
Before Hon'ble Dr. Sarojnei Saksena, J.

RANI,—Appellant.

versus

PARKASH SINGH,—Respondent.

F.A.O. 35-M of 1993

11th January, 1996

Hindu Marriage Act, 1955—S. 24—Maintenance pendente lite granted to wife appellant—Non-payment thereof—Defence of respondent struck off with consequence appeal allowed and Husband-respondent's petition under section 13 dismissed.

Held, that Section 24 of the Hindu Marriage Act empowers the matrimonial Court to make an order for maintenance pendente lite and for expenses of proceedings to a needy and indigent spouse. If this amount is not made available to the applicant, then the object and purpose of this provision stands defeated. Wife cannot be forced to take time-consuming execution proceedings for realising this amount. The conduct of respondent-husband amounts to contumacy. Law is not that powerless as to not to bring husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to the wife, his defence can be struck out. No doubt, in this appeal he is respondent. His defence is contained in his petition filed under section 13 of the Act. In a plethora of decisions of this Court *Smt. Swarno Devi v. Piara Ram*, 1975 H.L.R. 15, *Gurdev Kaur v. Dalip Singh* 1980 H.L.R. 240; *Smt. Surinder Kaur v. Baldev Singh*, 1980 H.L.R. 514 ; *Sheela Devi v. Madan Lal*, 1981 H.L.R. 126 and *Sumarti Devi v. Jai Parkash* 1985(1) H.L.R. 84, it is held that when the husband fails to pay maintenance and litigation expenses to the wife his defence is to be struck out. The consequence is that the appeal is to be allowed and his petition under section 13 of the Act is to be dismissed.

(Para 7)

H. S. Grewal, Advocate, for the Appellants.

Malkiat Singh, Advocate, for the Respondent.

JUDGMENT

Dr. Mrs. Sarojnei Saksena, J.

(1) Appellant-wife has assailed the decree of divorce granted by the Additional District Judge, Ludhiana, by judgment dated February 5, 1993, on the ground of cruelty under section 13(1) (i-a) of the Hindu Marriage Act, 1955.

(2) Admittedly, the parties were married on March 12, 1981. The appellant gave birth to one son and one daughter in this wedlock. The children are with the respondent.

(3) Respondent-husband's contention in the lower Court was that after 4/5 months of their marriage, appellant's parents and her brothers started interfering in their matrimonial life. She is arrogant and insolent by temperament, never bothered for him or for his family members. She wanted him to live separately but he could not accede to her command as he is the only son of his old parents. She used to leave the matrimonial home on her own, but he always brought her back. Once her brothers beat his mother. When she withdrew from his society, he filed a petition for restitution of conjugal rights. The matter was compromised. She agreed to live in the matrimonial home, but again she left the matrimonial home and lodged a false report with the police. The police called the respondent and tortured him. Thus, according to the respondent, she has treated him cruelly and it is injurious for him to live with her.

(4) The appellant-wife contested the petition. She averred that she never treated him with cruelty. Rather she was maltreated by him. He wanted more dowry. On that count she was beaten mercilessly and was turned out of the matrimonial home. The respondent wants to perform second marriage.

(5) On these pleadings, issues were raised. Parties adduced their evidence. The trial Court came to the conclusion that the wife has treated the husband with cruelty and thus the decree of divorce was passed.

(6) During the pendency of this appeal, the appellant filed a petition under section 24 of the Act for granting maintenance allowance as well as litigation expenses to her. This petition was allowed,—vide order dated November 22, 1993. The husband-respondent was ordered to pay Rs. 500 as maintenance *pendente lite* and Rs. 2.200 as litigation expenses. Arrears of maintenance *pendente lite* and litigation expenses were ordered to be paid by December 10, 1993. But it is apparent from the record that the husband never bothered to comply with this order. He did not pay the litigation expenses or the maintenance to the wife-appellant. On January 5, 1995, also the respondent was directed to bring the balance of the maintenance allowance in the Court, to be paid to the appellant, but on the adjourned date i.e. February 10, 1995, maintenance was not paid as the respondent's counsel could not contact the respondent.

On his request, the case was adjourned to March 13, 1995. On March 15, 1995, the arguments were heard but due to non-payment of arrears of maintenance, the case was adjourned to April 24, 1995, with a clear direction to the respondent through his counsel that arrears must be paid to the appellant before April 24, 1995. On April 24, 1995, correct address of the respondent was supplied by the appellant to the respondent's counsel. He again sought time to pay maintenance. The case was adjourned to May 23, 1995. It was taken up on May 25, 1995. Again such a prayer was made on behalf of the respondent. On January 8, 1996, respondent's counsel submitted that he sent a letter to the respondent at the new address given by the appellant, but still he could not get any reply. Thus, maintenance amount and litigation expenses as ordered—*vide* order dated November 22, 1993, were not paid by the husband.

(7) No doubt, wife can file, a petition under Order 21 Rule 37 C.P.C. for the recovery of this amount and the husband can be hauled up under the Contempt of Courts also for disobedience of the aforesaid Court's order, but section 24 of the Act empowers the matrimonial Court to make an order for maintenance *pendente lite* and for expenses of proceedings to a needy and indigent spouse. If this amount is not made available to the applicant, then the object and purpose of this provision stand defeated. Wife cannot be forced to take time-consuming execution proceedings for realising this amount. The conduct of the respondent-husband amounts to contumacy. Law is not that powerless as to not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to the wife, his defence can be struck out. No doubt, in this appeal he is respondent. His defence is contained in his petition filed under section 13 of the Act. In a plethora of decisions of this Court *Smt. Swarno Devi v. Piara Ram* (1), *Gurdev Kaur v. Dalip Singh* (2), *Smt. Surinder Kaur v. Baldev Singh* (3), *Sheela Devi v. Madan Lal* (4) and *Sumarti Devi v. Jai Parkash* (5) it is held that when the husband fails to pay maintenance and litigation expenses to the wife, his defence is to be struck out. The consequence is that the appeal is to be allowed and his petition under section 13 of the Act is to be dismissed.

(1) 1975 H.L.R. 15.

(2) 1980 H.L.R. 240.

(3) 1980 H.L.R. 514.

(4) 1981 H.L.R. 126.

(5) 1985 (1) H.L.R. 84.

(8) According, the appeal is allowed. Husband's petition filed under section 13 of the Act is hereby dismissed with costs, which are quantified at Rs. 1,000.

J.S.T.

Before Hon'ble G. S. Singhvi, J.

M/S BHARAT WOOLS, LUDHIANA,—Petitioner.

versus

THE STATE OF PUNJAB & OTHERS,—Respondents.

C.W.P. No. 8446 of 1995

2nd February, 1996

Constitution of India, 1950—Arts. 12 & 226—New Industrial Policy, 1992, Punjab Government Notification No. SI/Allotment Policy/12095-E dated 24th November, 1992—Paragraphs 1, 3, 5 & 6—Cancellation of offer of allotment of industrial plot—Possession of plot not handed over by Government—Minister for Industries cancelling offer on ground of violation of policy—Minister affording opportunity of hearing to parties concerned at a meeting—Minister has jurisdiction and authority in issuing direction to Allotment Committee to set aside offer of allotment—Chairman of Allotment Committee not authorised to make allotment of plots at his own level and by ignoring merits of the contestants—Administrative decisions taken in the realm of contract or quasi contract, the absence of reasons cannot ordinarily be made sole ground for nullifying the decision—In the absence of concluded contract coming into existence, the same remains beyond justiciability—Government not restricted to consider only the existing applicants for fresh allotment, new competitors would have to be considered—Mandamus cannot be issued to restrict choice only among those who applied under the original advertisement—Doctrine of legitimate expectation cannot be invoked in the present case—Environment clearance—Court issuing directions to Government to implement the various legislations for pollution control and to incorporate appropriate provisions in the industrial policy statement before making allotments—Punjab State Hosiery Knit Wear Development Corporation Ltd. is 'State' & 'other authority' within the meaning of Art. 12 and, therefore, amenable to writ jurisdiction.

Held: that Punjab State Hosiery Knit Wear Development Corporation Ltd. is an agency/instrumentality of the State and is