

Ram Kanta, wife of Shri Ashok Kumar v. Shri Ashok Kumar, son
of Shri Krishan Lal (O. Chinnappa Reddy, J.)

(15) If the assessee by not filing the returns on June 30, 1964, and June 30, 1965, had committed a default, the repeal or the modification of the provisions relating to penalty could not affect his right to be dealt with in accordance with the repealed or modified statutory provisions.

(16) After a careful consideration of the whole matter, we are of the considered view that the omission of an assessee to file a return on the due date completes his default on that date and does not render it a continuing default. Consequently, the penalty can be imposed on him only on the basis of the law which was prevalent on that date.

(17) We accordingly answer both the questions in favour of the assessee and against the Revenue.

N.K.S.

MISCELLANEOUS CIVIL

Before O. Chinnappa Reddy, J.

RAMA KANTA, WIFE OF SHRI ASHOK KUMAR,—
Applicant.

versus

SHRI ASHOK KUMAR, SON OF SHRI KRISHAN LAL,—*Respondent.*

Civil Misc. No. 2-M of 1977

January 31, 1977.

Hindu Marriage Act (XXV of 1955)—Sections 21 and 21-A—Code of Civil Procedure (Act V of 1908)—Section 24—Proceedings under the Hindu Marriage Act pending in different district courts—Transfer of such proceedings—Application under section 24—Whether maintainable.

Held, that section 21-A of the Hindu Marriage Act 1955 makes special provision for the transfer of certain proceedings under the Act. By virtue of section 21, it is to be taken that this special provision excludes the general provisions in the Code of Civil Procedure

1908 relating to transfer. The provision of Section 21-A of the Act would be rendered superfluous and practically meaningless if this section was to apply only to the situation mentioned therein and the other situations were to continue to be governed by section 24 of the Code. Since what can be done under section 21-A of the Act can always be done under section 24 of the Code and there would be no point in section 21-A of the Act governing some situations and section 24 of the Code governing other situations. Thus, for the transfer of proceedings under the Hindu Marriage Act pending in different district Courts application under section 24 of the Code is not maintainable. (Para 2)

Application u/s 24 C.P.C. praying that the petition u/s. 9 of the Hindu Marriage Act, 1955 filed by the respondent against the applicant in the court of the District Judge, Hoshiarpur on 3rd December, 1976 and which is now fixed for 14th January, 1977 be transferred to the court of the Additional District Judge, Chandigarh and the same be tried together with the petition u/s 13 of the Hindu Marriage Act filed by the applicant and pending in the court of the Additional District Judge Chandigarh and in which the next date of hearing is 12th January, 1977 and further praying that during the pendency of the present application, further proceedings in the petition u/s 9 of the Hindu Marriage Act filed by the respondent and pending in court of the District Judge, Hoshiarpur be stayed ad-interim.

D. V. Sehgal, Advocate with Vanita Sapra, Advocate, for the Applicant.

Y. P. Gandhi, Advocate, for the Respondent.

JUDGMENT

O. Chinnappa Reddy, J.—(1) The applicant is the wife of the respondent. On 29th September, 1976, she filed a petition in the Court of the District Judge, Chandigarh, praying for a decree of divorce. The respondent appeared in response to the summons issued to him and filed a written statement. The petition was transferred by the District Judge to the Additional District Judge. Before the Additional District Judge, there was an unsuccessful attempt for reconciliation. Thereafter, the respondent on 3rd December, 1976, filed a petition in the Court of the District Judge, Hoshiarpur, for restitution of conjugal rights. Alleging that the petition for restitution of conjugal rights has only been filed with a view to harass her, the petitioner has filed the present application under section 24 of the Code of Civil Procedure for transfer of the petition for restitution of conjugal rights now pending in the Court of the

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District Judge, Hoshiarpur, to the Court of the Additional District
Judge, Chandigarh.

(2) Shri Y. P. Gandhi, learned counsel for the respondent, has raised a preliminary objection that in view of section 21-A of the Hindu Marriage Act, no application under section 24 of the Code of Civil Procedure is maintainable. He relies on the decision of a Special Bench of the Calcutta High Court in Surendra Nath v. Malati, (1).

Section 21 and 21-A of the Hindu Marriage Act which are both relevant may be usefully extracted here :—

“21. Subject to the other provisions contained in this Act and to such rules as the High 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.

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 a 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 petition 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 in the same district, both the petitions shall be tried and heard together by that district court ;

(1) A.I.R. 1942 Calcutta 546.

- (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 (5 of 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 21-A makes special provision for the transfer of certain proceedings under the Hindu Marriage Act. By virtue of section 21, it is to be taken that this special provision excludes the general provisions in the Code of Civil Procedure relating to transfer. The learned counsel for the applicant argued that section 21-A would apply only to the situations mentioned therein and that other situations would continue to be governed by section 24 of the Code of Civil Procedure. To accept the contention of the learned counsel would be to render the provisions of section 21-A superfluous and practically meaningless since what can be done under section 21-A of the Hindu Marriage Act could always be done under section 24 C.P.C. and there would be no point in section 21-A of the Hindu Marriage Act governing some situation and section 24 C.P.C. governing other situations. A somewhat similar question arose before the Special Bench of the Calcutta High Court under the Indian Divorce Act. Section 8 of the Divorce Act contains a provision enabling a High Court to withdraw and try as a court of Original Jurisdiction any suit or proceeding under the Act pending in the court of any District Judge and also to withdraw and transfer such suit or proceeding for trial or disposal to the court of another District Judge. Section 45 provides that all proceedings under the Act shall be regulated by the Code of Civil Procedure subject to the provisions contained in the Act. A question arose whether it was the Appellate Bench of the High Court or a Judge sitting Singly on the original side that had the power to transfer a proceeding under the Divorce Act. If section 24 of the Code of Civil Procedure

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was applicable, the Appellate Bench would have the power. If section 8 of the Divorce Act was applicable, the Judge sitting singly on the original side would have the power. The Calcutta High Court held that section 24 of the Code of Civil Procedure was excluded by the special provision contained in section 8 of the Divorce Act read with section 45 of that Act. They said,—

“Section 8, Divorce Act, contains an express provision enabling the High Court, whenever it thinks fit, to remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act and also to withdraw any such suit or proceedings and transfer it for trial or disposal to the Court of any other such District Judge. Section 45 of the Act provides that :

“Subject to the provisions herein contained all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.”

It, therefore, follows that, as the Act contains an express provision regulating the transfer of a suit from the Court of one District Judge to that of another District Judge, Section 24, Civil P.C. can have no application.....”

The opinion of the Calcutta High Court fully supports the submission of the learned counsel for the respondent. The application is, therefore, dismissed, but in the circumstances without costs.

K.T.S.

REVISIONAL CIVIL

Before R. N. Mittal and K. S. Tiwana, JJ.

CHHAJU RAM,—Petitioner.

versus

TULSI DASS and another,—Respondents.

Civil Revision No. 475 of 1973

February 2, 1977.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (ii) (b)—Premises rented out as a ‘shop’ but used as a ‘godown’—Such user—Whether different from the one for which they were let out.