APPELLATE CIVIL

Before Mehar Singh, C. J. and Shamsher Bahadur, J.

DALJIT SINGH,—*Petitioner*

versus

SHAMSHER KAUR,—*Respondent*

F.A.O. 31-M of 1965

April 8, 1968

Hindu Marriage Act (XXV of 1955)—Ss. 21 and 28—Code of Civil Procedure (Act V of 1908)—Ss. 2(2), 33 and order 41 rule 1—Order under the Act—Whether to be followed by a decree as defined in the Code—Appeal from such order—Whether competent without a formal decree sheet.

Held, that sections 2(2), (9) and 33 of the Code of Civil Procedure have no application so far as the decrees under the Hindu Marriage Act, 1955 are concerned. The Code requires in an ordinary suit that a Judge shall make a judgment and on that will do follow a formal expression in the shape of a decree. But no such pattern is to be found in any provision of the Act. Apparently a petition under the Act is not something in the nature of a suit. Whatever right of appeal there is against an order on such petition under the Act has been conferred in the Act itself by section 28 and any such right obviously cannot be made subject to any limitations in regard to an appeal in the Code of Civil Procedure, nor can it be in any manner circumscribed by rule 1 of Order 41 of the Code. The word 'decree' has been given defined meanings in section 2(2) of the Code and that does not necessarily apply to a decree under the Act, because the scope and the nature of a decree under the Act has been sufficiently and specifically defined in the relevant provisions of the Act. The adjudications under sections 9, 10, 11 and 12 of the Act are stated to be decrees under those provisions when the relief claimed is granted. And as neither sections 2(2) and (9) and 33, nor Order 41, rule 1 of the Code apply to such an adjudication, it is not a correct approach that a judgment in such adjudication must be followed by a formal decree as is expressly required by those provisions of the Code. So no separate decree is necessary in regard to an appeal under section 28 of the Act, and an appeal from the judgment itself, which is what embodies a decree of the Court where the relief is granted, is what is a competent appeal under section 28 of the Act.

(Para 7)

Case referred by the Hon'ble Mr. Justice J. N. Kaushal on 29th July, 1966 to a Division Bench for decision of the important question of law involved in it. The Division Bench consisting of the Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice Shamsher Bahadur after deciding the question referred to them returned the case to the Single Judge for final disposal on 8th April, 1968.

First Appeal from the order of Shri Gurnam Singh, Additional District Judge, Hoshiarpur, dated the 20th January, 1965 dismissing the petition under section 9 of the Hindu Marriage Act.

PARKASH CHAND JAIN, G. C. MITTAL, H. L. SARIN AND H. S. AWASTHY, ADVOCATES, for the Appellant.

D. S. KANG, ADVOCATE, for the Respondent.

JUDGMENT

MEHAR SINGH, C. J.—This judgment will dispose of reference made in *Daljit Singh* v. *Sham Kaur,* F.A.O. No. 31-M of 1965, by Kaushal J., on July 29, 1966, and an appeal under clause 10 of the Letters Patent, L.P.A. No. 263 of 1966, *Radha* v. *Promodh Sharma,* against the judgment, dated August 1, 1966, of a learned Single Judge dismissing the appeal as incompetent on the ground that a copy of the decree-sheet had not been filed with the appeal within the period of limitation, the learned Judge following his own previous judgment in *Shiv Ram* v. *Lilawati* (1).

(2) In the first appeal, the appellant made a petition under section 10(1)(a) of the Hindu Marriage Act, 1955 (Act 25 of 1955), for judicial separation from his wife, the respondent, but his petition was dismissed by the learned trial Judge on January 20, 1965. He then filed an appeal in this Court (F.A.O. No. 31-M of 1965) against the order of the trial Judge, when that appeal came for hearing before the learned Single Judge a preliminary objection was raised on behalf of the respondent that the appeal was not competent because it was not accompanied by a decree and the judgment of the lower Court was not stamped with proper stamp.

(3) In the second appeal, the respondent made a petition under section 12 of Act 25 of 1955, seeking a decree of nullity of marriage with the appellant. On March 6, 1965, the learned trial Judge made a decree in terms of section 12 of the Act in his favour. Against that there was an appeal to this Court by the appellant which was dismissed on August 1, 1966, by the learned Single Judge on the ground that a copy of the decree was not filed with the appeal within time and so there was no competent appeal before him.

(1) F.A.O. 97-M of 1962 decided on February 24, 1966.

(4) A somewhat similar, if not the same, question arises in either of those cases, and, therefore, arguments in the same have been heard together.

(5) According to sub-section (1) of section 9 of the Act, if the Court is satisfied of the truth of the statements made in a petition under section 9 for restitution of conjugal rights and if there is no legal ground why the petition should not be granted, it 'may decree restitution of conjugal rights accordingly'; while according to sub-section (1) of section 10 the Court may make 'a decree for judicial separation' on the grounds stated in that sub-section; and in view of sections 11 and 12 a marriage may be declared 'by a decree of nullity' null and void if it contravenes any of the conditions specified in clauses (i), (iv) and (v) of section 5 and annulled 'by a decree of nullity' on any of the grounds mentioned in sub-section (1) of section 12. All these sections speak of the Court granting relief, on the grounds having been proved in support of a particular class of petitions, by way of a decree. These sections do not speak separately of a judgment or a decree. Section 21 of the Act says that "Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908." Although some rules in this respect have been made by this Court but those do not concern these two cases. Sub-section (1) of section 23 of the Act then reads—

> "23. (1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that—
>
> (a) any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and
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> (b) where the ground of the petition is the ground specified in clause (f) of sub-section (1) of section 10, or in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the peition is cruelty the petitioner has not in any manner condoned the cruelty, and
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> (c) the petition is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise; the Court shall decree such relief accordingly."

(6) It is clear that this sub-section also says that 'the Court shall decree such relief' and here again reference is only to the making of a decree by the Court. Section 28 of the Act is in these words—

"23. All decrees and orders made by the Court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force:

Provided that there shall be no appeal on the subject of costs only."

(7) It gives a right of appeal from all decrees and orders made by the Court in any proceeding under the Act. It has been contended on behalf of the respondent in each one of these two cases that as, because of section 21 of the Act the Code of Civil Procedure regulates the proceedings under the Act, so order 41, rule 1(1) of the Code applies to such an appeal. Order 41, rule 1(1) says—"Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded". Section 33 of the Code reads—

"The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow". In section 2(9) of the Code 'judgment' is defined to mean the statement given by the Judge of the grounds of a decree or order, and section 2(2) of the Code gives the definition of the word 'decree'. The Act, however, only speaks of the Court decreeing a particular type of relief claimed under the provisions of the Act. Appeals lie under section 28 of the Act from all decrees and orders. What is contended on behalf of the respondent in each case, on reference to *Jagat Dhish Bhargava*

v. *Jawahar Lal Bhargava* (2), is that the requirement that the certified copy of the decree-sheet should be filed along with the memorandum of appeal is mandatory, and in the absence of the decree the filing of the appeal would be incomplete, defective and incompetent. Apparently, the learned Single Judge in his judgment under appeal in L.P.A. No. 263 of 1966 has been of this view. But obviously section 33 and section 2(2) and (9) of the Code have no application so far as decrees under the Act are concerned. The Code requires in an ordinary suit that a Judge shall make a judgment and on that will be followed by formal expression in the shape of a decree. But no such pattern is to be found in any provision of the Act. Apparently a petition under the Act is not something in the nature of a suit. No doubt if the Act was not there, any of the reliefs to which reference has already been made would be sought in an ordinary civil Court, but now that the Act is there, those reliefs can only be sought under the provisions of the Act, and under those provisions the reliefs are not sought by way of a suit. Whatever right of appeal there is under the Act that has been conferred in the Act itself by section 28 and any such right obviously thus cannot be made subject to any limitations in regard to an appeal in the Code of Civil Procedure. As much has been the view in *Kadia Harilal Purshottam* v. *Kadia Lilavati Gokaldas* (3), *D. S. Seshadri* v. *Jayalakshmi* (4) and *Kode Kutumba Rao* v. *Kode Sesharatnamamba* (5). So the right of appeal in section 28 of the Act cannot be in any manner circumscribed by rule 1 of Order 41 of the Code of Civil Procedure. The word 'decree' has been given defined meanings in section 2(2) of the Code and that does not necessarily apply to a decree under the Act, because the scope and the nature of a decree under the Act has been sufficiently and specifically defined in the relevant provisions of the Act. The adjudications under sections 9, 10, 11 and 12 of the Act are stated to be decrees under those provisions when the relief claimed is granted. And as neither sections 2(2) and (9) and 33, nor Order 41, rule 1 of the Code apply to such an adjudication, it is not a correct approach that a judgment in such adjudication must be followed by a formal decree as is expressly required by those provisions of the

(2) A.I.R. 1961 S.C. 832.
(3) A.I.R. 1961 Gujarat 202.
(4) A.I.R. 1963 Mad. 283.
(5) A.I.R. 1967 A.P. 323.

Code. In *Kalakota Varalakshmi* v. *Kalakota Veeraddi* (6), *Bai Umiyabhen* v. *Ambalal Laxmidas* (7) and *P. C. Jairath* v. *Amrit Jairath* (8), on a same view it has been held that a decree made by a Court in a petition under section 9 or 10 or 12 of the Act is not a decree within the meaning of section 2(2) of the Code of Civil Procedure. So the provisions of the Code as referred to above have no application to the adjudication upon a petition under one of the sections 9, 10 or 11 of the Act. It appears clear that the Legislature intended the judgment or the statement of adjudication itself, where the relief is granted, to be a decree, and has described it as such in the relevant sections where the Court has been given power to make a decree. So no separate decree is necessary in regard to an appeal under section 28 of the Act, and an appeal from the judgment itself, which is what embodies a decree of the Court where the relief is granted, is what is a competent appeal under section 28 of the Act. On the side of the respondent in each case attention has been drawn to the Displaced Persons (Debts Adjustment) Act, 1951 (Act 70 of 1951), in which section 25 says—"Save as otherwise expressly provided in this Act or in any rules made thereunder, all proceedings under this Act shall be regulated by the provisions contained in the Code of Civil Procedure, 1908 (Act V of 1908)", which is a section, in substance, practical reproduction of section 21 of the Act. The learned counsel on behalf of each one of the respondents has then referred to two decisions of Bishan Narain, J., in *Khazan Chand* v. *Hans Raj* (9) and *Jagdish Chand* v. *Vir Singh* (10), in which in regard to applications for adjustment of debts of displaced debtors, according to section 5 or 11 of Act 70 of 1951 and having regard to section 25 of that Act, the learned Judge accepted an objection on behalf of the respondents in those appeals that the appeals were not competent because the judgments were not accompanied by decrees within the period of limitation in view of rule 1 of Order 41 of the Code. The learned counsel for the appellant in each one of these appeals first points out that sections 27 and 28 in Act 70 of 1951, one about contents of a decree under that Act and the other in regard to execution of decrees, are not to be found in the Act, and, therefore, the position of a decree under that Act was somewhat different.

(6) A.I.R. 1961 A. P. 359.
(7) A.I.R. 1966 Gujarat 139.
(8) A.I.R. 1967 Punj. 148.
(9) F.A.O. No. 95 of 1954 decided on 18th September, 1956.
(10) F.A.O. No. 54 of 1954 decided on 20th September, 1956.

However, those two sections of Act 70 of 1951 do not really make substantial difference. The learned counsel has then referred to two Division Bench decisions of this Court taking a contrary view. The first such case is *Narindar Singh* v. *Mata Din-Ram Narain* (11), in which Khosla and Falshaw JJ., held that an order of the Tribunal dismissing a petition under the provisions of Act 70 of 1951 is not a decree and an appeal against such an order is properly speaking a first appeal from order. The second case is *Union of India* v. *Tara Rani* (12), in which judgment was delivered on April 15, 1956, by Falshaw and Kapur JJ., holding that a decree under the provisions of Act 70 of 1951, is not a decree as defined in section 2(2) of the Code of Civil Procedure. It appears that these two decisions by the Division Benches of this Court were not placed before Bishan Narain J., when the learned Judge decided the two cases to which reference has already been made. The view taken by the two Division Benches of this Court is consistent with what has been said above that a decree as in the Act is not a decree under section 2(2) of the Code of Civil Procedure and the decisions in *Narindar Singh's and Tara Rani's cases* support this conclusion. The learned Single Judge in L.P.A. No. 263 of 1966, has not referred to any case in support of his view nor did he refer to any case or argument in support of his opinion in *Shiv Ram* v. *Lilawati* (1). So when the Court under the provisions of the Act makes a decree, it is not a decree under section 2(2) or as referred to in section 33 of the Code of Civil Procedure and to it are not attracted the provisions of sub-rule (1) of rule 1 of Order 41 of the Code. It means that so far as the judgment of the learned Single Judge in L.P.A. No. 263 of 1966 is concerned, it cannot be maintained. It is, therefore, reversed and the appeal of the appellant will now go back to be disposed of according to law on merits.

(8) In so far as F.A.O. No. 31-M of 1965 is concerned, it is an appeal against the judgment or order of the learned trial Court dismissing a petition under section 10 of the Act by the appellant. Now, not only section 10, but also sections 9, 11, 12 and 13 of the Act speak of the Court making a decree under those provisions when granting relief claimed under any one of the same. It follows that when a petition under any one of those sections is dismissed and the relief is denied, in the terms of any one of those sections, there is

(11) R.F.A. No. 223 of 1952 decided on 5th August, 1954.

(12) 1956 P.L.R. 519.

no occasion for making a decree. The very same conclusion is available from the provisions of sub-section (1) of section 23. Clause (a) of sub-section (1) of this section says that if in any proceeding under the Act, whether defended or not, the Court is satisfied that any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and clause (b) further says that where the ground of the petition is the ground specified in clause (f) of sub-section (1) of section 10, or in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and then it is satisfied on the three conditions that follow as clauses (c), (d) and (e), in such a case, but not otherwise, the Court shall decree such relief accordingly. Obviously if it is not in law in a position to grant any such relief, then it would be dismissing the petition and no question of decreeing the relief would possibly arise. In this approach, it is apparent that an order dismissing a petition under section 10 of the Act is not and cannot be described or classed as a decree under the provisions of the Act or for the matter of an appeal under section 28 of it. In *Minarani Majumdar* v. *Dasarath Majumdar* (13), Bachawat, J., with whom Law, J. concurred, held that an order dismissing a petition by husband for divorce under section 13 is not a decree within the meaning of section 25 of the Act. In this Court in *Sant Ram* v. *Krishan Gopal* (14), Dulat J., with whom Harnam Singh, J., concurred, came to the same conclusion that by dismissal of an application under the provisions of Act 70 of 1951 the Tribunal could not be said to have determined the claim one way or the other and in such a case no decree would be passed by the Tribunal. So, as the petition under section 10 of the Act by the appellant in F.A.O. No. 31-M of 1965 was dismissed, there was to be no decree under section 10 of the Act from which the appellant in that appeal was filing an appeal. He filed an appeal obviously against the order of the trial Court. No copy of the decree was, therefore, necessary with such an order. And correct amount of court-fee has thus been paid on the copy of the order appealed against. The answer to the question referred to by the learned

(13) A.I.R. 1963 Cal. 428.

(14) L.P.A. No. 34 of 1954 decided on 18th October, 1954.

Single Judge in this appeal is that the appeal of Daljit Singh, appellant is competent as against the order of the trial Court. This appeal will also now go back for disposal on merits.

(9) In the circumstances of the cases, there is no order in regard to costs, in either case.

SHAMSHER BAHADUR, J.—I agree.

R.N.M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

SAT PARKASH,—*Petitioner*

versus

SARBH DAYAL,—*Respondent*

Civil Revision No. 512 of 1967

April 19, 1968

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 4 and 5—Landlord obtaining eviction of tenant from house for personal occupation—Leasing out house after reconstructing it to another person—Tenant recovering possession under S. 13(4)—Landlord making application for fixing fair rent—S. 5—Whether applicable—Landlord leading no evidence falling within the ambit of S. 4(2)(a) and (b)—Fair rent—How fixed.

Held, that section 5 of the East Punjab Urban Rent Restriction Act, 1949 is not attracted in the case of a building from which a landlord obtains eviction of the tenant on the ground of requirement of the house for personal occupation, after reconstructing the house, fails to occupy it himself, and then under sub-section (4) of section 13 of the Act has to deliver back possession of the house to the tenant, even though the nature of the premises has changed. The landlord loses advantage of any investment on reconstruction because of his having acted contrary to the provisions of the statute. (Para 5)

Held, that if no evidence having reference to clauses (a) and (b) of sub-section (2) of section 4 of the Act has been led by any party to the fair rent proceedings, the only part to which reference can be made by the landlord in support of his claim is clause (i)(c) of sub-section (3) of the said section, which deals with increase for the purpose of fair rent. (Para 5)