
Deepak Kumar M.M. Vs Poornima S.

Writ Petition No. 39657/2014 (GM-FC)

Court: Karnataka High Court

Date of Decision: Oct. 28, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 11 Rule 14, Order 11 Rule 18(2), Order 11 Rule 21#Hindu Marriage Act, 1955 " Section 13(1)(ia), 24

Citation: (2015) 1 AKR 313 : (2015) ILR 733

Hon'ble Judges: A.N. Venugopal Gowda, J

Bench: Single Bench

Advocate: G. Balakrishna Shastry, Advocate for the Appellant; Geetha Devi M.P., Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.N. Venugopal Gowda, J.

This writ petition is directed against the order dated 30.04.2014 passed in M.C. No. 1018/2012 by the VI

Addl. Pri. Judge, Family Court, Bangalore striking out the defence put forth to the case.

2. Facts relevant for the deciding of this writ petition are the following:

(i) The parties are estranged couple. Their marriage was solemnized on 15.12.2010, in accordance with Hindu customs and rites, at Rajatha

Bhavana Kalyana Mantapa, Malleswaram, Bangalore. M.C. No. 1018/2012, out of which this writ petition arises, was brought by the

respondent-Dr. Poornima, under S. 13(1)(ia) of the Hindu Marriage Act, 1955 (for short "the Act"), against the petitioner-Dr. Deepak Kumar

M.M., on 24.03.2012, to pass a decree of divorce and dissolve the marriage solemnized on 15.12.2010. M.C. No. 1018/2012 was contested by

filing statement of objections on 30.11.2012. An interlocutory application was filed by the respondent, on 03.09.2012, under S. 24 of the Act, to

award interim maintenance in his favour. The said application was opposed by filing statement of objections on 11.01.2013, by contending that the

applicant is gainfully employed, in proof of which, an experience certificate issued by Chazhikattu Hospitals, Thodupuzha, Kerala State was

produced". Since the authenticity of the said certificate was questioned, the wife filed an I.A. under Order XI Rule 14 of CPC, to direct the

husband to produce his income tax returns, statement of his bank accounts, his appointment letter at Chazhikattu Hospitals, along with salary

details and other entitlements. The husband on 23.03.2013, filed statement of objections to the said I.A. and denied having any documents, as

stated in the application. On 15.04.2013, the wife filed another I.A. under Order XI Rule 14 C.P.C. to summon her husband's salary details from

Chazhikattu Hospitals (P) Limited, Thodupuzha, Kerala State and Sunshine Hospitals, Hyderabad. The wife filed another interlocutory application,

on 10.06.2013, to summon the income tax returns of her husband from the Income Tax Department. The said application was allowed on

12.06.2013 and the Income Tax Department was directed to produce the documents. I.A. filed on 15.04.2013 was allowed on 17.08.2013 and

the husband was directed to produce the documents within a period of 30 days. By a separate order passed on 17.08.2013, I.A. filed by the wife

was allowed and the aforesaid hospitals were directed to produce the documents. Chazhikattu Hospitals, Thodupuzha, Kerala State having

produced the salary details of the husband on 11.10.2013, revealed that the husband was gainfully employed and was earning Rs. 60,000/- per

month, when he filed I.A. for awarding interim maintenance. The documents produced on 08.11.2013, by Sunshine Hospitals, Hyderabad show

that the husband was working as a Fellow. By an order dated 26.11.2013, I.A. filed by the husband, under S. 24 of the Act, for awarding interim

maintenance in his favour was rejected.

(ii) The original petitioner, on 04.01.2014, led evidence and marked certain documents. Her cross-examination has not yet taken place.

(iii) The husband filed an application on 05.04.2013, to summon the salary particulars and income tax returns and the details of assets of his wife,

on the ground that they are necessary to consider his application for awarding interim maintenance, by stating that the application filed for grant of

interim maintenance was dismissed without hearing the arguments. The said application was opposed, by filing statement of objections on

07.04.2014, inter alia contending that the husband has obtained the salary details by making an application under Right to Information Act, 2005

from Mandya Institute of Medical Sciences, where she is working and that the application has been filed for protracting the case.

(iv) The wife filed an application, on 15.04.2014, under Order XI Rule 21 of CPC, for striking out the defence put forth to M.C. No. 1018/2012,

on the ground that the husband has wilfully failed to comply with the order passed on 17.08.2013. Though the said application was opposed, the

Judge of the Family Court having allowed the same and the defence put forth to the main case having been ordered to be struck off, this writ

petition was filed.

3. Sri G. Balakrishna Shastry, learned advocate, contended that the impugned order is one passed without taking into consideration the facts,

circumstances and the record of the case. He submitted that the documents which were ordered to be produced, having been secured by issue of

summons, the order passed to strike out the defence is illegal. He contended that there is improper exercise of judicial discretion and there being an

irrational act, impugned order calls for interference.

4. Smt. M.P. Geetha Devi, learned advocate, on the other hand contended that the petitioner having wilfully withheld the material documents,

which he was bound to produce and being guilty of causing undue delay in deciding the case, the Family Court is justified in ordering striking of the

defence put forth to M.C. No. 1018/2012.

5. In reply, Sri G. Balakrishna Shastry, submitted that on account of ill-advice, there being non production of the documents, which were

summoned and secured, the husband may be put on reasonable terms, so that, M.C. No. 1018/2012 can be decided on its merit. He submitted

that the husband would extend co-operation for deciding of the case with expedition and stipulated period. He submitted that, henceforth, the

petitioner would not cause any delay in deciding of the case by the Family Court.

6. Perused the writ record. The point for consideration is, whether the Family Court was justified in striking out the defence, under Order XI Rule

21 of CPC?

7. Two separate orders were passed on 17.08.2013. An interlocutory application filed, under Order XI Rule 14 of CPC was allowed and the

husband was directed to produce the documents, within 30 days. By another order, passed on the same day, the two hospitals, situated at Kerala

and Hyderabad, were directed to produce the documents, which the husband was directed to produce, within 30 days" period i.e., as per the

separate order passed simultaneously. Indisputably, the said two hospitals produced the documents, on 11.10.2013 and 08.11.2013 respectively.

By relying upon the said documents, I.A. filed by the husband, under S. 24 of the Act, was rejected on 26.11.2013.

8. In Babbar Sewing Machine Company Vs. Trilok Nath Mahajan, , while considering the question whether the Trial Court was justified in striking

out the defence of the defendant, under Order XI Rule 21 of CPC, Apex Court has held as follows:

11. It is a travesty of justice that the trial court should have, in the facts and circumstances of the case, passed an order striking out the defence of

the defendant under order XI, Rule 21 and that the High Court should have declined to set it aside. The penalty imposed by order XI, Rule 21 is

of a highly penal nature, and ought only to be used in extreme cases, and should in no way be imposed unless there is a clear failure to comply with

the obligations laid down in the rule.

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14. Even assuming that in certain circumstances the provisions of Order XI, Rule 21 must be strictly enforced, it does not follow that a suit can be

lightly thrown out or a defence struck out, without adequate reasons. The test laid down is whether the default is wilful. In the case of a plaintiff, it

entails in the dismissal of the suit and, therefore, an order for dismissal ought not be made under Order XI, Rule 21, unless the court is satisfied that

the plaintiff was willfully withholding information by refusing to answer interrogatories or by withholding the documents which he sought to discover.

In such an event, the plaintiff must take the consequence of having his claim dismissed due to his default, i.e. by suppression of information which

he was bound to give: *Denvillier v. Myers* (1883) WN 58. In the case of the defendant, he is visited with the penalty that his defence is liable to be

struck out and to be placed in the same position as if he had not defended the suit. The power for dismissal of a suit or striking out of the defence

under Order XI, Rule 21, should be exercised only where the defaulting party fails to attend the hearing or is guilty of prolonged or inordinate and

inexcusable delay which may cause substantial or serious prejudice to the opposite party.

15. It is well settled that the stringent provisions of Order XI, Rule 21 should be applied only in extreme cases, where there is contumacy on the

part of the defendant or a wilful attempt to disregard the order of the court is established.

16. An order striking out the defence under Order XI, Rule 21 of the Code should, therefore, not be made unless there has been obstinacy or

contumacy on the part of the defendant or wilful attempt to disregard the order of the court. The rule must be worked with caution, and may be

made use of as a last resort: *Mulla's C.P.C.* 13th Ed. Vol. I.P. 581, *Khajah Assenoolla Joo Vs. Khajah Abdool Aziz and Others*, , *Banshi Singh*

v. Palit Singh (1908) 7 CLJ 295, *Allahabad Bank Ltd. v. Ganpat Rai* (ILR 11 Lah 209), *Haigh v. Haigh* (LR (1885) 31 Charter D 478) and

Twycroft v. Grant (1875) WN 201.

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20. It is settled law that the provisions of Order XI, Rule 21, should be applied only in extreme cases where obstinacy or contumacy on the part of

the defendant or a wilful attempt to disregard the order of the court is established. As pointed out by Lord Russel C.J. in *Reg. v. Senior* (1899) 1

QBD 283 and affirmed by Cave L.C. in *Tamboli v. G.I.P. Railway* AIR 1928 PC 24, ""wilfully"" means that:

The act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it.

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24. The principle governing the court's exercise of its discretion under Order XI, Rule 21, as already stated, is that it is only when the default is

wilful and as a last resort that the court should dismiss the suit or strike out the defence, when the party is guilty of such contumacious conduct or

there is a wilful attempt to disregard the order of the court that the trial of the suit is arrested. Applying this test, it is quite clear that there was no

wilful default on the part of the defendant of the court's order under Order XI, Rule 18(2) for the production of documents for inspection, and

consequently, the order passed by the trial Court on May 23, 1967, striking out the defence of the defendant must be vacated, and the trial must

proceed afresh from the stage where the defendant was not permitted to participate.

(Italicised by me for emphasis)

9. In this case, in view of the production of the documents by the aforesaid two Hospitals, the husband has not produced the documents. No

doubt, the petitioner ought to have readily produced the documents relating to his employment, income etc., and ought not to have forced his wife,

to file application/s, invoking Order XI Rule 14 CPC.

10. An order striking of the defence is in the nature of a penalty and hence, a serious responsibility rests on the Court in the matter and the power

is not to be exercised mechanically. The Court must have due regard to all the facts and circumstances of the case. There is need for judicious

exercise of the discretion under Order XI Rule 21 of CPC. Since, the default in the instant case is not wilful and the conduct of the husband is not

contumacious and the trial of the case was not arrested, no case, to strike out the defence put forth to M.C. No. 1018/2012 having been made

out, Family Court has acted mechanically and without adequate reasons has ordered to strike out the defence.

11. However, the dates and events of the case, pending in the Family Court, briefly, noticed in para 2 supra, give credence to the claim of the wife,

that the husband is protracting the matter to avoid decision of the case on its merit. Therefore, keeping in view the submission made by Sri G.

Balakrishna Shastry, noticed in para 5 supra, that the husband be put on terms, with a view to do justice between the parties, it is ordered as

follows:

i) Writ petition is allowed and the impugned order is quashed.

ii) For protracting the case, the petitioner-husband, shall pay the respondent-wife, cost of Rs. 40,000/-, in the Family Court, on the next hearing

date of M.C. No. 1018/2012.

iii) Cross-examination of PW-1 shall be completed within next two hearing date(s) of the case and the witnesses, if examined, shall be cross-

examined, without seeking any adjournment(s).

iv) Soon after the case on the side of the wife is closed, the husband shall lead his evidence and complete his side of the case, within a period of

two months.

v) Keeping in view the fact that M.C. No. 1018/2012 was filed on 24.03.2012 and as more than 2 1/2 years has already lapsed, Family Court

shall proceed to hear the arguments and deliver judgment, within a period of six weeks from the date the case is posted for hearing main

arguments.

No costs.