

Prem Pal v. Raksha Chohan (S. S. Kang, J.)

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of Rs 15 per square yard and whatever has been paid by them so far would be adjusted against the price to be calculated at this rate. In view of the divided success, there would be no order as to costs.

Bhopinder Singh Dhillon, J.—I agree.

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N. K. S.

Before D. S. Tewatia and S. S. Kang, JJ.

PREM PAL,—Petitioner.

versus

RAKSHA CHOCHAN,—Respondent.

Civil Misc. No. 26-M of 1979.

April 28, 1980.

*Hindu Marriage Act (XXV of 1955)—Sections 9, 10, 13, 21 and 21-A—Code of Civil Procedure (V of 1908)—Section 24—Petition for restitution of conjugal rights filed by the husband—Wife subsequently filing a petition for divorce in a different court—Transfer of the subsequent petition to the Court in which the earlier petition is pending—Section 21-A—Whether controls the application of section 24 of the Code to petitions other than those filed under sections 10 and 13 of the Act.*

*Held*, that a close look at sections 21 and 21-A of the Hindu Marriage Act, 1955 will reveal that the legislature has ordained that a subsequent petition for a decree of judicial separation under section 10 or for a decree of divorce under section 13 shall be tried and decided by the court in which a petition for a decree for judicial separation under section 10 or for a decree of divorce under section 13 was pending before the filing of the later petition. It has been provided in mandatory terms that the later petition has to be transferred to the court which is trying the petition under sections 10 or 13 filed earlier in point of time. The Court trying the later petition has no choice and it is imperative for that Court to transfer these proceedings. However, section 21-A of the Act applies to petitions filed under section 10 or 13 only. The provisions of section 21-A do not in any manner control or exclude the application of section 24 of the Code of Civil Procedure 1908 to the other proceedings under the Act. Plenary powers have been conferred on the High Court and the District Courts for the transfer

of suits or other proceedings pending before the Subordinate Courts. No fetters or restrictions have been placed on the exercise of these powers. Section 21-A of the Act does not in any way take away these powers. By section 21-A, a positive mandate has been given and the later proceedings under sections 10 or 13 of the Act have to be transferred and there is no discretion. However, in other cases, the High Court and the District Courts have been invested with the powers to transfer, if the justice of the case demands, any proceedings from one Subordinate Court to another Court of competent jurisdiction, and section 21-A has been enacted only to take care of a particular type of proceedings in matrimonial cases. (Para 4).

*Rama Kanta v. Ashok Kumar*, 1978, H.L.R. 583 OVERRULED.

*Application under Section 21(A) of the Hindu Marriage Act praying that the petition under Section 13 of the Hindu Marriage Act filed by the respondent-wife and pending on the file of District Judge, Jullundur, be transferred to the court of the Sub-Judge, 1st Class, Garhshankar, District Hoshiarpur so that both the petitions are heard and disposed of together by the District Court, in which the earlier petition was filed.*

*It is further prayed that pending decision of the present transfer application in this Hon'ble Court, the proceedings in the Court of District Judge, Jullundur be kindly stayed.*

S. P. Jain, Advocate, for the Petitioner.

A. K. Chopra, Advocate, for the respondent.

#### JUDGMENT

*Sukhdev Singh Kang, J.—*

(1) A petition under section 9 of the Hindu Marriage Act, 1955 (hereinafter called 'the Act') for restitution of conjugal rights was filed by Prem Pal, petitioner, against his wife Smt. Raksha Chohan in the Court of Subordinate Judge, Garhshankar, District Hoshiarpur, on 17th May, 1978. After many months, Smt. Raksha Chohan presented a petition under section 13 of the Act for dissolution of marriage by a decree of divorce and in the alternative for the grant of a decree for judicial separation under section 10, read with section 13-A of the Act. The latter petition had been filed in the Court of District Judge, Jullundur.

(2) Prem Pal has filed the present application under section 21-A of the Act for the transfer of the petition under section 13 of the Act filed by Smt. Raksha Chohan and pending in the Court of District Judge, Jullundur, to the Court of Sub-Judge 1st Class,

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Garhshankar or the District Judge, Hoshiarpur. He contended that as the petition under section 9 of the Act had been filed earlier to the petition under section 13 of the Act filed by the respondent-wife, therefore, in view of the provisions of section 21-A of the Act, the petition under section 13, which had been filed later in point of time should be transferred to the Court where the earlier application was pending. He had sought the transfer on another ground also, namely, that he apprehended danger to his life from the side of the respondent if he went to Jullundur.

(3) This application came up for hearing before my learned brother Tewatia, J. It was contended by the applicant on the strength of two Single Bench decisions of this Court in *Smt. Urmila v. Kulwinder Kumar Sharma* (1). *Pushpa Rani v. Shri Ram Sarup* (2), that section 13 proceedings be transferred to the Court which was trying the section 9 application, because the issue of cruelty was common to both the cases; and in order to avoid conflicting decisions by the two Courts, it was desirable that the divorce proceedings which had been filed later should be transferred to the Court, at Garhshankar or at Hoshiarpur. This petition for transfer was contested by the respondent-wife. It was contended that in view of the provisions of section 21-A of the Act, a resort could not be had to the provisions of section 24 of the Code of Civil Procedure (hereinafter called the Code). The learned counsel for the respondent-wife relied upon a Single Bench decision of this Court in *Smt. Ram Kanta v. Ashok Kumar* (3). Since my learned brother Tewatia, J., could not persuade himself to agree with the view taken in *Smt. Rama Kanta's case* (supra), he directed the present petition to be placed before Hon'ble the Chief Justice for its decision by a Larger Bench. It is under these circumstances that this matter has been placed before us for decision.

(4) It will be beneficial to notice the relevant statutory provisions at the very threshold:—

Section 21 of the Act:

“21. Application of Act V of 1908:—Subject to the other provisions contained in this Act and to such rules as the High

(1) C.M. 4-M of 1979 decided on 28th February, 1979.

(2) C.M. 50 M/78 decided on 20th December, 1978.

(3) 1978 H.L.R. 583.

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 (Act V of 1908)."

Section 21-A of the Act:

21-A. Power to transfer petitions in certain cases:—

(1) Where—

- (a) a petition under this Act has been presented to a District Court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and
- (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same District Court or in a different district court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies:—

- (a) if the petitions are presented to the same District Court, both the petitions shall be tried and heard together by that District Court;
- (b) If the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district Court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code."

Section 24 of the Code of Civil Procedure:

“S. 24 General power of transfer and withdrawal:—

- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or if its own motion without such notice, the High Court or the District Court may at any stage—
  - (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
  - (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
    - (i) try or dispose of the same; or
    - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
    - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.
  
- (2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.
  
- (3) For the purposes of this section,—
  - (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;
  - (b) “proceeding” includes a proceeding for the execution of a decree or order.
  
- (4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.
  
- (5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

Now, a close look at sections 21 and 21-A of the Act will reveal that the legislature has ordained that a subsequent petition for a decree of

judicial separation under section 10 or for a decree of divorce under section 13 shall be tried and decided by the Court in which a petition for a decree for judicial separation under section 10 or for a decree of divorce under section 13 was pending before the filing of the later petition. It has been provided in mandatory terms that the later petition has to be transferred to the Court which is trying the petition under sections 10 or 13 filed earlier in point of time. The Court trying the later petition has no choice. It is imperative for that Court to transfer these proceedings. However, section 21-A of the Act applies to petitions filed under sections 10 or 13 only. Both the petitions should be under these two sections only. The reason for this provision seems to be simple. The legislature wanted to avoid a conflict of decisions. The grounds for grant of relief under the two sections are the same. In its wisdom, the legislature has not included the proceedings under other sections of the Act within the purview of section 21-A. From the language employed in section 21-A, it is clear that only petitions under sections 10 and 13 were to be tried by one Court and in case, the proceedings were pending in two different districts, they were to be tried by the Court in which the proceedings have been instituted first in time. The provisions of section 21-A do not in any manner control or exclude the application of section 24 of the Code to the other proceedings under the Act. Plenary powers have been conferred on the High Court and the District Courts for the transfer of the suits or other proceedings pending before the Subordinate Courts. No fetters or restrictions have been placed on the exercise of these powers. Section 21-A of the Act does not in any way take away these powers. As noticed earlier, by section 21-A, a positive mandate has been given. The later proceedings under sections 10 or 13 of the Act have to be transferred. There is no discretion. However, in other cases, this Court and the District Courts have been invested with the powers to transfer, if the justice of the case demanded, any proceedings from one Subordinate Court to another Court of competent jurisdiction. Section 21-A has been enacted only to take care of a particular type of proceedings in matrimonial cases.

((5) In *Rama Kanta's case* (supra) reliance has been mainly placed on the decision of the Calcutta High Court in *Surendra Nath Dutt v. Malati and another* (4). In that case, their Lordships were

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(4) A.I.R. (29) 1942 Calcutta 546.

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considering the provisions of section 8 of Divorce Act vis-a-vis section 24 of the Code. The language employed and the powers conferred by both the sections are similar. Under the Divorce Act also, the High Court had been invested with the powers to try any suit pending in the Subordinate Courts or to transfer the same from one Court to any other Court of competent jurisdiction. The Calcutta High Court had framed rules to regulate the proceedings under the Divorce Act. Taking into account the language in section 8 of the Divorce Act and section 24 of the Code and the different rules framed for the trial and decision of the cases under the Divorce Act by the Calcutta High Court, it was observed that as the Divorce Act contains an express provision regulating the transfer of a suit from the Court of a District Judge to that of another District Judge, section 24 of the Code can have no application. In the present case, plenary powers of transfer have not been given by section 21-A. It deals with petitions under sections 10 and 13 only. So far as these two types of proceedings are concerned they will be governed only by section 21-A of the Act. However, the proceedings taken under other provisions of the Act, like sections 9, 25, 26 and 27 will not be covered by section 21-A. So far as those proceedings are concerned, section 24 of the Code will be applicable. Proceedings under section 9 have not been mentioned in section 21-A. As noticed above, section 21 clearly states that subject to the other provisions contained under this Act and to the rules framed by the High Court, all proceedings under the Act shall be regulated by the Civil Procedure Code. The Act has not made any provision relating to the transfer of the petitions other than sections 10 and 13. So, such proceedings can be transferred only under section 24 of the Code. However, the Court while deciding the transfer application may take into account the legislative policy enshrined in section 21-A, but it cannot be said that the powers of this Court are in anyway hedged in relation to proceedings other than under sections 10 and 13, by section 21-A. With respect to the learned Judge, who decided *Rama Kanta's case* (supra), we hold that it does not lay down correct law and affirm the dicta in *Smt. Urmila's case* and *Pushpa Rani's case* (supra). We also hold that once the provisions of section 21-A are complied with the proceedings under sections 10 and 13 of the Act which are pending in a particular Court can be transferred under section 24 of the Code to some other Court of competent jurisdiction if the facts and circumstances and the justice of the case so require.

(6) Coming to the merits of the present petition, it has become infructuous. Mr. Ashwani Chopra, learned counsel for the respondents, has stated at the bar that the petition under section 9 of the Act for restitution of conjugal rights filed by the applicant-husband has already been dismissed on 16th November, 1979. The main ground taken in the present application for transfer was that the petition under section 9 filed prior in time by the applicant was pending in the Civil Court at Garhshankar. Since that has been decided, this ground does not survive.

(7) Second ground taken in the petition was that the applicant apprehended danger to his life if he went to Jullundur to defend his case. This plea was not argued in the Court by Mr Jain. No material has been brought on the file to sustain this objection. Consequently, we find no merit in this application and the same is dismissed, but with no order as to costs.

(8) Parties are directed through their respective counsel to appear before the learned District Judge, Jullundur, on 21st May, 1980.

*D. S. Tewatia, J.*—I agree.

S.C.K.

*Before J. V. Gupta J.*

ASHWANI KUMAR KAUSHIK and another *Appellants.*

*versus*

RAM RATTAN and others,—*Respondents.*

*Second Appeal from Order No. 5 of 1980.*

May 2, 1980.

*Code of Civil Procedure (V of 1908)—Order 23 Rule 3—Parties to a suit making statements in court regarding their compromise—Court passing a decree not in accordance with the compromise but adding something more to it—Such decree—Whether appealable,*

*Held, that no appeal would lie against a consent decree but if it is found that the defendant had made a limited offer but the*