APPELLATE CIVIL

Before C. G. Suri, J.

DAYAL SINGH,—*Appellant.*

versus

BHAJAN KAUR,—*Respondent.*

F.A.O. No. 25-M of 1966.

November 9, 1971.

Hindu Marriage Act (XXV of 1955)—Section 25—Annulment of marriage at the instance of wife—Such wife—Whether entitled to the grant of permanent alimony and maintenance.

Held, that section 25 of the Hindu Marriage Act, 1955, has to be construed liberally. Where a marriage is annulled at the instance of the wife on the ground that the husband had a spouse living at the time of the marriage, the marriage is no doubt void *ipso jure* but the aggrieved lady is to be treated as a wife for the purpose of making an application under section 25 of the Act and she is entitled to the grant of permanent alimony and maintenance thereunder.

(Paras 1, 2, 4 & 6)

First Appeal from the order of Shri Nirpinder Singh, Sub-Judge, 1st Class, Malerkotla, (empowered u/s 3-B of Act No. 25 of 1955, as District court), dated 1st December, 1965, allowing the petition of Bhajan Kaur and directing the respondent (Dayal Singh) to pay alimony to her at Rs. 25 P.M. till the time she remains unmarried, with effect from today.

Rajinder Krishan Aggarwal, Advocate, *for the appellant.*

Santosh Kumar Aggarwal, Advocate, *for the respondent.*

JUDGMENT

SURI J.—(1) After a marriage between the parties had been annulled on the wife's petition under section 11 read with clause (1) of section 5 of the Hindu Marriage Act, 1955 (hereinafter briefly referred to as 'the Act') on the ground that the husband had a spouse living at the time of the said marriage, the lady aggrieved (respondent in this appeal) made an application for permanent

alimony and maintenance under section 25 of the Act. She has been granted a maintenance allowance of Rs. 25 per month by the Court of first instance. The offending or the offended male has come in appeal to this Court.

(2) There is no dispute as regards the rate or quantum of the maintenance allowance and considering the high prices prevailing these days, this allowance would hardly enable the respondent to subsist on starvation level. The only grievance made by the appellant, therefore, is that the marriage was void *ipso jure,* from its very inception and that the respondent had never acquired the status of a wife to give her the right to make an application under section 25 of the Act.

(3) The parties had lived together as husband and wife for more than a year after the mock marriage or the sham ceremony and no children had fortunately been born from the wedlock. When the respondent came to know that the appellant was already married and that his first wife was alive, she promptly applied for the annulment of the marriage. On the material now before me, it is not possible to say how far the appellant had been held responsible for any deception or suppression of material facts from the respondent before she was induced to go through that sham ceremony or mock marriage. Even if the respondent could be said to have gone through a marriage ceremony with full knowledge about the appellant's live wife, it is obvious that she has been robbed of her maidenhood and the fact that she had promptly asked for the annulment of this mock marriage and that she was granted relief by the Court may suggest that she was not trying to take advantage of her own wrong or disability within the meaning of section 23(1) (a) of the Act.

(4) The main argument of Shri Rajinder Krishan Aggarwal, the learned counsel for the appellant, is that the marriage being void *ab initio,* the parties never acquired the legal status of 'the wife' or 'the husband' within the meaning of section 25(1) of the Act and that the respondent could not, therefore, make an application for permanent alimony or maintenance under that section. On first impression, the argument strikes one as very appealing and the restricted interpretation sought to be put on the phraseology of this section had been accepted as correct in a few rulings relied upon by the appellant's counsel. The better view which may

appear to have found favour with the majority of High Courts. however, is that the Act has not been very carefully drafted and that the language of section 25 has to be liberally construed. Even if the marriage was void *ipso jure*, the lady had been made to go through a mock marriage and to lose her maidenhood under the belief brought out by false pretences that she was a lawfully wedded wife. The children born from such a living together or commensality are treated as legitimate for certain purposes in view of the provisions of section 16 of the Act and they have valid claims against the couple who brought them into the world as if the couple were their lawfully wedded parents. The children have all valid claims against their parents and the mock ceremony is supposed to have brought about a marriage which is annulled by the decree granted by the Court under section 11 of the Act. Sections 11 and 12 make a distinction between void and voidable marriages but the decree of nullity that follows in either case confers the same rights on the children born from this living together under a false belief about the validity of the marriage. The tie between the parties is, therefore, treated as a valid marriage for certain limited purposes and we can extend the fiction by describing the parties as husband and wife. The very use of the word 'marriage' in sections 11 and 12 of the Act would imply that the parties to that marriage are being treated as husband and wife. The learned counsel for the appellant wanted to make an argument out of the fact that the words 'husband' and 'wife' have been eschewed in sections 11 (void marriages) and 12 (voidable marriages) of the Act dealing with nullity of marriages while these words have been used in section 9 (restitution of conjugal rights) and section 13 (divorce). There might have been some force in this argument were it not for the fact that the use of these words has been carefully avoided in section 10 as well, when the section relates to judicial separation where there is no dispute that the parties had gone through a marriage which was in all respects legally valid. The use of these words in some of the sections mentioned above and their omission in some other sections may, therefore, appear to be more a result of carelessness rather than any intelligent drafting of the Act.

(5) I may then deal with two rulings cited by Shri Rajinder Krishan Aggarwal, the learned counsel for the appellant. In *Ishwar Singh* v. *Smt. Hukam Kaur* (1) the wife had applied for

(1) A.I.R. 1965 All. 464.

maintenance under section 488 of the Criminal Proccedure Code. The opposite party had denied that he had married the applicant. It transpired in evidence that the applicant was already married and that her first husband was alive. The plea that the first husband had granted divorce by mutual consent to the applicant or that she was free to remarry had remained unproved. Under the circumstances, the lady was not found entitled to any maintenance under section 488 of the Code of Criminal Procedure. Under that section, the marriage has to be strictly proved before the applicant would be entitled to any relief. The reference in head-note (b) of this ruling to section 25 of the Hindu Marriage Act is a mistake due to the printer's devil and one has to go through the short half page ruling to make sure that this section had never come up for the consideration of the Court. This ruling has, therefore, no bearing on the present case. The other case which has been relied upon by Shri R. K. Aggarwal is *A.P.K. Narayanaswami Reddiar* v. *Padmanabhan and others* (2). His reliance is on certain portions of the judgment which have been described in the head-notes based on these portions to be *obiter* remarks. To appreciate these remarks in their true context, it may be necessary to narrate briefly the facts of the case. The appellant, an offending male, had a spouse living when he married respondent No. 4 in that case. Some children may appear to have been born from that wedlock and they had also been impleaded. The petition had been filed by the victimised female and her minor children under section 4(1) of the Madras Hindu (Bigamy Prevention and Divorce) Act of 1949. The decision of the Division Bench proceeded on a very strict interpretation of the provisions of that particular Act. The Division Bench ruling of our High Court in *Jal Kaur* v. *Pala Singh* (3) had not found favour in *A.P.K. Narayanaswami Reddiar's case.* Certain observations were made as to how section 25 of the Hindu Marriage Act, 1955 or section 18 of the Hindu Adoption and Maintenance Act, 1956 were to be construed even though it was felt that it was not necessary to decide the question for purposes of disposing of the appeal that was before the Hon'ble Judges at the time. These observations have, therefore, been correctly described as *obiter* remarks in the two head-notes which are based on this part of the judgment. The argument of the respondent's counsel, that although a woman may not strictly be a wife in the context of a valid marriage, she could

(2) A.I.R. 1966 Mad. 394.
(3) A.I.R. 1961 Pb. 391.

still be so regarded for certain purposes, was rejected even though the Division Bench ruling of this Court in *Jal Kaur's case* (3) had been cited. Another ruling which was turned down was *Mehta Gunvantray Maganlal* v. *Bai Prabha Keshavji* (4) wherein a Single Bench of the Court was of the view that section 25 of the Act applied to all kinds of proceedings whether they were proceedings for judicial separation or for restitution of conjugal rights or for dissolution of marriage by divorce or for annulment of marriage.

(6) As against this, the majority view of a number of High Courts appears to be that the Act is a carelessly drafted piece of legislation and that the language of section 25 should not receive a very strict construction and that the aggrieved lady in a case of annulment of marriage should be treated as a wife for the purpose of making an application under section 25. In *Arya Kumar Bal* v. *Smt. Ila Bal* (5) the aggrieved female was granted permanent alimony at the time of the passing of the decree for annulment of marriage and the difficulty, if any, was got over by the use of the fiction "reputed wife". That was a case where decree of nullity of marriage was granted on the ground of the husband's impotency which would be a case of voidable marriage and not a marriage void *ipso jure*. It was, however, observed that the relief in the nature of alimony is really a relief which is incidental to the passing of the decree and that decree for nullity stands on the same footing as a decree for dissolution of marriage. Nobody had contested the fact in this case that the wife could be granted permanent alimony at or after the time of the passing of a decree for nullity and the question that had come up for decision only was whether during the pendency of the husband's appeal, the wife could be granted interim maintenance and litigation expenses under section 24 of the Act. The question was decided in the wife's favour and she was granted alimony pendente lite at the rate of Rs. 500 per month and a like amount as litigation expenses.

(7) In *Jal Kaur's case* (3) (*supra*), a Division Bench of this Court was of the view that the provisions of the Hindu Adoption and Maintenance Act, 1956 were to be liberally construed. The general purpose underlying an enactment could be kept in mind while interpreting its provisions. The recent codification of

(4) A.I.R. 1963 Gujrat 240.

(5) A.I.R. 1968 Cal. 276.

Hindu Law had for its fundamental purpose the removal of the disabilities placed on Hindu women and were intended to confer on them better rights of maintenance and property. Section 18(1) and 2(d) give the wife the right to be maintained by her husband and this maintenance can be claimed by her even where she is living separate on the ground that the husband has another wife living. In *Minarani Majumdar* v. *Dasarth Majumdar* (6), the judgment was written for the Division Bench by Bachawat J. It was observed that an order for separate maintenance under section 25 could be passed in favour of a married woman living apart from her husband on the passing of a decree for divorce or nullity or judicial separation or for restitution of conjugal rights. It was held that the power of any Court exercising jurisdiction under section 25 of the Act to pass an order of maintenance arose at the time of passing any decree or at any time subsequent thereto. Even though the case could have been disposed of on the basis of an answer to the question whether the dismissal of a husband's petition for divorce under section 13 amounted to 'the passing of any decree' within the meaning of section 25 of the Act, the interpretation of the phrase "while the appellant remains unmarried" was also taken upon by the Hon'ble Judges. The Division Bench ruling of the Gujrat High Court in *Kadia Harilal Purshottam* v. *Kadia Lilavati Gokaldas* (7) was relied upon. In the last mentioned ruling, it was observed as follows:—

> "Though the Courts have always been extremely reluctant to substitute words in a statute or add words to it, they would do so where there is a repugnancy to good sense. In enacting section 25 the intention of the legislature was not to restrict the powers of the Court in granting permanent alimony and maintenance to an extremely limited class of cases, namely where the Court had passed a decree for divorce or of nullity of marriage. The words used in the section are 'at the time of passing any decree'. The power was intended to be exercised at the time of the passing of any of the decrees referred to in the earlier provisions of the Act or at any time subsequent thereto."

(6) A.I.R. 1963 Cal. 428.
(7) A.I.R. 1961 Gujrat 202.

(8) The Hon'ble Judges then proceeded to the question of interpretation of the words "while the applicant remains married" in section 25 of the Act. After considering the historical development of law of divorce and judicial separation (a *mensa et thoro*) in England, the meaning of the expression "permanent alimony" used under English law was studied in the context of the English case law. The following observations of the Hon'ble Judges with regard to the degree of care employed in the drafting of section 25 of the Act could be reproduced with advantage:—

> "In our view, whilst enacting Section 25 the legislature did not intend to resrict the ordinary provisions relating to permanent alimony and maintenance in connection with proceedings for judicial separation, divorce and nullity of marriage, but to extend the same and make the provisions applicable both in favour of the wife as well as the husband. No doubt, the words used by the legislature 'while the applicant remains unmarried' suggest the construction sought to be placed by Mr. Nanavaty. We have, however, to consider the paramount intention of the legislature. In Maxwell on Interpretation of Statutes, at page 229 it has been observed as follows :
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> 'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumambly not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence; no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskilfulness or

ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.'

"The Courts have always been extremely reluctant to substitute words in a statute or add words to it. A Court would do so where there is a repugnancy to good sense. The Hindu Marriage Act, 1955, cannot be regarded as a work of art. It is not noted for good drafting. It contains several provisions which present difficulties while interpreting the same. The words used in some sections are far from happy and difficulties are experienced in gathering the true meaning of the legislature. There is however one thing clear that the main object and intention of the enactment was to amend and codify the law relating to marriage among Hindus. The intention was not to restrict the powers of the Court in granting permanent alimony and maintenance to an extremely limited class of cases, namely where the Court had passed a decree for divorce or of nullity of marriage. The words used in section are 'at the time of passing any decree'. The words 'any decree' would not have been used if it was the intention of the legislature to restrict the operation of the section only to cases where a decree for divorce or of nullity of marriage was passed. The power was intended to be exercised at the time of the passing of any of the decrees referred to in the earlier provisions of the Act or at any time subsequent thereto."

"The section vests the Court with wide discretion in the matter of making orders for *the maintenance and support of one spouse by the other where* it passes any decree for restitution of conjugal rights, judicial separation, dissolution of marriage by divorce or annulment of the marriage on the ground that it was void or voidable."

(9) The question whether a wife, who was refusing to comply with a decree for restitution of conjugal rights obtained against her by her husband, could claim separate maintenance came up before a Division Bench of this Court of which I was a member in *Smt. Ram Piari* v. *Shri Piara Lal P.C.S.* (8). Relying on a Single Bench decision in *Surjit Kaur* v. *Paragat Singh* (9),

(8) I.L.R. (1971) 1 Pb. & Hr. 555.

(9) I.L.R. (1964) 2 Pb. 100.

the wife's right to alimony was found to be absolute and it was held that it was incumbent on the Courts to make an order that the husband shall pay to the wife on her petition such sum as can be awarded in the circumstances of the case. Even an unchaste wife was found to have an absolute right to a starving allowance for her maintenance on the basis of a Single Bench decision in *Amar Kanta Sen* v. *Sovana Sen and another* (10) and the right was declared to be enforceable even where the wife had been divorced on the ground of her adultery. The provision is intended to prevent the wife's starvation but this right to bare subsistence would disappear where the wife has an income of her own. A similar view was taken by a Division Bench in the case of *Dr. Hormusji M. Kalapesi* v. *Dinbai H. Kalapesi* (11), which was a case under the Parsi Marriage and Divorce Act. It was observed that it had been the consistent practice of the Courts to entertain applications for alimony even in the case of defaulting or guilty wives. An application for alimony had, so far as the Judges were aware, never been thrown out on the preliminary ground that the petition had been made by a guilty wife. The English case law was discussed and it was found that it was never intended that a guilty wife should be turned out to the streets to starve. The Hindu law recognised even the right of a concubine to be maintained by her master. In this connection, reference could be made to paragraph 553 of Mulla's Hindu Law, 13th Edition (1966) on pages 543-44. Under the circumstances, the respondent who has suffered at the hands of an overbearing male cannot be denied permanent alimony at a rate which in this case would only help to prolong her starvation. She has not, however, filed any cross appeal or objections complaining of the low rate. In *Fisher* v. *Fisher* (12) on page 1055, it was observed that the legislature did not intend that the wife entitled to a dissolution of marriage should purchase the decree at the price of being left destitute. Where the husband's circumstances or financial position allow it, the Courts will direct a maintenance to be secured to the woman as long as she remains chaste and unmarried.

(10) The appeal is accordingly dismissed with costs.

B.S.G.

(10) A.I.R. 1960 Cal. 438.
(11) A.I.R. 1955 Bom. 413.
(12) 164 English Reports (2 Sw. & Tr. 410).