
AIR 2000 MP 48 : (2000) 1 DMC 582 : (2000) 1 MPLJ 19

Madhya Pradesh High Court (Indore Bench)

Case No: First Appeal No. 475 of 1998

Surajmal

APPELLANT

Vs

Rukminibai

RESPONDENT

Date of Decision: March 31, 1999

Acts Referred:

- Hindu Marriage Act, 1955 - Section 23(A), 25

Citation: AIR 2000 MP 48 : (2000) 1 DMC 582 : (2000) 1 MPLJ 19

Hon'ble Judges: J.G. Chitre, J

Bench: Single Bench

Advocate: Ajay Ukas, for the Appellant;

Final Decision: Dismissed

Judgement

J.G. Chitre, J.

Shri Ajay Ukas, counsel for the appellant. The respondent is absent. None is present for her.

By this appeal the appellant is assailing correctness, propriety and legality of the order which has been passed by the 3rd Addl. District Judge. Mandsaur in the matter of H.M.A. 20/98 so far as the order of the trial Court granting permanent alimony to respondent at the rate of Rs. 800/- per month is concerned.

A matrimonial petition was filed by the present appellant Surajmal in the said court for getting divorce against the respondent Rukminibai, his wedded wife. He alleged that Rukminibai is living in adultery for 3 years prior to the presentation of matrimonial petition in the Court. He also alleged that she used to abuse him and his family members when she was residing in his house. He further alleged that in spite of notice sent to respondent and a meeting of caste panchayat, respondent did not come back to matrimonial home. The respondent contended that the appellant was assaulting her and on account of such

assault it was not safe for her to stay with him along with their daughter. The daughter begotten out of the said wedlock seems to be with respondent-Rukminibai. The trial Court granted a decree of divorce in favour of the appellant and against the respondent herself dissolving their marriage. However, while deciding that matrimonial petition the trial Court granted alimony of Rs. 800/- per month to the respondent. And that alimony order is subject matter of challenge in this appeal.

Shri Ukas, submitted that the learned trial-Judge committed the error of granting permanent alimony in favour of the respondent in the absence of the application or prayer made by the respondent for permanent alimony. He further submitted that while passing such order, the trial Judge did not consider the conduct of the respondent. Though it passed a decree of divorce in favour of the appellant. He submitted that the said order of permanent alimony be set aside by allowing this appeal.

Shri Ajay Ukas, counsel for the appellant placed reliance on judgments as follows :

(1982) 1 DMC 83 (Bhiklal v. Kamlabai) (1982) 1 DMC 171 (Rajagopalan v. Kamalammal); [Chand Dhawan \(Smt\) Vs. Jawaharlal Dhawan](#) .

These judgments cited by Shri Ukas, are not relevant to the point which is to be adjudicated.

Shri Ukas further placed reliance on the provisions of Section 25 of the Hindu Marriage Act, 1955 (hereinafter referred to as Act for convenience) wherein it has been provided that-

"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."

While considering provisions of Section 25 of the Act, provisions of Section 23(B) cannot be ignored which provides that-

"In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground: and if the petitioner's adultery, cruelty or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground."

It means that in absence of the petition filed by other spouse who has been contesting said litigation as respondent, is entitled to claim any relief under the provisions of the Act by making counter-claim on the ground of petitioner's adultery, cruelty or desertion. And such spouse would be entitled to get such relief if he proves the said fact. That spouse would be entitled to get said relief from the Court as if the said spouse had presented a petition seeking such relief on that ground. Thus, keeping in view the spirit of provisions of Section 23(B), the spirit behind the enactment will have to be seen. The Act has adopted a broader approach while dealing with matrimonial cases. Therefore, the words "on application made to it used in Sub-section (1) of Section 25 will have to be interpreted in a broader view. The word "on application made to it should not be construed in a strict sense. It does not mean always that such spouse is required to present a separate application for making a prayer for permanent alimony. After all, provisions of Section 25 of the Act according to me have been introduced in the Act for the purpose of protecting the interest of such spouse against whom the Court has passed the decree. When such spouse happens to be a wife, the society and law would not afford to see such spouse seeking sanctuary on the streets at the stake of losing her soul and virtues. When the decree of divorce is passed, the law would be definitely interested in seeing that some arrangement has been made for the purpose of enabling such spouse-wife to have some money with her which would enable her to live safely and with dignity of womanhood. Such provisions would be made if she is left to maintain herself with a child begotten out of the wedlock which has been dissolved by decree of divorce dissolving such marriage. It would create difficult situation for such discarded wives and children increasing the possibility of vagaries and unchastity. Therefore, it will have to be seen whether a prayer has been made by such spouse any way in the written statement or by separate application. Keeping in view the spirit of the enactment of the Act, it would be safe if such a prayer is made in the written statement.

In the present matter in para 2 at page No. 4 of the written statement, the respondent has made a prayer to the Court to grant Rs. 3000/- per month to her from the appellant as permanent alimony. In my view this is sufficient. The divorced wife cannot be thrown on streets after dissolution of the marriage by a decree of divorce without granting permanent alimony to her if such a prayer has been made by her in her written statement, when the Act has adopted broader view as indicated u/s 23(A) of the Act.

Shri Ukas submitted that while granting such alimony the Court has to keep in view the conduct of spouse. In the present case there is no finding against the respondent holding that she is living in adultery. The Court has found that the respondent resided separately from the appellant and thereby deprived the appellant of the matrimonial pleasure which amounted to cruelty according to the trial Judge. This is not a serious matrimonial sin committed by the respondent. Perhaps keeping in view this aspect of the matter her claim for permanent alimony has been reduced by the trial Court from Rs. 9000/- as demanded by her to Rs. 800/- per month. I do not find that this is a fit case in which respondent should be robbed off said Rs. 800/- also in these days of escalating prices. It is to be kept

in mind that she has to pull on with this amount in these days of escalating prices of all the commodities as such. Besides that her daughter is also living with her.

Thus, in the result the appeal stands dismissed, but no order as to the costs.