

Section 28 of the Act, so far as it is relevant, may be quoted as under :

'28. Decree in proceedings. (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that -

(a) any of the ground for granting relief exists

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and in such a case, but not otherwise the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible to do consistently with the nature and circumstance of the case, to make every endeavour to bring about a reconciliation between the parties:
that
.....'

4. From bare reading of the above provisions, it would appear that on being satisfied about the existence of the grounds, the court may grant the relief but under Sub-section (2), before proceeding to grant the relief the court is required to make endeavour to bring about reconciliation. In other words, the requirement to make endeavour to bring about reconciliation can be satisfied at any stage before proceeding to grant relief. Where the court instead of making endeavour to bring about reconciliation at the very first instance directs the other side to file objections, the same cannot be said to in conflict with Section 28 of the Act. This is what follows from conjoint reading of Sub-sections (1) and (2) of Section 28. As a matter of fact, in Sushma Kumari v. Om Prakash, AIR 1993-Patna 156, the Patna High Court held that where decree is passed without observing the requirement of Section 23(2) of the Central Act (corresponding to Section 28 (2) of the Jammu & Kashmir Act), the same can be done by the appellate court.

5. If this is the correct interpretation of law, I fail to appreciate as to how the direction to file objections, call be said to he illegal, As indicated above, the suit is in the preliminary stage, and merely because the wife, in an apparent haste, made

her disinclination for reconciliation known to the court through the counsel does not mean that further proceedings would be rendered as illegal.

6. However, the above observations should not be construed to mean that the court should postpone making endeavour to bring about reconciliation till the stage of passing the decree. The nature of matrimonial cases is different from ordinary run-of-the-mill cases. It is the duty of the court to see that marriage do not break down on flimsy grounds and therefore sincere efforts have to be made to resolve the differences between the parties by reconciliation. It would only be in the fitness of things that efforts are made well before the trial commences. Such an effort must be made in personal presence of the parties. It may not be safe to treat the statement of the counsel, even where it is based on instructions, as compliance of requirement. The stand of the party as communicated to the counsel may be the result of his or her pre-conceived impression, and the chance of his/her coming to terms, in presence of the court, cannot be ruled out. The argument of the counsel for the petitioner to this extent must be accepted.

7. As by the impugned order the court below has merely directed the petitioner to file objections, this Court does not consider the case as fit for interference. However, while declining to interfere with the order, this Court would expect the court below to make sincere endeavours to bring about reconciliation between the parties before proceeding further in the matter.

The revision is accordingly disposed of.

The record of lower court be sent back forthwith.