

Shiv. Dayal.
and another
v.
Union of India,
and others

Grover, J.

for where he is not satisfied with "the legality or propriety" of an order passed by one of the subordinate authorities mentioned therein. It is not shown that in making the allotment and granting proprietary rights in respect of the land in dispute the Managing Officer or the Settlement Officer had acted in violation of any provision of law or ignored any circumstance which would make their orders open to attack on the ground of propriety, and as such no case for interference by the Chief Settlement Commissioner in exercise of his revisional powers was made out.

For the foregoing reasons I find that the Chief Settlement Commissioner had exceeded his authority in passing the impugned order, and I agree with my learned brother that the same must be quashed and the petition allowed, leaving the parties to bear their own costs.

K.S.K.

APPELLATE CIVIL

Before H. R. Khanna, J.

SHRI CHANDER RAM.—Appellant

versus

SHRIMATI SABIYA WATI,—Respondent.

F.A.O. 80-D of 1962

Hindu Marriage Act (XXV of 1955)—S. 25—Order for permanent alimony—Whether can be made in favour of a defaulting or a guilty party.

1964

May, 8th.

Held, that there is nothing in section 25 of the Hindu Marriage Act, 1955, to show that the order for payment of alimony can be made only in favour of a wife who is not

a defaulting or a guilty party. The conduct of the parties is, no doubt, one of the circumstances to be taken into consideration while determining the question of alimony, but it does not necessarily follow from that that a guilty wife is to be driven to a state of abject penury and starvation. It may be that where the wife is guilty of gross and wilful desertion, the court may in its discretion refuse to award her alimony, but in the absence of a flagrantly vicious attitude on the part of a wife, the court would not be justified in refusing to grant her alimony because of her refusal to live with her husband.

First Appeal under section 28 of the Hindu Marriage Act, 1955, from the order of Shri J. B. Garg, Sub-Judge, 1st Class, Delhi, with delegated powers of District Judge, Delhi, dated the 11th April, 1962, granting a sum of Rs. 32 per mensem as permanent alimony to the respondent to be paid by the husband till the lifetime of the wife or till she remarries.

M. C. BHUTANI, ADVOCATE, for the Appellant.

M. K. CHAWLA, ADVOCATE, for the Respondent.

JUDGMENT.

KHANNA, J.—This appeal filed by Chander Ram is directed against the order of learned Subordinate Judge, 1st Class, Delhi, whereby he awarded permanent alimony at the rate of Rs. 32 per mensem in favour of Sabiya Wati respondent till her lifetime or till she remarries, against the appellant. Khanna, J.

The brief facts of the case are that the appellant filed a petition under section 10 of the Hindu Marriage Act, against the respondent for judicial separation on the allegation that she had deserted him after living with him for only a week.

The petition was resisted by the respondent who averred that the appellant had treated her with cruelty and had forced her to bring money from the house of her parents. The Court below

Chander Ram
v.
Shrinati Sabiya
Wati

Khanna, J.

found that the respondent had deserted the petitioner appellant for a period of more than two years immediately preceding the presentation of the petition. Accordingly, a decree for judicial separation was awarded in favour of the appellant against the respondent.

During the course of the proceedings before the Court below the respondent filed an application under section 25 of the Hindu Marriage Act for grant of permanent alimony against the appellant. The Court below accepted the application after observing that the parties to this case were a very unfortunate couple who had not been able to live together beyond a few months. Permanent alimony at the rate of Rs. 32 per mensem was, accordingly, awarded to the respondent against the appellant till her lifetime or till such time as she remarries.

In appeal the first contention of Shri Bhutani, learned counsel for the appellant, is that there was no material before the Court below to show that the respondent was not in a position to maintain herself and in the circumstances the Court below was not justified in ordering the payment of permanent alimony to the respondent. In this respect I find that the respondent along with her application filed affidavit dated 1st February, 1962 in the course of which she stated that she had no income at all and had no source of livelihood and that she was hard put to maintain herself. It was further stated that the respondent was being fed by her widow mother who had also no source of affairs and was almost starving, and had even of income. According, further to the respondent she was passing her days in a very miserable state no clothes to put on. In view of that affidavit it

cannot be said that there was no material before the Court below to indicate that the respondent was not in a position to maintain herself.

Chander Ram
v.
Shrimati Sabiya
Wati

Khanna, J.

The second and the main contention of Mr. Bhutani, however, is that as the respondent was found to have deserted the petitioner and as such was the defaulting party, the Court below was not justified in making an order for payment of alimony to her. According to the learned counsel, an order for payment of alimony can only be made in favour of a wife who is not guilty or a defaulting party. In this respect I find that Section 25 of the Hindu Marriage Act, under which the order for payment of alimony has been made, reads as under:—

- “(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.
- (2) If the court is satisfied that there is a change in the circumstances of either

Chander Ram
 " "
 Shrimati Sabiya
 Wati

 Khanna, J.

party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

- (3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order."

There is nothing in the above section to show that the order for payment of alimony can be made only in favour of a wife who is not a defaulting or a guilty party. The conduct of the parties is, no doubt, one of the circumstances to be taken into consideration while determining the question of alimony, but it does not necessarily follow from that that a guilty wife is to be driven to a state of abject penury and starvation. It may be that where the wife is guilty of gross and wilful desertion, the court may in its discretion refuse to award her alimony, but in the absence of a flagrantly vicious attitude on the part of a wife, the court, in my opinion, would not be justified in refusing to grant her alimony because of her refusal to live with her husband. As observed by Jessel, M. R. in *Robertson v. Robertson and Favagross* (1); it was not intended that a guilty wife should be turned out into the streets to starve. In Division Bench case *Dr. Hormusji M. Kalapesi v. Dinbai H. Kalapesi* (2), Gajendragadkar, J. (as he then was)

(1) (1883) viii Prebate Division 94.

(2) A.I.R. 1955 Bom. 413.

observed, while dealing with a case under the Parsi Marriage and Divorce Act, as under:—

Chander Ram
v.
Shrimati Sabiya
Wati

Khanna, J.

“It may be relevant to refer to a corresponding provision in the Bombay Hindu Divorce Act, 22 of 1947, Section 8 of this Act has been enacted in substantially similar terms as those which have been employed by the Legislature in enacting section 47 of the Parsi Marriage and Divorce Act. So far as we are aware, it has been the consistent practice of this Court to entertain applications for alimony even from defaulting or guilty wives and to deal with them on the merits.

An application made for alimony has, so far as we are aware, never been thrown out on the preliminary ground that the said application has been made by a guilty wife. Indeed, that appears to be the position even under the English Law. Latey on Divorce observes that the Court has an absolute discretion on or after decree ‘nisi’ to order a husband to provide for a guilty wife.”

Reliance in the above case was based upon observations in *Ashcroft v. Ashcroft* (3), that there is no rule of practice that a wife against whom a decree ‘nisi’ for dissolution of marriage is pronounced must show special circumstances to entitle her to an order under section 32 of the Matrimonial Causes Act, 1857. It was also added in the English Cases that the Court would order the husband to secure a provision for his guilty wife, even though his

Chander Ram
v.
 Shrimati Sabiya
 Wati
 —————
 Khanna, J.

own conduct has been unimpeachable, if the wife is proved to be entirely without means of support and unable through ill-health to earn her own living. After referring to some other English authorities, Gajendragadkar, J., observed in that case as under:—

“It may be that in a given case desertion by the wife may be so grossly wilful that a Court may feel that a wife who has been guilty of such gross and wilful desertion should not be given alimony against her husband. We do not think it would be proper to characterise the conduct of the wife in those terms in the present case.”

In the present case I find that though the respondent has been found to have deserted the husband, there is nothing to show that she is unchaste or is living away because of some ulterior motive. Her conduct is also not such as can be deemed to be flagrantly vicious or to amount to gross and wilful desertion. In the circumstances, I see no cogent ground to interfere with the order of the Court below about the grant of alimony in favour of the respondent.

The appeal, accordingly, fails and is dismissed, but in the circumstances I leave the parties to bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and Prem Chand Pandit, JJ.

SWAMI RAM LAL AND OTHERS,—*Appellants*

versus

THE DEPUTY CUSTODIAN-GENERAL, EVACUEE

PROPERTY, AND OTHERS.—*Respondents*

Letters Patent Appeal No. 151 of 1959

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 9—Scope of—Dispute relating to