REVISIONAL CIVIL

Before Mehar Singh, J.

SARLA SHARMA,—*Petitioner*

versus

SHAKUNTLA AND ANOTHER,—*Respondents*

Civil Revision No. 132-D and 133-D of 1965.

1965

April, 8th.

Hindu Marriage Act (XXV of 1925)—Ss. 13 and 21—High Court Rules and Orders, Volume II, Chapter 1-E—Rules framed under section 21 of the Act—Rules 10, 11 and 12—Divorce petition by the wife alleging adultery by her husband with another woman—Whether necessary to make the alleged adultress a co-respondent.

Held, that there is no provision in the Hindu Marriage Act, 1955, prescribing as to who in particular is a necessary or, for that matter, even a proper party to a petition for divorce under section 13 of the Act. However, Rule 10 of the Rules framed by the High Court, under section 21 of the Act as contained in High Court Rules and Orders, Volume II, Chapter 1-E, prescribes that where the divorce petition is by the husband, the adulterer must be impleaded as a co-respondent while Rule 11 only says that where the divorce petition is by the wife, all that the Court is required to do is to serve the pleadings containing charge of adultery upon the adultress to enable her to apply for leave to intervene, and the Court has been given power to grant such leave. Thus for reasons of public policy the Rules have designedly left the position of the female adultress on a different basis so that she is permitted to be an intervener and that again with the leave of the Court and not as of right. The female adultress, therefore, is neither a necessary nor a proper party to a divorce petition by the wife against her husband on the ground of adultery.

Petition for Revision under section 110 of Act 5 of 1908, from the order of Shri M. S. Joshi, Additional District Judge, Delhi, dated 5th March, 1965, rejecting the application under order 1, Rule 10 C.P.C. for striking out the name of the present petitioner.

RADHE MOHAN LAL, ADVOCATE, for the Petitioner.

S. S. CHADHA, ADVOCATE, for the Respondents.

ORDER

MEHAR SINGH, J.—This judgment will dispose of two Civil Revision Aplications Nos. 32-D and 33-D of 1965 from two separate orders of the Additional District Judge of Mehar Singh, J.

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Delhi, made on March 5, 1965, in a petition for divorce under section 13 of the Hindu Marriage Act, 1955 (Act 23 of 1955), by Shakuntla respondent I, against her husband D. K. Syal respondent 2, in both the revision applications. The revision applications are by Sarla Sharma, who is named in the divorce petition as a co-respondent, with whom the husband of respondent 1 is alleged to have committed adultery, which is ground for the divorce sought by respondent 1 from respondent 2. Respondent 1 has in the divorce petition made the applicant Sarla Sharma a respondent, or she may, for the sake of clarity, be described as co-respondent, along with her husband.

An application was moved in the divorce petition on behalf of respondent 1 under rule 4 of Order 14 of the Code of Civil Procedure for the examination of the applicant before the settlement of the issues on the grounds that without such examination proper issues could not be settled. It appears that on that the applicant moved an application under Order 1 rule 10 of the Code of Civil Procedure that she not being a party to the divorce petition according to law, her name should be removed from the array of respondents in the divorce petition. The order of the learned trial Judge questioned in Civil Revision Application No. 152-D of 1965, is that rejecting the application of the applicant under Order 1, rule 10, Civil Procedure Code, for striking off her name from the array of respondents in the divorce petition. The attention of the learned Judge was drawn to rules 10, 11 and 12 of the Rules framed under section 21 of Act 25 of 1955 as published in the Rules and Orders of this Court, Volume II, Chapter I-E, page 2, and the learned Judge was of the opinion that according to rule 10, where a divorce petition is by the husband, the adulterer is required to be made a co-respondent or a party respondent to such petition, but rules 11 and 12 merely provide for the intervention by a woman co-respondent when the divorce petition is by the wife against the husband with an allegation of adultery with such a female co-respondent. After noting those rules the learned Judge goes on to say that the counsel for the present applicant failed to cite a single precedent that where a female co-respondent was impleaded as a party respondent to a divorce petition under the provisions of Act 25 of 1955, her name was struck off the array of respondents. He then pointed

out that if, in spite of specific allegations by respondent 1 that respondent 2 has committed adultery with the applicant, the last-named does not wish to take interest in the outcome of the divorce petition, she can ignore the same. He was of the opinion that respondent 1 is *dominus lite* and there is no logic under which the present applicant can be said to have nothing to do with the divorce petition. This is the approach in which the learned Judge dismissed the applicant's application under Order 1, rule 10 of the Code of Civil Procedure for striking off her name from the array of respondents in the divorce petition. On the same day the learned Judge proceeded to pass the second order, which is the subject-matter of Civil Revision Application No. 133-D of 1965, and in that order he said that if the counsel for the applicant answers the questions put to him the applicant need not be compelled to attend court in person for that purpose. It is not clear from the order, whether it was an order made on the application of respondent 1 under rule 4 of Order 14 or under rule 2 of Order 10 of the Code of Civil Procedure, but that makes no difference because in either case order can only be made in this manner against a party to a proceeding in Court. So that the correctness or otherwise of this order is really dependent upon the correctness or otherwise of the other order of the learned Judge refusing to strike off the name of the applicant from the array of respondents in the divorce petition under rule 10 of Order 1. If she remains a party, the order calling upon her counsel to answer questions before settlement of issues is an order in regard to which there is no justification for interference, and, if on the contrary she is not a party to the divorce petition, no such order can be made against her either calling upon her counsel or calling upon her in person to answer questions before settlement of issues, whether such an order is made under rule 4 of Order 14 or rule 2 of Order 10 of the Code of Civil Procedure. So that really the substance of the matter is settled by a decision of the order against which Civil Revision Application No. 132-D of 1965 is directed.

There is no provision in Act 25 of 1955 who in particular is a necessary or, for that matter, even a proper party to a petition for divorce under section 13 of the Act. The relevant rules in the Rules framed by this Court under the provisions of that Act are those to which reference

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was made before the learned trial Judge, and those rules read—

"10. Upon a petition presented by a husband for divorce on the ground of adultery, the petitioner shall make the alleged adulterer a co-respondent. The petitioner may, however, be excused from so doing on any of the following grounds with the permission of the Court:—

(a) That the respondent is leading the life of a prostitute and that the petitioner knows of no particular person with whom the adultery has been committed;

(b) that the name of the alleged adulterer is unknown to the petitioner although he has made due efforts to discover the same;

(c) that the alleged adulterer is dead.

11. Where a husband is charged with adultery with a named person, a true copy of the pleadings, containing such charge shall, unless the Court for good cause shown otherwise directs, be served upon the person with whom adultery is alleged to have been committed, accompanied by a notice that such person is entitled, within the time therein specified, to apply for leave to intervene in the cause.

12(a). A respondent or a co-respondent or a woman to whom leave to intervene has been granted under these rules, may file in the Court an answer to the petition."

The learned counsel for the applicant has also referred to rule 13, but to the case of a female co-respondent rules 11 and 12(a) apply directly. So, in my opinion, rule 13 does not come in for consideration.

The argument on behalf of the applicant is that while in the case of a divorse petition by the husband it is specifically provided in rule 10 that the adulterer shall be made a co-respondent to such a petition, except in cases detailed in the rule, there is no such rule where in a similar petition by a wife the adultress is to be shown as a co-respondent. On the contrary, the learned counsel presses that rules 11 and 12(a) emphasize that all that the Court can do is to serve a copy of the pleadings including a charge of adultery on a female alleged to be the adultress, so that

she may intervene in such a divorce petition if she wishes to do so. According to him the only duty cast upon the court is to apprise such a female of the charge made in the pleadings to enable her to intervene in such a divorce petition. So that according to the rules she is not to be made a party respondent as a male adulterer is required to be made under rule 10. The reply by the learned counsel for respondent 1 is that the sole object of rule 11 is that if a female adultress in a divorce petition by the wife is not made a party respondent to it, she may have an opportunity to defend the charge of adultery against her, but in a case in which she has in fact been made a party respondent, those rules do not come into play for the obvious reason that she has then every opportunity to defend her character. The only other argument that is urged on the side of respondent 1 is that the impugned order has been made by the learned trial Judge under rule 10 of Order 1 in the exercise of his discretion, and this Court ought not to interfere where obviously the discretion has been exercised in a judicial manner. It is further pointed out in this respect, that in any case, even if the applicant is not a necessary party to the divorce petition under rule 10 of Order 1, she is at least a proper party, and she is not entitled to have her name removed from the array of the respondents to the divorce petition.

When rules 10, 11 and 12(a), reproduced above, are read together, two things emerge as distinctly and specifically provided by this Court—(a) that where the divorce petition is by the husband, the adulterer must be impleaded as a corespondent, and (b) that where the divorce petition is by the wife, all that the Court is required to do is to serve the pleadings containing charge of adultery upon the adultress to enable her to apply for leave to intervene, and then power is given to the court to grant such leave. It is obvious that in the rules this Court has treated a male adulterer on an entirely different basis than a female adultress. If it was the object of the rules that a female adultress be compelled to be in the position of a party respondent or rather co-respondent to a divorce petition, there was no reason why in the rules the same should not have been recognised. I consider that for reasons of public policy the rules have designedly left the position of the female adultress on a different basis so that she may only be permitted to be an intervener and that again with the

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leave of the Court and not as of right. The position of such a person in divorce proceedings cannot be altered at the whim and caprice of a petitioner, a position which was before the rule-making authority in regard to the petition of a husband, and, if such an authority intended to place a female adultress more or less in the same position as a male adulterer, it would not have gone on to make specific rules 11 and 12(a) to deal with her as intervener. The learned trial Judge was of the opinion that respondent 1 is *dominus lite* and so she has the caprice of making or not making the applicant as a party to the divorce petition. This is not a result which flows from the combined effect of rules 10, 11 and 12(a). Ordinarily a person against whom a charge of adultery has been made by the wife in her divorce petition may be said to be a proper party to such a petition and, if the rules did not make clear her position only as an intervener and that too with the permission of the Court alone, there might well have been some substance in the argument on the side of respondent 1 that, in any case, the applicant is a proper party to the divorce petition. This argument cannot, however, prevail in the face of the clear position of such a party as an intervener according to rules 11 and 12(a). In my opinion, the female adultress is neither a necessary nor a proper party to a divorce petition in view of rules 10, 11 and 12(a), and the only manner in which she can intervene in such a petition is in accordance with the provisions of rules 11 and 12(a) and that too with the leave granted in that behalf to intervene by an order of the Court. The consequence then is that the application of the applicant under Order 1, rule 10 of the Code of Civil Procedure must succeed. So that in this respect the order of the learned trial Judge is reversed and the name of the applicant is removed from the array of respondents to the divorce petition by respondent 1 in Civil Revision Application No. 132-D of 1965. With this order it follows that the second order of the learned trial Judge, which is questioned in Civil Revision Application No. 133-D of 1965, calling upon the counsel for the applicant to answer certain questions before the settlement of issues in the divorce petition cannot stand either. That order too is set aside.

The result is that both the revision applications succeed and the orders questioned in both the applications are set

aside, but, in the circumstances of these cases, there is not order in regard to costs.

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R.S.

INCOME-TAX REFERENCE

Before Inder Dev Dua and R. S. Narula, J.J.

M/S SONEPAT LIGHT POWER AND GENERAL MILLS LTD., (IN LIQUIDATION),—*Appellants*

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB—*Respondent*

Income-Tax Reference No: 31 of 1962.

1965

April, 8th.

Income-Tax Act (XI of 1922), as amended by Act (VIII of 1946)—S. 10(2)(vii)—Scheme of—Indian Electricity Act (IX of 1910)—Section 7(i)—Amount payable under—Nature of—Amount paid by government under second proviso to section 7—Whether taxable.

Held, that the scheme of the deeming provisions of section 10(2)(vii) of the Income-tax Act, 1922, is based on the fact that an assessee recovers the value of the capital investment of plant, machinery, etc., by earning an income-tax rebate on account of depreciation and that it is presumed in law that at the end of a certain period the written-down value of the machinery, etc., as a result of depreciation would be reduced to nil. By this process of allowing a rebate on the original capital costs written-down value is obained every year after deducting the depreciation allowed till that time. If then the assessee sells or disposes of the machinery, etc., at a price higher than the written-down value on his books, he is justly deemed to have earned a profit to the extent of the difference between the amount he actually receives against the sale of machinery and the written-down value thereof in his books. But for the legal fiction created by the deeming provision in section 10(2)(vii) of the Incem-tax Act, such surplus earned by an assessee would certainly not be 'profit' and would not be taxable under section 10(1) as it was not the business of the assessee to sell away his profit-making apparatus.

Held, that the provisions of section 7 of the Indian Electricity Act, 1910, are not of a confiscatory nature but have been made to