

rejecting a plaint but is just an order against which no appeal is provided under Order 43, Rule 1, of the Code, has, therefore, to be repelled. The argument indeed is that the right of appeal must be specifically given and cannot be held to be implied. In my view, it is not a case of implying a right of appeal but only of appreciating the true import of the order directing a plaint to be taken off the file. If, on the other hand, the Court dismisses the suit instead of passing an order as envisaged in Order 32, rule 2, and a final decree is drawn up, howsoever erroneous may be the dismissal of the suit, the fact remains that the same has been dismissed and a decree passed. In such a situation as well, the right of appeal as conferred by section 96 of the Code of Civil Procedure, cannot be denied to the plaintiff.

(5) For the foregoing reasons, the appeal has no merit and stands dismissed with no order as to costs.

N.K.S.

MISCELLANEOUS CIVIL

Before D. S. Tewatia, J.

DURGA DASS,—Appellant

versus

TARA RANI AND ANOTHER,—Respondents.

Civil Misc. No. 2762-C of 1970

in

E. F. A. No. 119 of 1970.

November 17, 1970.

Hindu Marriage Act (XXV of 1955)—Sections 24 and 25—Execution proceedings to realize the amounts made payable by the Court—Whether proceedings under the Act—Litigation expenses for such proceedings—Whether can be ordered to be paid.

Held, that "proceedings under the Act" as mentioned in section 24 of Hindu Marriage Act, cover also the execution proceedings to realize the amounts made payable by the Court and litigation expenses for such proceedings can be ordered to be paid. The difficulties of a litigant start after the decree is secured and he sets about the task of executing the decree. If

Durga Dass v. Tara Rani, etc. (Tewatia, J.)

the execution proceedings meant to realize the arrears of maintenance are not to be treated proceedings under the Act, the order passed under sections 24 and 25 of the Act granting alimony or maintenance to a spouse shall be rendered ineffective if the spouse who has been ordered to pay the amount does not pay and enforces the other spouse in whose favour the order has been passed to realize the amount by execution.

(Paras 5 and 6)

Application on behalf of Smt. Tara Rani under section 24 of the Hindu Marriage Act, 1955, praying that the amount of Rs. 320 be ordered to be given to the petitioner to defend the above titled E.F.A.

(Original Case No. 412 of 1969 of 21st October, 1969, pending in the court of Shri H. S. Ahluwalia, Senior Sub-Judge, Ludhiana, and an interim order passed by him on 10th July, 1970).

V. P. SHARDA, ADVOCATE, for the appellant.

R. N. MITTAL, ADVOCATE, for the petitioning respondents.

ORDER.

TEWATIA, J.—(1) This is an application under section 24 of the Hindu Marriage Act, claiming Rs. 320, as litigation expenses and Rs. 50 as a monthly maintenance amount. The learned counsel for Shri Durga Dass appellant, Mr. V. P. Sharda, has urged that the present proceedings in the High Court are not under the Hindu Marriage Act and so the provisions of section 24 of the Hindu Marriage Act (Act No. 25 of 1955, hereinafter referred to as the Act), are not attracted to the facts of this case.

(2) To appreciate the respective contentions of the learned counsel, a few relevant facts may be noticed. The applicant who was the wife of Shri Durga Dass appellant secured a decree of divorce and she was granted Rs. 50 as the alimony under section 25 of the Act, and that amount of alimony was made a charge on the movable and immovable property belonging to Shri Durga Dass except the amount of provident fund. With a view to recover the unpaid amount of alimony the applicant got attached the gratuity amount and the bonus amount lying with the Railway Administration belonging to Shri Durga Dass. Objections were raised in the executing Court that neither the bonus amount nor the gratuity amount could be attached and the Senior Subordinate Judge, Ludhiana, *vide* his order dated July 10, 1970, held that the gratuity amount could be attached and the amount of alimony could be realized

there from, but bonus amount was not attachable as the same formed part of the provident fund. Against that order, two execution appeals have been filed—one at the instance of Durga Dass, Execution First Appeal No. 119 of 1970, and the other at the instance of Shrimati Tara Rani, Execution First Appeal No. 109 of 1970. In her appeal Shrimati Tara Rani has claimed that even bonus amount is attachable and that it is not a part of the provident fund and Shri Durga Dass, on the other hand in his appeal has claimed that even the gratuity amount is not attachable and it is in these execution first appeals that the present application under section 24 of the Act, has been presented by Shrimati Tara Rani.

(3) The question that arises for consideration is as to whether execution proceedings of the kind which has its aim to realize the amount of alimony made payable by the order of the Court in proceedings under section 25 of the Act, are to be considered proceedings under the said Act.

(4) According to the learned counsel for Shri Durga Dass, the expression 'proceedings under this Act', have to be construed strictly to mean the proceedings which are envisaged under the Act, such as, the proceedings relating to the restitution of conjugal rights, judicial separation, divorce or dissolution of marriage, while counsel for the applicant Shrimati Tara Rani has urged that the said expression shall not only include the proceedings that are got enumerated above by the learned counsel for the appellant but the ancillary proceedings taken out to enforce orders and decrees under the said Act, shall also be considered as arising under the Act. Learned counsel for the applicant has submitted that section 28 of the Act, envisages the enforcement of the decrees and orders passed under the Act, in like manner as the decrees and orders of the Court made in the exercise of the original civil jurisdiction. Learned counsel has further urged that if the civil proceedings like the execution proceedings meant to realize the arrears of the maintenance amount are not to be treated proceedings under the Act, then the order passed under sections 24 and 25 of the Act, granting alimony or maintenance to a spouse shall be rendered ineffective if the spouse who has been ordered to pay the amount does not pay the amount and forces the other spouse in whose favour the order has been passed to realize the amount by execution and if

the spouse who is entitled to the amount is so poor that he or she is not in a position to finance the execution proceedings. The learned counsel has referred me to a decision of the Calcutta High Court reported in *Sm. Anita Karmokar and another v. Birendra Chandra Karmokar*, (1), wherein the facts were that an order under section 24 of the Act, was passed granting certain amount to one of the spouses and the other spouse did not pay and the question arose as to whether the Court has a right to stay the proceedings till such time the amount ordered to be paid under section 24 of the Act, is paid by the other spouse who was the spouse to whom the money was granted and who was to realize that amount by taking out execution proceedings. Banerjee, J., approvingly quoted the following observations of their Lordships of the Privy Council reported in *General Manager of Raj Durbhanga v. Ramput Singh* (2) :—

“To relegate one to that difficult and risky path-way, even for realization of the litigation expenses, without staying the hearing of the matrimonial suit, may result in the suit itself being heard out before the expenses may be realised by process of execution. Therefore, to hold that the levying of execution is the only remedy for enforcement of an order made under section 24 may, result in making such order wholly nugatory and ineffective.”

(5) The perusal of the above rulings shows that the difficulties of a litigant start after the decree is secured and he sets about the task of executing the decree and so the Court can go even to the extent of exploring and stapping its inherent powers to save the poor litigant from traversing the thorny and tortuous path of execution proceedings. The ratio of the above decision beacons the Court to adopt a construction which may enable rather than thwart the effective enforcement of its orders and decrees.

(6) In the present case the applicant who is not in a position to finance the execution proceedings, if does not succeed in securing litigation expenses and maintenance allowance from Shri Durga Dass, then the order passed by the Court under section 25 of the Act, shall be rendered totally ineffective as otherwise she will not be able to realize the arrears of alimony from Shri Durga Dass. Such a situation cannot be countenanced and perhaps such a situation

(1) A.I.R. 1962 Cal. 98.

(2) 14 Moo. I.A. 605.

was envisaged by the framers of the Act, and that is why a provision like the one contained in section 24 of the Act, was incorporated in the Act, because a wife who is dependent for her maintenance on her husband more than often has no means of her own for her maintenance and it must have been considered necessary that if Court has to have full information to help it decide the dispute, before it, justly and effectively then the spouse which has no means of her own should be enabled to effectively defend her case by asking the other spouse to pay for the litigation expenses as also to pay for her maintenance. Therefore, I am clearly of the opinion that the expression "proceedings under this Act" shall cover the execution proceedings as well; recourse to which was made necessary by Shri Durga Dass by not complying with the order of maintenance passed under section 25 of the Act. Therefore, I order Shri Durga Dass to pay Rs. 200 to the applicant and Rs. 50 per month to her towards maintenance with effect from the date of the application. The arrears of the maintenance amount as also the litigation expenses must be paid within one month from today and the amount of maintenance be paid to her by the 5th of every month by money order. The amount of maintenance so paid by Shri Durga Dass shall be accounted for in the amount of alimony that he has already been required to pay under section 25 of the Act. There is no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before D. K. Mahajan and Bal Raj Tuli, JJ.

GRAM PANCHAYAT AND OTHERS,—Appellants

versus

HAR LAL AND OTHERS,—Respondents.

Letters Patent Appeal No. 556 of 1968.

November 19, 1970.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42, proviso—Expression "parties interested" mentioned in the proviso—Meaning of—Expression—Whether includes tenants on the land.