

Smt. Rajkumari Kaushalya Devi v. Bawa Pritam Singh and others

prejudicially affect the rights of prior or puisne mortgagees.

Wanchoo, J.

There is therefore, no force in this appeal and it is hereby dismissed with costs.

B.R.T.

APPELLATE CIVIL.

Before Bishan Narain and I. D. Dua, JJ.

SHMT. MALKAN RANI,—Appellant.

versus

KRISHAN KUMAR,—Respondent.

(First Appeal from Order No. 13 (M) of 1959)

1960

April 21st

Hindu Marriage Act (XXV of 1955)—Section 24—Object and purpose of—Husband applying under Section 9 for restitution of conjugal rights—Wife making application under Section 24 for grant of maintenance pendente lite and for expenses of proceedings—Order passed directing husband to pay maintenance pendente lite and expenses of proceedings to his wife—Husband refusing to pay the same—Proceedings on application under Section 9—Whether can be stayed.

Held, that section 24 of the Hindu Marriage Act empowers the matrimonial Court to make an order for maintenance *pendente lite* and for expenses of proceedings to a needy and indigent spouse. The object and purpose of this statutory provision obviously is to enable the Court to see that the indigent spouse is put in a financial condition in which the party concerned may produce proper material and evidence in the case. The intention of the Legislature in enacting this provision is to see that a party is not handicapped in or prevented from bringing all the relevant facts before the Court for decision of the case because of his or her poverty. If these amounts are not made available to the applicant under section 24 of the

Hindu Marriage Act immediately, then its object and purpose will stand defeated. The realisation of this amount by taking execution proceedings in accordance with the provisions of the Code of Civil Procedure must plunge the indigent spouse into another lengthy and unpleasant litigation and what is more, the matrimonial Court will find it difficult, if not impossible, to decide the case satisfactorily or expeditiously. It will result in denial of justice to the person in whose favour the order under section 24 of the Hindu Marriage Act has been made. In such circumstances the Courts can use their inherent jurisdiction to avoid such consequences. There is nothing in the Hindu Marriage Act which prevents the courts from exercising their inherent jurisdiction to advance the cause of justice and the Code of Civil Procedure contains no provision under which *pendente lite* maintenance and litigation expenses can be recovered without delay. Section 28 of the Hindu Marriage Act gives the right to a party to recover such an amount by taking execution proceedings but it does not affect Court's power to exercise its jurisdiction equitably and in such a way as to prevent abuse of its process. The Court can, therefore, adjourn the case or stay further proceedings till the defaulting spouse complies with the orders made under section 24 of the Hindu Marriage Act in the exercise of its inherent jurisdiction after taking into consideration all the circumstances of the case. In cases where the defaulter spouse has initiated proceedings under the Hindu Marriage Act, stay of proceedings may not be adequate and other steps may have to be taken to put the indigent spouse in funds to prosecute the proceedings. When the defaulter gives reasonable ground for non-compliance with the order, then it may be sufficient merely to adjourn the proceedings to enable him (or her) to comply with the order. If, however, the defaulter wilfully neglects or wilfully refuses to comply with the order, contempt proceedings in accordance with law can be taken against him, even if ultimately these proceedings result in imprisonment because his conduct obstructs the judicial proceedings and prevents the trial to be equitably conducted.

Case referred by Hon'ble Mr. Justice Dua, to a larger Bench with his order, dated the 15th December, 1959, for the decision of the case owing to difficult question of law involved in the case and later on decided by a Division

Bench consisting of Hon'ble Mr. Justice Bishan Narain and Hon'ble Mr. Justice Dua, on 21st April, 1960.

First Appeal from the Order of Shri Pritam Singh, Senior Sub-Judge, Ambala, dated the 9th May, 1959, dismissing the application.

H. S. WASU AND B. S. WASU, ADVOCATES, for the Appellant.

S. K. JAIN, ADVOCATE, for the Respondent.

JUDGMENT

The judgment of the Court was delivered by—

Bishan Narain, J. BISHAN NARAIN, J.—In October, 1958, Krishan Kumar applied under section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights against his wife Mst. Malkan Rani. The wife made an application under section 24 of the Hindu Marriage Act, for her maintenance *pendente lite* and for expenses to defend herself. The learned Senior Sub-Judge Ambala, by order dated 6th February, 1959, directed the husband to pay Rs. 40 per mensem as maintenance *pendente lite* with effect from 1st February, 1959, and to pay to her another sum of Rs. 150 as litigation expenses. The learned Judge further directed him to pay this amount on or before 6th March, 1959, failing which the wife would be at liberty to realise this amount by taking execution proceedings. The husband has not paid the maintenance nor litigation expenses. Mst. Malkan Rani then applied to the Court that proceedings in the suit should be stayed till the payment of these amounts because otherwise she could not defend herself. This petition was rejected on the ground that she could enforce the order only in execution proceedings and that there was no provision in the Hindu Marriage Act under which the husband could be

compelled to pay this amount by stay of the proceedings. Dissatisfied with this order Mst. Malkhan Rani appealed to this Court. The appeal came before Dua J. who referred it to a larger Bench and it has now come before us for decision.

Shmt. Malkhan
Rani
v.
Krishan Kumar
Bishan Narain, J.

The only point that requires determination in this case is whether or not the proceedings in the suit filed by the husband for restitution of conjugal rights could be stayed till the husband paid the amount which he had been ordered to pay under section 24 of the Hindu Marriage Act.

The Indian Legislature by enacting the Hindu Marriage Act (Act 25 of 1955) has codified the law relating to marital relations among Hindus. Section 21 of the Act makes the provisions of the Code of Civil Procedure applicable to proceedings under this Act. Section 24 relates to maintenance *pendente lite* and expenses of proceedings. It reads—

[His Lordship read Section 24 and continued:]
Section 28 is the other section which must be taken into consideration in the present appeal. It reads—

[His Lordship read Section 28 and continued:]

It was contended on behalf of the wife that the Hindu Marriage Act does not lay down any specific provision for enforcing an order under section 24 of the Act, and, therefore, the matrimonial Court can stay further proceedings in the exercise of its inherent jurisdiction. On the other hand, the contention raised on behalf of the husband was that section 28 of the Hindu Marriage Act lays down the method for enforcing an order made under the Act and its enforcement by another procedure must be held to have been prohibited or excluded.

Shmt. Malkhan
Rani
v.
Krishan Kumar
Bishan Narain, J.

Now section 24 of the Hindu Marriage Act, empowers the matrimonial Court to make an order for maintenance *pendente lite* and for expenses of proceedings to a needy and indigent spouse. The object and purpose of this statutory provision, obviously is to enable the Court to see that the indigent spouse is put in a financial condition in which the party concerned may produce proper material and evidence in the case. The intention of the Legislature in enacting this provision is to see that a party is not handicapped in or prevented from bringing all the relevant facts before the Court for decision of the case because of his or her poverty. Now in the Punjab no counsel can appear in Court without previously getting his fee or remuneration. Other litigation expenses have also to be incurred during the proceedings. Similarly *pendente lite* maintenance allowance is to be utilized during the pendency of the litigation and not afterwards. If these amounts are not made available to the applicant under section 24 of the Hindu Marriage Act, immediately, then its object and purpose will stand defeated. The relations between the two spouses in a litigation under the Hindu Marriage Act are likely to be hostile and the spouse who has to pay litigation expenses is likely to be unwilling to pay these amounts and may even adopt dilatory tactics in the matter. In the circumstances it is obvious that realisation of this amount by taking execution proceedings in accordance with the provisions of the Code of Civil Procedure must plunge the indigent spouse into another lengthy and unpleasant litigation and what is more, the matrimonial Court will find it difficult, if not impossible, to decide the case satisfactorily or expeditiously. It will result in denial of justice to the person in whose favour the order under section 24 of the Hindu Marriage Act has been made.

The question arises if the Courts are helpless and cannot make effective the legislative intention expressed in section 24 of the Hindu Marriage Act. I think the Courts are not helpless in the matter and can use their inherent jurisdiction to avoid such consequences. There is nothing in the Hindu Marriage Act which can prevent the Courts to exercise the inherent jurisdiction to advance the cause of justice. The Code of Civil Procedure contains no provision under which *pendente lite* maintenance and litigation expenses can be recovered without delay. As Chopra J. observed in another context,—*vide Sunder Mal v. Budh Ram* (1).—

Shmt. Malkhan
Rani
v.
Krishan Kumar
Bishan Narain, J.

“Courts exist for administering justice. In India every Court is a Court of equity as well as of law. For the administration of justice it is necessary that it should have powers to undo a wrong and do the right. If there is a specific law of procedure by which the Court is to be governed, that has to be followed and justice administered in accordance with its provisions. But where the law is silent, every Court must be deemed to possess, as inherent in its very constitution, powers to carry into effect the purpose for which it exists. A Code can hardly be expected to cover all possible eventualities for all times. The reason is that no rules can regulate for all time to come so as to make express provision against all inconveniences which are infinite in number and so that their disposition shall express all the cases that may probably happen. So long as a particular procedure or action is not

(1) I. L. R. 4 Patiala 481.

Shmt. Malkhan
Rani
v.
Krishan Kumar
—
Bishan Narain, J.

expressly prohibited, the Court can act according to justice, equity and good conscience. Mahmood J. in *Narsing v. Mangal Dubey* (1), says—

‘Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible until it is shown to be prohibited by the law. As a matter of general principle prohibitions cannot be presumed.’

In places where and for cases to which the Civil Procedure Code applies, its section 151 makes a legislative recognition of the inherent power of a Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court. The Court does not derive that power from the section. On the other hand, the section only clarifies the position that nothing in the Code shall be deemed to circumscribe or otherwise affect the powers which are inherent in the very constitution of a Court.”

The Court has to exercise this inherent power to advance the cause of justice though in the process the indigent spouse must benefit. That benefit, however, is not the motive for the exercise of this inherent jurisdiction. The Courts after all are intended and are expected to conduct their proceedings equitably between the parties and can take all steps consistent with law to achieve this objective.

(1) I. L. R. 5 All. 163.

It was, however, argued on behalf of the husband that section 28 of the Hindu Marriage Act lays down the procedure for recovering the amounts due under orders made under section 24 of the Act and impliedly excludes the recovery of such an amount by any other mode. I do not agree. Section 28 gives this right to a party to recover such an amount by taking execution proceedings but it does not effect the Court's power to exercise its jurisdiction equitably and in such a way as to prevent abuse of its process. Moreover as I have already said there is no procedure prescribed in the Code of Civil Procedure for enforcing *pendente lite* maintenance and for payment of expenses of a litigation pending in the matrimonial Court.

Shmt. Malkhan
Rani
v.
Krishan Kumar
Bishan Narain, J.

If the defaulter has moved the matrimonial Court for any relief, then it is an obvious step to adjourn the case or to stay further proceedings till he complies with the orders made under section 24 of the Hindu Marriage Act. In England the ecclesiastical Courts provided for such a maintenance and for costs of the defence [*vide Kemp Welch v. Kemp Welch and Crymes* (1)]. These Courts take adequate steps including an order staying further proceedings in the case to compel the defaulter to comply with such an order. In *Clarke v. Clarke* (2), the matrimonial Court stayed further proceedings while in *Latham v. Latham and Gethin* (3), the Courts refused to make a *nisi* decree absolute. There is no reason why this power cannot be exercised in such circumstances in this country also.

When the Court is exercising this inherent power then it has to take into consideration all the circumstances of the case and then come to the conclusion whether the justice requires the proceedings, to be adjourned or to be stayed till

(1) 1910 P. 233.

(2) 1891 P. 278.

(3) 164 E. R. 1011.

Shmt. Malkhan
 Rani
 v.
 Krishan Kumar
 Bishan Nain, J.

payment is made,—*vide Leavis. v. Leavis*, (1)]. In cases where the defaulter spouse has initiated proceedings under the Hindu Marriage Act, stay of proceedings may not be adequate and other steps may have to be taken to put the indigent spouse in funds to prosecute the proceedings. When the defaulter gives reasonable ground for non-compliance with the order, then it may be sufficient merely to adjourn the proceedings to enable him (or her) to comply with the order. If, however, the defaulter wilfully neglects or wilfully refuses to comply with the order then I see no reason why contempt proceedings in accordance with law should not be taken against such a defaulter, even if ultimately these proceedings result in imprisonment because his conduct obstructs the judicial proceedings and prevents the trial to be equitably conducted. It is, however, not necessary to discuss the matter of contempt in this judgment at length because that stage has not yet arisen in the present case. The wife in the present case has merely made an application for stay of the proceedings till the husband complies with the order made under section 24 of the Hindu Marriage Act.

For these reasons it must be held that the trial Court was in error in holding that it had no power to take any steps in the matrimonial proceedings to make the husband comply with the order made under section 24 of the Hindu Marriage Act. It is for the trial Court to exercise its discretion in accordance with law. We accordingly accept this appeal with costs and return the case to the trial Court to decide the wife's application on merits. The parties have been directed to appear before the trial Court on 27th May, 1960.

B.R.T.