

27. A Division Bench of our High Court in *Asha Rani v. Union of India* (4) held that the normal multiplier should be sixteen in such cases. It was so held after taking note of *Lachhman Singh's* case (*supra*).

28. Keeping in view the principles set out in the Full Bench decision referred to above and having regard generally to the circumstances of this case, it would be fair and just to hold that the loss suffered by the claimants on account of the death of the deceased was to the extent of Rs. 2,000 per month and the suitable multiplier should obviously be sixteen. Computed on this basis the claimants must be held entitled to Rs. 3,84,000 ($2,000 \times 12 \times 16$) as compensation. The amount claimed in this case was only Rs. 3 lacs. Thus, no award can be made in excess thereof. The amount awarded to the claimants is consequently enhanced to Rs. 3 lacs. The claimants shall, in addition, be entitled to 10% interest per annum thereon from the date of the application to the date of payment thereof. In the result, the appeal filed by the claimants, i.e. F.A.O. 200/1976 is hereby accepted with costs; counsel fee Rs. 500, while that filed by the State of Haryana is dismissed. There will be no order as to costs in that appeal.

N.K.S.

Before G. C. Mital, J.

DARSHAN KAUR,—Appellant.

versus

MALOOK SINGH,—Respondent.

First Appeal from Order No. 11-M of 1981.

August 31, 1982.

Hindu Marriage Act (XXV of 1955)—Sections 19 and 25—Marriage solemnized within the jurisdiction of the Court at Jullundur and the parties residing there—Decree for divorce granted by a Court in Allahabad—Application for permanent alimony made to a Court at Jullundur—Court at Jullundur—Whether competent to grant the relief.

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Held, that where the marriage of the parties was solemnized within the jurisdiction of the District Court, Jullundur, and both the parties were residing therein, it is clear that even for a petition under section 25 of the Hindu Marriage Act, 1955, the Jullundur Court will have jurisdiction in the matter. From the words "on application made to it for the purpose" used in section 25 of the Act, it cannot be inferred that 'it' is the Court which passed the decree or that Court alone is entitled to entertain such an application. This is not the scope of either section 25 or section 19 of the Act. Moreover, the opening part of section 25 shows that the proceedings may be taken before 'any' Court exercising jurisdiction under this Act and the jurisdiction under this Act is exercised in view of section 19 of the Act on matters arising under the Act. Therefore, the reasonable interpretation to be placed would be that section 25 or for that matter any other section, should be read subject to section 19 so far as the jurisdiction of the Court is concerned unless there is a specific provision to the contrary in any particular section. On a plain reading of section 19 and reading it harmoniously with section 25 of the Act, the only conclusion to be drawn would be that even if a petition for divorce, or any other decree, is granted by one of the Courts having jurisdiction under section 19 of the Act, it may give cause to the opposite party to move for the grant of permanent alimony or any other relief under section 26 or 27 of the Act and the jurisdiction will be governed by section 19 of the Act and not merely by the passing of a decree by a particular Court. It is, therefore, held that the Court at Jullundur has jurisdiction to decide the petition filed under section 25 or 27 of the Act.

(Paras 3 and 6).

First Appeal from Order against the order of the court of Shri M. S. Luna, Additional District Judge, Jullundur, dated the 18th October, 1980 dismissing the petition and leaving the parties to bear their own costs.

Vinod Sharma, Advocate, for the Appellant.

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

JUDGMENT

Gokal Chand Mital, J.

1. Malook Singh obtained an *ex parte* decree of divorce against his wife Darshan Kaur from the Court of Additional District Judge, Allahabad on 15th November, 1976. When she came to know of the decree, she filed an appeal in the Allahabad High Court, which was barred by time by 366 days and was consequently dismissed as such on 1st February, 1980. On 19th April, 1980, Darshan Kaur filed a petition under section 25 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) for

the grant of permanent alimony against Malook Singh in the Court of District Judge, Jullundur, in which it was recited that the decree of divorce was passed by the Additional District Judge, Allahabad and the appellant's appeal failed before the Allahabad High Court. She pleaded that the husband had six Killas of land having value at the rate of Rs. 35,000 per Killa out of which on one Killa there was an orchard and tubewell was installed. The respondent had 20 Tolas of gold ornaments and was employed as Editor Paper Lok Lahar and was drawing Rs. 800 per month besides getting military pension amounting to Rs. 350 per month. In para 5 of the petition it was pleaded that the respondent voluntarily resided and worked for gain in village Gari Baksha, District Jullundur. Claim for Rs. 500 per month for permanent alimony was made. The petition was contested by Malook Singh, who took up a preliminary objection that since the decree of divorce was passed by the Additional District Judge, Allahabad, only that Court had the jurisdiction to entertain the petition. He denied if he owned any land or had gold ornaments in his possession. He also denied that he was Editor of Lok Lahar and was getting any salary from that paper. He pleaded that he was getting Rs. 60 per month as pension from Air Force. In reply to para 5 he admitted that he resided in village Garhi Baksha, District Jullundur. The Court below struck the following preliminary issue:—

“Whether the Court has jurisdiction to entertain this petition?”

The Court below relied on *Seeta Ram v. Smt. Phooli*, (1) and *A. R. Manuswamy Rajoo v. Hanza Rani* (2), in coming to the conclusion that it is the Court which granted the decree of divorce, which alone had the jurisdiction to entertain the petition under section 25 of the Act and thus concluded that the District Court at Jullundur had no jurisdiction to entertain the petition under section 25 of the Act. Consequently, her petition was dismissed,—*vide* order dated 18th October, 1980. This is Darshan Kaur's appeal to this Court.

2. After hearing the learned counsel for the parties, I am of the view that this appeal deserves to succeed. The Court below only considered section 25 of the Act in deciding the preliminary issue

(1) A.I.R. 1972 Rajasthan 313.

(2) A.I.R. 1975 Madras 15.

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and did not give due importance to section 19 of the Act. Sections 19 and 25 of the Act are as under :—

“19. Court to which petition shall be presented—Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction—

(i) the marriage was solemnized, or

(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.”

“25. *Permanent alimony and maintenance* —

(1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as having regard to the respondent's own income and other property, if any, the income and other property of the applicant the conduct of the parties and other circumstances of the case it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the Court is satisfied that there is change in the circumstances of either party at any time after it has made an

order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

- (3) If the Court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the Court may deem just."

3. A reading of section 19 clearly shows that every petition under the Act (which will include a petition under section 25 of the Act as well) has to be presented to the District Court within the local limits of whose ordinary original civil jurisdiction—

- (i) the marriage was solemnized, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- (iv) (not concerned in this case).

It is not disputed that the marriage of the parties was solemnized within the jurisdiction of District Court, Jullundur, both the parties are residing within the jurisdiction of District Court, Jullundur, although it is not clear as to where they last resided together. Therefore, it is clear that even for a petition under section 25 of the Act, the Jullundur Court will have jurisdiction in this matter. Adverting to the phraseology of section 25, stress is being laid on the words "on application made to *it* for the purpose". From these words it is sought to be inferred that '*it*' is the Court, which passed the decree, and that court alone is entitled to entertain such application. If this interpretation were to be placed on these words, it will lead to anomalous results as would be clear from the following example. Suppose, a divorce petition is dismissed by the first Court and the dismissal is confirmed by the High Court and the matter goes to the Supreme Court and the Supreme Court grants a decree of

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divorce. The interpretation sought to be placed on section 25 of the Act and on the word 'it', would mean that a petition for grant of permanent alimony under section 25 of the Act will have to be filed before the Supreme Court. Similarly, if the divorce petition was declined by the first Court, but was granted by this Court, the application for the grant of permanent alimony will lie to this Court. This is not the scope of either section 25 or conveyed by section 19 of the Act. Moreover, the opening part of section 25 shows that the proceedings may be taken before 'any' Court exercising jurisdiction under this Act and the jurisdiction under this Act is exercised in view of section 19 of the Act on matters arising under the Act. Therefore, the reasonable interpretation to be placed, would be that section 25 or for the matter any other section, should be read subject to section 19 so far as the jurisdiction of the Court is concerned unless there is a specific provision to the contrary in any particular section. Therefore, on a plain reading of section 19 and reading it harmoniously with section 25 of the Act, the only conclusion to be drawn would be that even if a petition for divorce, or any other decree, is granted by one of the Courts having jurisdiction under section 19 of the Act, it may give cause to the opposite party to move for the grant of permanent alimony or any other relief under section 26 or 27 of the Act, again the jurisdiction will be governed by section 19 of the Act and not merely by the passing of a decree by a particular Court.

4. As regards the two causes relied upon by the Court below, on a careful perusal of the same, it shows that they are clearly distinguishable and have not even remotely decided the point which is at issue before me. On the other hand a reading of the same shows that the Court which granted the decree, has also jurisdiction to entertain the petition under section 25 or 27 of the Act, which means it gives inclusive jurisdiction and the jurisdiction of any other Court, which may have jurisdiction in view of section 19 of the Act, has not been excluded by any of these two decisions. Therefore, the Court below was in error to place reliance on the said decisions.

5. Falling back to the peculiar facts of this case, it is admitted that both the parties are living within the jurisdiction of District Court, Jullundur. When the divorce petition was filed, the husband was temporarily posted at Allahabad being an employee of the Air Force, during which period, he filed a petition for divorce at that

place and obtained *ex parte* decree. The passing of *ex parte* decree further shows that probably the wife was not properly got served in the village in district Jullundur and when she came to know of the decree, she moved to Allahabad High Court and her appeal was dismissed as barred by time. At least, on these facts it will cause manifest injustice not only to the wife but also to the husband because both the parties would be driven to the jurisdiction of Allahabad Court. If with difficulty, the wife is able to go to Allahabad Court to file the petition under section 25 of the Act, it will drag her husband also to that place and only at that time, the husband will realise that he committed a mistake in opposing the petition filed at Jullundur.

6. For the reasons recorded above, this appeal is allowed, the order of the Court below dated 18th October, 1980 is set aside and it is held that the Jullundur Court has jurisdiction to decide the petition filed under section 25 or 27 of the Act. For deciding the remaining matter on merits in accordance with law, the parties, through their counsel, are directed to appear before the Additional District Judge, Jullundur, on 20th September, 1982. The appellant will have her costs.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain & S. C. Mital, JJ.

I. S. GOEL AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2018 of 1981

March 3, 1983.

Punjab Service of Engineers, Class-I, P.W.D. (B & R Branch) Rules, 1960—Rules 6(a), 9 and 22—Appointment by promotion to Class-I Service—Members of Class-II Service not possessing a university degree promoted to Class-I on the ground of seniority—Requirement of holding a degree waived generally in their case—Such waiver—Whether permissible under the proviso to Rule 6(a)—Rule 6(a)—Scope of—Matter of waiver—Whether required to be considered in the case of each officer specifically—Rule 22—Whether applicable.