

N. K. S.

Before R. N. Mittal & M. M. Punchhi, JJ.

SOHAN LAL,—Petitioner.

versus

SMT. KAMLESH,—Respondent.

Civil Revision No. 2154 of 1983

February 6, 1984

Hindu Marriage Act (XXV of 1955)—Sections 9 & 24—Respondent moving an application for maintenance pendente lite and expenses of the proceedings in a petition for restitution of conjugal rights—Petition for restitution dismissed as withdrawn—Application of the respondent—Whether could continue after the disposal of the main petition—Revision petition against an order under section 24—Whether survives after the disposal of the main proceedings—Maintenance pendente lite and expenses—Whether to be awarded till the date of the disposal of the main proceedings.

Held, that the Court during the pendency of the proceedings under the Hindu Marriage Act, 1955, namely, for restitution of conjugal rights, judicial separation, divorce or nullity of marriage, can

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grant to a spouse having no sufficient income to maintain himself/herself and to meet the necessary expenses of the proceeding, maintenance *pendente lite* and litigation expenses. The object of enacting section 24 is that an indigent spouse should not suffer during the pendency of the proceedings because of his/her poverty. It is the duty of the Court to decide such an application expeditiously so that the indigent spouse is not handicapped because of want of funds. However, if the application under section 24 is not decided during the pendency of the main petition on account of dilatory tactics of the other spouse or for some unforeseen circumstances, the whole purpose of the section stands frustrated in case it is dismissed on the ground that after the decision of main petition it does not survive. Therefore, even if the main petition is decided finally, the application under section 24 which is pending decision can continue. Similarly, a revision petition filed against an order under section 24 can continue in spite of disposal of the main petition.

(Para 5)

Nirmala vs. Ram Dass, A.I.R. 1973 Punjab & Haryana 48.

Savitri Piplani vs. Subhash Chander, C.R. 114 of 1979, decided on November 15, 1979.

Savitri Piplani vs. Subhash Chander, C.R. 244 of 1980 on November, 21, 1980 [1982 Marriage Law Journal 108 (Pb.)]

OVER-RULED.

Chitra Lekha vs. Ranjit Rai, A.I.R. 1977 Delhi 176.

Rita Mago vs. V. P. Mago, 1982 Hindu Law Reporter, 201 (Delhi).

DISSENTED FROM.

Held, that the word 'proceeding' in section 24 appears at three places and it connotes the main proceedings, that is, proceedings other than proceedings under section 24. The words 'monthly during the proceedings such sum' are very important. These words show the intention of the legislature that it intended to give maintenance to the indigent spouse till disposal of the main petition. If the application under section 24 is taken to be included in the word 'proceeding', anomalous results would follow. Therefore, if the application under section 24 continues after dismissal of the main petition, the applicant is entitled to the maintenance till the date of the decision of the main petition.

(Para 11).

Sudarshan Kumar Khurana vs. Smt. Deepak, A.I.R. 1981 Punjab & Haryana 305.

OVER-RULED TO THIS EXTENT ONLY.

Petition under section 115 C.P.C. for revision of the order of the Court of Shri K. S. Bhullar, Sub-Judge 1st Class, Chandigarh, dated 30th July, 1983, allowing the application for review and restoring the application under section 24 of the Hindu Marriage Act, 1955.

K. K. Cuccria, Advocate, for the Petitioner.

Hemant Gupta, Advocate, for the Respondent.

JUDGMENT

Rajendra Nath Mittal, J.

(1) This is a revision petition directed against the order of the Subordinate Judge 1st Class, Chandigarh.

(2) Briefly, the facts are that Sohan Lal, petitioner, filed a petition under section 9 of the Hindu Marriage Act (hereinafter called the Act) against his wife for restitution of conjugal rights. The respondent filed an application under section 24 of the Act for grant of maintenance *pendente lite* and litigation expenses. After hearing the arguments on the said application, the Subordinate Judge adjourned the same for pronouncement of the order. The husband, before the pronouncement of the order withdrew the petition under section 9 and consequently it was dismissed as withdrawn. The Court, in view of the dismissal of the petition, dismissed the application under section 24 as having become infructuous. The wife filed an application for review of the order passed on the application under section 24 stating that in view of the dismissal of the petition under section 9, the application under section 24 did not become infructuous.

(3) The review application was contested by the husband who *inter alia* pleaded that his wife had filed separate proceedings for maintenance under section 125 of the Code of Criminal Procedure, and the application was misconceived. He also pleaded that after the petition under section 9 had been dismissed, the application under section 24 could not survive.

(4) The learned Subordinate Judge reviewed the order of dismissal and restored the application under section 24 of the Act. The husband came up in revision against the said order to this Court. At the time of motion hearing, the learned Judge found

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a conflict in decisions of this Court. Consequently, the revision petition was admitted to Division Bench. This is how the matter is before us.

(5) The first question that arises for determination is that if the main petition under the Act is decided finally, whether the application for maintenance *pendente lite* and litigation expenses under section 24 of the Act, which is pending decision, can continue. Section 24 deals with maintenance *pendente lite* and expenses of proceedings. It reads as follows :—

“Where in any proceeding under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and *monthly during the proceeding such sum as*, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable.”

From a reading of the section, it is evident that the Court, during the pendency of the proceeding under the Act, viz., for restitution of conjugal rights, judicial separation, divorce or nullity of marriage, can grant to a spouse having no sufficient income to maintain himself/herself and to meet the necessary expenses of the proceeding, maintenance *pendente lite* and litigation expenses. The object of enacting the section is that an indigent spouse should not suffer during the pendency of the proceedings because of his/her poverty. It is the duty of the Court to decide such an application expeditiously so that the indigent spouse is not handicapped because of want of funds. However, if the application under section 24 is not decided during the pendency of the main petition on account of dilatory tactics of the other spouse or for some unforeseen circumstances, the whole purpose of the section stands frustrated in case it is dismissed on the ground that after the decision of main petition it does not survive. Therefore, we are of the view that even if the main petition is decided finally, the application under section 24 which is pending decision can continue. Similarly, a revision petition filed against an order under section 24 can continue in spite of disposal of the main petition. In the above

view, we are fortified by the following observations of D. S. Tewatia, J., in *Amrik Singh v. Smt. Narinder Kaur* (1):—

“If the view is that the provisions of section 24 of the Act were intended by the legislature to enable the indigent spouse to secure wherewithal to defend the proceedings against oneself and to maintain oneself during the pendency of the proceedings, then it is incumbent upon the Courts to take an immediate decision upon the petition under section 24 of the Act, otherwise the delay would defeat the very purpose. Otherwise in a case where the Court delays the decision on the application till the fag-end of the trial of the main case, right to maintenance and litigation expenses would be denied to the applicant on the specious argument that she had been able to prosecute the litigation for all that long period and had survived and so she was not entitled to favourable order on her application, for the litigation expenses and the interim maintenance under section 24 of the Act was intended merely to meet the contingency of an indigent spouse not being able to prosecute the case and survive during the pendency of the proceedings which contingency would no longer exist when the proceedings had reached the stage of conclusion though not finally concluded.”

I do not think that the interim maintenance and litigation expenses could be denied to the applicant on such a ground when the application had been filed during the pendency of the main proceedings and it is the court which delayed its decision thereon. If the relief could not be denied in the above situation then surely the applicant would not be denied the same relief even after the conclusion of the main petition.”

This judgment was followed in *Sudershan Kumar Khurana v. Smt. Deepak* (2) and *Bhanwar Lal v. Smt. Kamla Devi* (3). *Gokal Chand Mittal, J.* in *Sudershan Kumar Khurana's case* (supra) observed that sections 24 and 26 were enacted to provide maintenance

- (1) A.I.R. 1979 Pb. & Haryana, 211.
- (2) A.I.R. 1981 Pb. & Haryana 305.
- (3) A.I.R. 1983, Rajasthan, 229. z

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to wife and child *pendente lite*. Generally, the petitions under these sections are decided first and should as a matter of fact be decided before conclusion of main petition. It is further observed that a reading of sections 24 and 26 does not show that if the main petition under sections 9, 10, 12 or 13 is disposed of, the jurisdiction of the Court to award maintenance *pendente lite* by an order to be passed thereafter is taken away. This view was affirmed in *Bhanwar Lal's case* (supra). The same view was taken by a Division Bench of Mysore High Court in *S. Subramanyam v. Mrs. M. G. Saraswathi*, (4). It was held therein that it cannot be said that since the proceedings had themselves terminated, there was no occasion to grant interim maintenance or expense. The right to those items, if established, could not be defeated by allowing time to elapse and the pendency of the proceedings to end. We are in respectful agreement with the observations made in the aforesaid cases.

(6) The learned counsel for the petitioner made a reference to *Nirmla v. Ram Dass* (5); *Smt. Savitri Piplani v. Subhash Chander* (6), *Smt. Savitri Piplani v. Subhash Chander* (7), reported, *Smt. Chitra Lekha v. Ranjit Rai*, (8), and *Rita Mago v. V. P. Mago*, (9).

(7) In *Nirmla Devi's case* (supra), the wife made an application under section 24 on 14th January, 1970, and the main petition was decided by the Court on 19th February, 1970, without deciding the application under section 24. An appeal was filed to this Court against the dismissal of the application under section 24. The learned Judge, it appears from the tenor of the judgment, was of the view that the application under section 24, on account of the decision of the main petition, could not be granted.

(8) In Civil Revision No. 114 of 1979 (supra), the trial Court, on an application by the wife, granted her a sum of Rs. 50 per mensem as maintenance allowance for the children and for her. She came up in revision against the order on the ground that the

(4) A.I.R. 1964 Mysore 38.

(5) A.I.R. 1973 Pb. & Haryana 48.

(6) C.R. 114 of 1979 decided on 15th November, 1979.

(7) C.R. 244/80, decided on 21st November, 1980.

(8) A.I.R. 1977, Delhi, 176.

(9) 1982 Marriage Law Report 201 (Delhi).

amount of maintenance was less. During the pendency of the revision petition, the main petition was finally disposed of. The learned Judge observed that the petition had become infructuous. In similar circumstances. Smt. Savitri Piplani again came up in revision (Civil Revision No. 244 of 1980) against the order of the trial Court granting her Rs. 75 per mensem as maintenance *pendente lite* but declining to grant her the expenses of the proceedings. Again, during the pendency of the revision petition, the main petition was disposed of by the trial Court. The learned Judge following the view taken in C.R. No. 114 of 1979 observed that the correctness of such orders was not required to be scrutinised after the proceedings in the main case had concluded. Consequently, the revision petition was dismissed.

(9) With great respect to the learned Judges, we are unable to accept the view expressed by them: Consequently, we overrule all these three cases.

(10) In *Smt. Chitra Lekha's case* (supra) the petition was filed by the husband under section 10(1)(b) of the Hindu Marriage Act for judicial separation. The wife made an application under section 24 for grant of interim alimony and litigation expenses. Before disposal of the application under section 24, the husband's petition was dismissed for default. Consequently, the application under section 24 was also dismissed. An appeal against the order under section 24 was dismissed observing that no interim alimony and litigation expenses can be granted after termination of the proceedings. The same view was taken in *Rita Mago's case* (supra). With great respect to the learned Judges, we have not been able to persuade ourselves to accept that view.

(11) The second question that arises for determination is that if the application under section 24 continues after dismissal of the main petition, whether the applicant is entitled to the maintenance till the date of decision of the main petition or the disposal of the application under section 24. Section 24 has already been reproduced above. The word "proceeding" in the section appears at three places and it connotes the main proceedings, that is, proceedings other than proceedings under section 24. The words "monthly during the proceedings such sum" are very important. These words show the intention of the legislature that it intended to give maintenance to the indigent spouse till disposal of the main petition. If the application under section 24 is taken to be included

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in the word "proceeding", anomalous results would follow. Therefore, we are of the opinion that if the application under section 24 continues after dismissal of the main petition, the applicant is entitled to the maintenance till the date of the decision of the main petition. In *Sundarshan Kumar Khurana's case* (supra), a different view has been expressed by the learned single Judge wherein it was observed that there was no justification for not awarding maintenance *pendente lite* to the wife even beyond the conclusion of the main petition till proceedings under sections 24 and 26 of the Act were finalized. With great respect to the learned Judge, we do not agree with the above observations. Consequently, we overrule the said case to this extent only. However, it may be reiterated that we have approved the other observations of the learned Judge in this case, as mentioned above.

(12) For the aforesaid reasons, we do not find any merit in the revision petition and dismiss the same with costs.

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