

facts and events which have come into existence after the decree appealed against. Consequently, I accept the application, take the certificate on the record and mark it as Exhibit P.A. In Civil Misc. No. 886-C-I of 1986, it is stated that the applicant would produce the original certificate after the application for additional evidence is allowed. Consequently, it is prayed that the filing of the original certificate be dispensed with for the time being. The plaintiffs have since filed the original certificate. Therefore, the civil miscellaneous has become infructuous.

(14) The rate of damages has not been challenged in the appeal before me. Consequently, I do not find any merit in the appeal.

(15) Now I advert to R.S.A. No. 1210 of 1982. The plaintiffs have filed this suit for damages at the rate of 500 per mensem for the period from 1st July, 1976 to 31st July, 1977 regarding the property in dispute. The trial Court decreed the suit for recovery of Rs. 5,200. The appeal by Piara Singh was dismissed by the Additional District Judge. He has come up in second appeal to this Court.

(16) No additional argument has been raised in the appeal by Mr. Anand Swaroop.

(17) For the reasons already mentioned, I do not find merit in this appeal too. Consequently, I dismiss both the appeals with costs.

R. N. R.

Before S. S. Sodhi, J.

MADAN LAL,—*Petitioner.*

versus

MEENA,—*Respondent.*

Civil Revision No. 587 of 1986
July 30, 1986.

Code of Civil Procedure (V of 1908)—Order IX, Rule 13—Hindu Marriage Act (XXV of 1955)—Sections 21 and 24—Ex-parte decree

Madan Lal v. Meena (S. S. Sodhi, J.)

of divorce passed against wife—Application made by wife under Order IX Rule 13 for setting aside the ex-parte decree—Application aforesaid—Whether outside the purview of the Act—Benefit of Section 24 of the Act—Whether available in proceedings for setting aside the ex-parte decree. ...

Held, that a reading of Section 21 of the Hindu Marriage Act, 1955 would show that the provisions of the Code of Civil Procedure, 1908 are there merely to regulate the proceedings therein and not as substantive law separate and distinct from it. Further, the object and rationale of Section 24 of the Act is to provide against lack of financial means operating to the detriment of a party to proceedings under the Act, in other words, to obviate against the financial handicap of a party to the litigation. Seen from this angle too, the provisions of Section 24 of the Act cannot be construed to take an application under Order IX, Rule 13 of the Code for setting aside the *ex-parte* decree outside the purview thereof. To hold otherwise, could mean grave prejudice to an innocent party against whom an *ex-parte* decree has been wrongly passed in as much as lacking the financial means to challenge such an *ex-parte* decree, the party may be constrained to suffer it. As such, the benefit of Section 24 of the Act would be available in proceedings for setting aside the *ex-parte* decree. (Paras 3 and 4)

Petition under section 115 C.P.C. for revision of the order of Shri T. S. Cheema, District Judge, Patiala, dated 28th January, 1986, awarding the applicant Rs. 300 per month as alimony during the pendency of the proceedings. She shall also be entitled to receive a consolidated sum of Rs. 600 as litigation expenses.

Hemant Gupta, Advocate, for the Petitioner.

V. K. Sharma, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J. :

(1) The controversy sought to be raised in revision here is with regard to the applicability of the provisions of Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), to an application for setting aside an *ex parte* decree for divorce obtained under the Act. The impugned order being of the District Judge, Patiala, awarding Rs. 300 as maintenance *pendente lite* and Rs. 600 as expenses of the litigation to the wife—Meena in proceedings for setting aside the *ex parte* decree for divorce obtained against her by her husband Madan Lal on May 29, 1984.

(2) Before proceeding further, it may be mentioned that the application for setting aside the *ex parte* decree has since been allowed and the petition for divorce filed by the husband—Madan Lal, has also been dismissed by the District Judge, Patiala, by his order of May 26, 1986 on his failure of pay arrears of maintenance *pendente lite* and the expenses of the litigation.

(3) The challenge to the impugned order was founded upon the wholly untenable premises that an application under Order 9, Rule 13 of the Code of Civil Procedure for setting aside an *ex parte* decree for divorce, could not be taken to be proceedings under the Act so as to extend to it the applicability of the provisions of Section 24 of the Act. The argument being that while seeking and obtaining a decree for divorce, be it *ex parte* or after contest, would be “proceedings” under the Act, an application for setting aside such a decree would be one under the Code of Civil Procedure and thus not one under the Act, and, therefore, the provisions of Section 24 of the Act, would not be available in respect thereof. There is a patent fallacy in this contention inasmuch as, the provisions of the Code of Civil Procedure, in the Hindu Marriage Act, 1955, are there merely to regulate the proceedings therein and not as substantive law separate and distinct from it, as would be apparent from a plain reading of Section 21 of the Act, which reads :—

“—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.”

(4) Further, the object and rationale of Section 24 of the Hindu Marriage Act, 1955, is to provide against lack of financial means operating to the detriment of a party to proceedings under the Act. In other words, to obviate against the financial handicap of a party to the litigation. Seen from this angle too, the provisions of Section 24 of the Act cannot be construed to take an application for setting aside of an *ex parte* decree under the Act as outside the purview thereof. To hold otherwise, could mean grave prejudice to an innocent party against whom an *ex parte* decree has been wrongly passed inasmuch as lacking the financial means to challenge such an *ex parte* decree, it may be constrained to suffer it. Nothing could have been further from the intention of the legislature in this behalf.

Harish Chand and others v. Kirpa Ram (D. V. Sehgal, J.)

(5) No infirmity can thus be spelt out in the impugned order of the District Judge, Patiala, which is accordingly hereby upheld and affirmed.

(6) This revision petition is hereby dismissed with costs. Counsel fee Rs. 300.

FULL BENCH

Before P. C. Jain, CJ., S. P. Goyal and D. V. Sehgal, JJ.

HARISH CHAND AND OTHERS,—Petitioners.

versus

KIRPA RAM,—Respondents.

Civil Revision No. 2615 of 1983

December 19, 1985.

Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—Section 2(h)—Order of eviction passed against a statutory tenant in occupation of a non-residential building—Tenant dying during pendency of appeal against ejection order—Heirs and legal representatives of deceased tenant seeking impleadment to proceed with the appeal—Such heirs—Whether have a heritable right of tenancy to the demised premises—Definition of tenant given in Section 2(h) of the Act—Whether applies to tenants of residential and non-residential buildings—Devolution of tenancy and order of inheritance in relation to a non-residential building—Whether governed by the general law of succession—Such tenants—Whether continue to enjoy the protection afforded by the Act.

Held, that the condition and order of inheritance of tenancy which find place in Section 2(h) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 read with the Schedule appended thereto are limited in their application to a "residential building" The tenancy in respect of "non-residential building" in the event of the death of the tenant devolves on the heirs of the deceased tenant in accordance with the general law of succession applicable to the tenant and the heirs who step into the shoes of the deceased tenant continue to enjoy the protection afforded by the Haryana Act. (Para 17)

1. Mateshwar Dayal vs. Om Parkash 1984(2) R.L.R. 678.