Before Dr. Sarojnei Saksena, J.

LOVE KUMAR,—*Appellant.*

versus

SUNITA PURI,—*Respondent.*

F.A.O. No. 28/M of 93

26th September, 1996

Hindu Marriage Act, 1955—Ss. 13, 23 (2) & 28—Code of Civil Procedure, 1908—Order 14, Rl. 1—Non-appearance of defendant/husband in reconciliation proceedings—Court striking off defence and without framing issues recording evidence of wife and granting divorce—Defendant giving sufficient cause for non-appearance—Not proper for Court to strike off defence on failure to appear for reconciliation—Divorce decree set aside and trial Court directed to frame issues and decide the case in accordance with law.

Hindu Marriage Act, 1955—Ss. 23 (2) & 24—Difference of—In the context of striking off defence—Held that Ss. 24 & 23 (2) stand on different footings and different rights—Distinction between provisions drawn.

Held, that this is not correct to say that in a divorce case reconciliation efforts have to be timed immediately preceeding the grant of decree and not at any other stage of the proceedings of the trial. Such an attempt can be and should be made at any stage. The matrimonial Court is required to call parties and make a genuine efforts for their reconciliation. there is not even a whisper in this provision that the matrimonial Court has the power to strike of the defence of that spouse, who after being given opportunities for reconciliation fails to appear.

(Para 19)

Further held, that under section 23 (2) of the Act neither such a liability is cast on one spouse nor such a right is given to the other spouse. Reconciliation is a mutual dialogue to burry their differences. A duty is cast on the Court to call the party at the initial stage for reconciliation. Even before delivering judgment and decree, the Court can make effort for reconciliation. Thus, the stage of trial for calling the parties for reconciliation is left to the discretion of the Court.

(Para 21)

Further held that, provisions of Sections 24 and 23 (2) of the Act stand on different footings, different rights and liability flow from Section 24, but no such rights and liabilities flow from Section 23 (2) of the Act and precisely that is the reason why in so many judgments when the spouse against whom an order under section 24 of the Act is passed, fails to comply with that order his or her defence is struck off and the matrimonial cause is thereafter decided. To my mind, the aims, object, reasons and the scheme of the Act do not envisage the type of situation created and the type of order paassed by the matrimonial Court on May 13, 1992. Hence, the lower Court fell into an error in striking down the appellant/husband's defence on May 13, 1992 and thereafter without framing issues and without giving an opportunity to the appellant-husband to adduce his evidence, he recorded the evidence of respondent-wife on July 13, 1992 and in unwarranted not haste decided the divorce petition in her favour.

(Paras 22 & 25)

N. B. S. Gujral, Advocate, *for the appellant.*

Sudeep Mahajan, Advocate, *for respondent No.* 1.

JUDGMENT

(*Mrs.*) *Sarojnei Saksena, J.*

(1) Husband has filed this appeal under section 28 of the Hindu Marriage Act (in short, the Act) against the judgment and decree dated July 23, 1992, whereby a decree of divorce is granted in favour of respondent-wife on the grounds of cruelty and desertion.

(2) Admitted facts of the case are that the parties were married on August 13, 1988, at Jalandhar according to Hindu rites. Thereafter, they lived together at Fatehabad, Tehsil Tarn Taran, District Amritsar. In this wedlock respondent gave birth to a female child on May 2, 1989.

(3) In the divorce petition, respondent-wife pleaded that soon after the marriage, appellant-husband threatened her with cruelty. She was tortured time and again by him and his parents on the count that her parents have not given sufficient dowry at the time of marriage. Appellant-husband was addicted to vices and being intoxicated, he used to give her merciless beatings and abuse her. She was also threatened that she would be eliminated. She was not allowed to use her dowry articles and gold ornaments, which were kept by her husband and in-laws. Thus, these cruel acts of the

husband and his family members caused mental agony to her. She averred that under those circumstances, it is not safe for her to live with the husband in the matrimonial home. The husband tortured her and asked her to bring Rs. 25,000, but she was unable to fulfil his desire. False allegations were levelled against her. Appellant-husband deserted her since January 30, 1989, without any reasonable cause or excuse for separate living. He met her for the last time on May 31, 1989, and make it very clear that he would not come and see her. Since January 30, 1989, she is residing in her parental home. Her husband never cared to enquire about her welfare. In the presence of the persons, named in the divorce petition, appellant-husband stated that he would not let her live in the matrimonial home. Thus, he has brought matrimonial relations permanently to an end. There is no possibility of any reconciliation. Hence, she claimed divorce.

(4) On being noticed, appellant-husband filed written statement raising preliminary objection that as respondent-wife wants to take benefit of her own wrongs, her petition is not maintainable. He denied that he ever maltreated her or tortured or treated her with cruelty or asked her to bring more money or anything else. According to him, she was unable to adjust herself in the matrimonial home. She wanted to live with her parents at Jalandhar, to which he did not agree. On her own, she left the matrimonial home on January 28, 1991, without his consent. She has also taken away all her jewellery etc. as well as the minor child. He made attempts in May, 1991 and July, 1991, to bring her back, but she declined.

(5) After filing of the replication by the wife, the lower Court adjourned the case for reconciliation. On three dates the husband-appellant did not appear for reconciliation. On May 13, 1992, the lower Court struck down his defence under section 23 (2) of the Act and without framing issues, adjourned the case for wife-respondent's evidence, which was recorded on July 23, 1992, and on that very date, decree of divorce was granted.

(6) Appellant's learned counsel, relying on *Smt. Kaniz Fatima (deceased) and another* v. *Shah Naim Ashraf* (1), and *U. Stoling Nonglang* v. *Ka Klin Lyngdoh Umiong and others* (2), contended

(1) A.I.R. 1982 Allahabad 450.

(2) A.I.R. 1982 Gauhati 83.

that when the allegations made in the divorce petition were traversed by the appellant-husband, the Court was duty bound to frame issues under Order 14, Rule 1, Code of Civil Procedure. He also contended that only on three dates case was fixed for reconciliation, but as the petitioner-husband counsel did not inform him of any date so fixed, he could not appear before the matrimonial Court for the said purpose. His counsel never informed him of the progress of the case therefore, the case proceeded *ex parte* and on the basis of his non-appearance in reconciliation proceedings, his defence was struck off and divorce decree was granted on the basis of evidence adduced by the respondent-wife.

(7) Appellant's counsel further contended that in this case from the Zimini orders of the lower Court, it is evident that after many attempts appellant-husband was served by publication. His counsel appeared on January 25, 1992, the case was adjourned to February 12, 1992, for filing of written statement. On this adjourned date, lawyers were on strike, hence both the parties sought an adjournment and the case was adjourned to March 5, 1992. Written statement was not filed, hence adjournment was granted for this purpose at costs of Rs. 25 and the case was adjourned to March 27, 1992. On this date, written statement was filed and the Court adjourned the case for filing of rejoinder and reconciliation for April 9, 1992. This was the first date whereby appellant-husband was ordered through his counsel to remain present on April 9, 1992, for reconciliation. On April 9, 1992, again lawyers were on strike, hence the case was adjourned for rejoinder and reconciliation on April 24, 1992. On April 24, 1992, appellant-husband was not present in the Court for reconciliation. Last opportunity was granted to his counsel to produce him for reconciliation, the case was adjourned to May 13, 1992. and on May 13, 1992, as the appellant-husband was not present for reconciliation, his defence was struck down. Hence, it is obvious that only two effective dates were given for reconciliation and immediately on May 13, 1992, when the appellant-husband did not appear for the said purpose, his defence was struck off.

(8) Appellant's learned counsel also submitted that while filing this appeal he filed an application under section 5 of the Limitation Act seeking condonation of delay of 126 days. In this petition also he averred that after filing of the written statement, his counsel assured him that his personal presence is not required ; the case will proceed further and if his presence is required, he would be called by post ; therefore: he was not present in the lower Court when

the case was taken up on the adjourned dates, his counsel never informed him that the case is fixed for reconciliation. When the postman informed him that a registered letter from Jalandhar Court was sent in his name, he immediately rushed to Jalandhar Court on December 23, 1992, and then his counsel informed him that after the decision of the case, his clerk informed him (appellant) by a letter, which might have been lost in the transit. Immediately he applied for certified copy of the order dated July 23, 1992, and on January 11, 1993, he filed appeal. He filed his affidavit in support of this petition. Respondent wife controverted these averments made in his petition as well as in the affidavit. She also filed her counter-affidavit before the Division Bench. But the Division Bench,—*vide* order dated January 24, 1994, allowed the petition and condoned the delay.

(9) Appellant's counsel further submitted that the appellant was always ready and willing to take back the respondent-wife in his marital fold. His conduct is evident from the proceedings of this appeal. At one point of time the parties agreed for obtaining a decree of divorce on the basis of mutual consent ; later on attempts for reconciliation were made ; Appellant-husband made an attempt to live with the respondent-wife at Jalandhar in her government accommodation ; he also tried for her transfer from village Dhunola Tehsil to district Jalandhar ; parties lived together for some time in harmony, but thereafter again disparagement cropped up and they separated.

(10) Appellant's learned counsel contended that when the appellant-husband did not appear for reconciliation immediately, the Court should have proceeded with the trial of the matrimonial case ; it should have adjourned the case for framing of the issues and thereafter should have fixed a date for recording evidence of both the parties. If later on, appellant-husband or his counsel would have failed to appear in the case, it could have proceeded *ex parte*. But simply on the ground that the husband failed to appear for reconciliation, section 23 (2) of the Act does not empower the matrimonial Court to strike off the defence of such a spouse and on this count the decree under challenge is liable to be set aside.

(11) Respondent-wife's learned counsel contended that before deciding any matrimonial cause, a duty is enjoined upon the Court to call for the parties for reconciliation under section 23 (2) of the Act. Various dates were given by the matrimonial court for appearance of the appellant-husband for the purpose of reconciliation but

as he chose not to appear, the Court had no other alternative but to strike off his defence and when the defence was struck off, it was not necessary for the matrimonial Court to frame issues under Order 14, Rule 1, Code of Civil Procedure. Thus, he submitted that the lower Court has not fallen into any error in granting divorce decree in favour of the respondent-wife.

(12) Respondent's learned counsel also referred to the provisions of section 24 of the Act and contended that even under section 24 there is no provision of striking off defence of such a spouse, who fails to pay maintenance allowance and litigation expenses to other spouse during the pendency of the matrimonial case/appeal, but by now by judicial pronouncements, it has become settled law that when the spouse so ordered fails to pay maintenance allowance and litigation expenses to the other spouse, the Court has jurisdiction to strike off his/her defence. In support of this contention, he has relied on *Sumarti Devi* v. *Jai Parkash* (3), *Sheela Devi* v. *Madan Lal* (4), and *Gurdev Kaur* v. *Dalip Singh* (5).

(13) Respondent's learned counsel valiantly argued that the provisions of Section 23 (2) of the Act stand on the same footing and once the spouse called for reconciliation deliberately declines to appear before the Court for the said purpose, the Court has jurisdiction to strike off the defence of such spouse.

(14) To my mind, respondent's learned counsel's submission do not merit consideration. In our Indian society, we treat the marriage as sacrosanct and in past divorce was not favoured/approved by the society. However with the changing attitudes towards the life and bringing in the element of contract in the concept of marriage, Hindu Marriage Act was enacted to give right to the spouse to seek divorce on the grounds specified therein. The object and purpose of section 23(2) is quite different from section 24. Both these provisions are quoted below for ready reference :—

> "(2) Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every

(3) 1985 (1) All India Hindu Law Reporter 84.

(4) 1991 All India Hindu Law Reporter 126.

(5) 1980 All India Hindu Law Reporter 240.

case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties :

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of Section 13.

24. *Maintenance Pendente Lite and Expenses of Proceedings.*—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."

Section 24 of the Act has been enacted with a view to empower the Court to direct payment of maintenance. Pendente lite and litigation expenses to a party in matrimonial proceedings, are obviously to provide financial assistance to an indigent spouse to maintain herself/himself during the pendency of the proceedings and also to have sufficient funds to carry on litigation so that he/she does not unduly suffer in the conduct of the case for want of funds. Thus, grant of maintenance allowance is always aimed at preserving the existence of an individual, who is supposed to be in a position to support himself/herself. Section 24 of the Act contemplates that none of the parties to a matrimonial cause should be able to take undue advantage of his financial superiority to defeat the rightful claims of the weaker party. These proceedings have the limited purpose of enabling the weaker party to substantiate his or her rights during the pendency of the proceedings.

(15) The provisions of sections 23(2) and 24 are to be interpreted keeping in mind the object of enacting Hindu Marriage Act, 1955, which was to amend and codify the law relating to marriage amongst the Hindus. The principles of preistine Hindu law have been

statutorily modified by this Act. The basic tenets of statutory interpretation are to be kept in mind. According to Blackstone the most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are "either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. (Blackstone Commentaries on the Laws of Englsnad Vol. IP-59 referred to in *Atmaram Mittal* v. *Ishwar Singh Punia* (6).

(16) In the words of O. Chinappa Reddy, J. "Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textural interpretation match the contextual. A statute is best interpreted when we know why it was enacted" (*Reserve Bank of India* v. *Pearless General Finance and Investment Co.* (7).

(17) A bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficient legislation to futility. As stated by Iyer, J. "to be literal in meaning is to see the skin and miss the soul.....The judicial key to construction is the composite perception of the *deha* and the *dehi* of the provision" (*Chairman Board of Mining* v. *Ramjee* (8).

(18) If there is obvious anomaly in the application of law, the Court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislation..... The legislators do not always deal with specific controversies which the Courts decide. They incorporate general purposes behind the statutory words and it is for the Courts to decide specific cases. *Union of India* v. *Filip Tiago De. Gama* (9).

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(6) A.I.R. 1988 S.C. 2031.

(7) A.I.R. 1987 S.C. 1023.

(8) A.I.R. 1977 S.C. 965.

(9) A.I.R. 1990 S.C. 981.

(19) Under section 23(2) of the Act it is incumbent on the matrimonial Court, to endeavour to bring about reconciliation between the parties, a great responsibility is cast on the Court. A Hindu marriage is not contractual but sacrosanct, it is not easy to create such ties but more difficult to break them; once anulled, it cannot be restored. A Judge should actively stimulate rapproachment process. It is fundamental that reconciliation of a ruptured marriage is the first duty of the Judge. The sanctity of marriage is the corner stone of civilisation. The object and purpose of this provision is obvious. The State is interested in the security and preservation of the institution of marriage and for this the Court is required to make attempt to bring about a reconciliation between the parties. However, omission to make attempts at reconciliation will not take away the jurisdiction of the Court to pass any decree under the Act. This is not correct to say that in a divorce case reconciliation efforts have to be timed immediately preceding the grant of decree and not at any other stage of the proceedings of the trial. Such an attempt can be and should be made at any stage. The matrimonial Court is required to call parties and make a genuine efforts for their reconciliation, there is not even a whisper in this provision that the matrimonial Court has the power to strike off the defence of that spouse, who after being given opportunities for reconciliation fails to appear.

(20) Considering all the aspects of the case when the Court passes an order under section 24 of the Act in favour of any spouse and if the other spouse, who is so ordered fails to abide by the order deliberately and avoids to pay maintenance allowance and litigation expenses to the other spouse, the result is obvious. The spouse in whose favour the order is passed is unable to maintain himself or herself and also faces financial hardship in conducting the case for want of funds. Thus, a *liability* is imposed on such spouse against whom such an order under section 24 of the Act is passed vis-a-vis *a right* is created in favour of the spouse, who is knocking the door of the Court for grant of maintenance and litigation expenses Avoidance of such order has legal consequences as it impedes further progress of the case and, therefore, when a spouse against whom order under section 24 of the Act is passed wholly or partially does not comply with the said order of the Court, the Courts have interpreted such a situation in favour of the spouse in whose favour such an order is passed and resultantly, under such circumstances, the defence of the spouse against whom such order is passed is struck off as by his own conduct, he forfeits the right to defend/prosecute the case.

(21) But under Section 23(2) of the Act neither such a liability is cast on one spouse nor such a right is given to the other spouse. Reconciliation is a mutual dialogue to burry their differences. A duty is cast on the Court to call the parties at the initial stage for reconciliation. Even before delivering judgment and decree, the Court can make effort for reconciliation. Thus, the stage of trial for calling the parties for reconciliation is left to the discretion of the Court.

(22) Provisions of Sections 24 and 23(2) of the Act stand on different footings, different rights and liability flow from section 24, but no such rights and liabilities flow from section 23(2) of the Act and precisely that is the reason why in so many judgments when the spouse against whom an order under Section 24 of the Act is passed, fails to comply with that order his or her defence is struck off and the matrimonial cause is thereafter decided. To my mind the aims, object, reasons and the scheme of the Act do not envisage the type of situation created and the type of order passed by the matrimonial Court on May 13, 1992.

(23) In *Parkash Chander* v. *Raj Kumar* (10), Madhya Pradesh High Court had an occasion to consider somewhat similar facts. In that case the petitioner filed civil suit for dissolution of his marriage. The case was adjourned for reconciliation under section 23(2) of the Act. On the said date the petitioner's counsel did put in appearance but the petitioner remained absent. The petitioner's learned counsel stated at the Bar that the Court might proceed on the basis that the petitioner is not willing for any reconciliation. In such circumstances, the learned District Judge dismissed the petition on the ground that the petitioner did not co-operate with the Court in the performance of its necessary duty relating to reconciliation. A Single Bench of Madhya Pradesh High Court held that such a dismissal of the petition is not warranted by law and, therefore, the order was set aside.

(24) In *Kalavati Narbheran Panchal* v. *Shamaldas Punjalal Panchal* (11), the High Court set aside the decree of divorce as in that case the matrimonial Judge refused to grant second adjournment to the wife's Advocate at the stage of reconciliation and thereafter he recorded husband's evidence and granted decree of divorce.

(10) (1987) I.H.L.R. 237.

(11) 1984 H.L.R. 40.

The Gujrat High Court held that the trial Court should have made endeavour to bring about reconciliation between the parties and if an attempt to reconciliation had failed, then the wife should have been given adequate opportunity to file written statement and put her case effectively. The High Court observed that has resulted in miscarriage of justice.

(25) Thus, in my considered view, the lower Court fell into an error in striking off the appellant husband's defence on May 13, 1992, and thereafter without framing issues and without giving an opportunity to the appellant-husband to adduce his evidence, he recorded the evidence of respondent wife on July 13, 1992, and in unwarranted hot haste decided the divorce petition in her favour.

(26) Resultantly, appeal is hereby allowed; trial Court's judgment and decree are set aside; case is remanded to the trial Court to frame issues on the basis of pleadings on record and decide it in accordance with law.

R.N.R.

Before Amarjeet Chaudhary, J.

JASPAL SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

C.W.P. 13271 of 1994

30th October, 1996

Punjab Recruitment of Sportsmen Rules, 1988—*Rl.* 2(*d*)(*b*)(*ii*)—*Constitution of India*, 1950—*Arts.* 14 & 16—*Reservation of posts for Sportsmen—Rules defining 'Sportsmen' as persons who have represented the State of Punjab and secured 1st, 2nd or 3rd position either at State level or at National level sporting events—Distinction placed in definition of 'Sportsmen' is* intra vires *the Constitution—Reservation of 3 per cent posts is reasonable and bears rational nexus to the object sought to be achieved—Validity of rules upheld.*

Held, that after considering and perusing the objects sought to be achieved by restricting the reservation to the sportsmen belonging to the State of Punjab who represented the State of Punjab and obtained 1st, 2nd or 3rd position either in a team or individual events and the Constitutional provisions, I have no doubt that the