

(2000) 09 MP CK 0028

Madhya Pradesh High Court

Case No: First Appeal No. 39/98

Badri Prasad

APPELLANT

Vs

Smt. Urmila Mahobiya

RESPONDENT

Date of Decision: Sept. 6, 2000

Acts Referred:

- Hindu Marriage Act, 1955 - Section 10, 11, 12, 13, 14

Citation: AIR 2001 MP 106 : (2001) ILR (MP) 1363 : (2001) 3 MPHT 14 : (2001) 2 MPLJ 631

Hon'ble Judges: Mr. V.K. Agrawal, J

Bench: Single Bench

Advocate: Shri S.S. Bisan, for the Appellant; Shri Umesh Jogi, for the Respondent

Final Decision: Partly Allowed

Judgement

V.K. Agrawal, J.

This appeal is directed against the judgment dated 24-12-1997 in Civil Suit No. 4-A of 1997 by IV Additional District Judge, Jabalpur, whereby the application of the plaintiff/appellant u/s 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the "Ad* for short) was dismissed, but he was directed to pay Rs. 1,000/- per month as permanent alimony to the non-applicant/wife.

The essential facts, leading to this appeal, stated in brief, are that the appellant/husband filed a petition u/s 13 of the Act praying for a decree for divorce on the ground that the respondent/wife treated the husband/petitioner with cruelty. The application was resisted by the respondent/wife.

The learned Trial Court, by the impugned-judgment, held that the petitioner/appellant failed to prove that his wife, the respondent, treated him with cruelty. Therefore, the application of the husband/appellant for divorce was dismissed. However, he was directed to pay Rs. 1000/- as permanent alimony by the impugned-judgment.

The learned counsel for the appellant has not challenged the dismissal of his application for divorce u/s 13 of the Act. However, it has been urged by the learned counsel for the appellant that the grant of permanent alimony by the impugned-judgment, despite dismissal of the application for divorce was not justified and is not sustainable under law.

In view of the above, the only question that arises for consideration is : "as to whether permanent alimony u/s 25 of the Act could be granted, even after the dismissal of the application for divorce ?"

Section 25 of the "Act" may be usefully reproduced. It reads :

"25. Permanent alimony and maintenance.-- (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1). it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the Court may deem just."

The above section has been enacted in recognition of the right of the wife and the husband to be in equali jura in the matter of maintenance when a decree is passed granting relief in any matrimonial cause. It is primarily intended to secure maintenance and support to the wife, in whose favour a decree is passed, it appears to be based on the principle that the obligation of the husband to provide maintenance and support to his wife does not come to an end simply because he had successfully obtained a decree for any of the reliefs under the Act. Therefore, the Court granting a decree at the time of passing it or at any time subsequent thereto has been empowered to direct that an amount be paid by one spouse to another, which may be in the form of a gross sum or may be directed to be paid by monthly or periodical basis, the order of permanent alimony granted u/s 25 of the Act may be rescinded, upon proof of remarriage or unchastity of the party, in whose

favour the maintenance was granted.

It may also be noted that the words, "at the time of passing any decree or any time subsequent thereto" indicate that an order for permanent alimony or maintenance can only be made when a decree granting substantive relief is passed. However, the relief of permanent alimony cannot be given where the main petition for relief under the Act such as divorce, judicial separation, etc., is dismissed or withdrawn. Different interpretations of the above phrase were given by different High Courts. Some of the High Courts including Bombay, Delhi, Gujarat and Calcutta had interpreted the above provisions as stipulating that after the application for substantive relief under the Act has been dismissed, the Court could not grant the ancillary relief of alimony u/s 25 of the Act. It was interpreted that the word "decree" in the section, was with reference to decrees under the provision of the Act, which put an end to the marital status of the Parties. However, some other High Courts including the High Court of Andhra Pradesh had taken a different view and opined that dismissal of the proceedings for reliefs under this Act was no bar to the grant of permanent alimony u/s 25 of the Act.

The divergence of judicial opinion of different High Courts as above, however, has been set at rest by the Apex Court in [Chand Dhawan \(Smt\) Vs. Jawaharlal Dhawan](#), wherein it has been laid down that the decree in the context of Section 25 of the Act refers to any decree provided for under Sections 9 to 14 of the Act disrupting the marital status, but does not include any order dismissing the petition under any of those sections resulting in the continuance of the marital status between the parties. The Apex Court, after considering the decisions and views taken by the various High Courts has observed in the above context :

"The matrimonial Court, a Court of special jurisdiction, is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree, which implies that unless it goes onwards, moves or leads through, to affect or disrupt the marital status between the Parties. By rejecting a claim, the matrimonial Court does not make an appealable decree in the terms of Section 28, but that neither affects nor disrupts the marriage. It certainly does not pass a decree in terms of Section 25 for its decision has not moved or done anything towards, or led through, to disturb the marriage, or to confer or take away any legal character or status. Like a surgeon, the matrimonial Court, if operating, assumes the obligation of the post operatives, and when not, leaves the patient to the physician."

In view of the above, it is clear that since in the instant case, there was no disruption of the marital status between parties as prayer for divorce u/s 13 of the Act was disallowed, there was no occasion for the Trial Court to pass an order granting permanent alimony to the respondent/wife u/s 25 of the Act.

In view of the above, the Trial Court was obviously in error in granting a decree for permanent alimony. Therefore, the direction of the learned Trial Court that the

appellant/husband shall pay alimony of Rs. 1,000/-per month to the respondent/wife cannot be upheld.

Accordingly, the appeal is partly allowed and the direction of the Trial Court granting permanent alimony in favour of the respondent/wife is set aside. The parties shall bear their own costs of this appeal.

First Appeal partly allowed.