
(1975) 07 AP CK 0001

Andhra Pradesh High Court

Case No: C.M.A. 393/73 and 34/74

Bathula China Kotireddi

APPELLANT

Vs

Bathula Ramanamma

RESPONDENT

Date of Decision: July 1, 1975

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1), 24, 28

Hon'ble Judges: A. Sambasiva Rao, Acting C.J.; A.V. Krishna Rao, J

Bench: Division Bench

Advocate: A.S.C. Bose, for the Appellant; K. Krishna Rao, for the Respondent

Judgement

Hon"ble Mr. A. Sambasiva Rao, Acting C.J.

1. These two Civil Miscellaneous appeals arise out of matrimonial dispute raised by the appellant as petitioner against his wife, the 1st respondent in O.P. No 47 of 1972 in the Subordinate Judges court Chirala. He filed that O.P. u/s 13 (1) of the Hindu Marriage Act, 1955 for dissolution of the marriage on the ground that the 1st respondent was living in adultery with the 2nd respondent The 1st respondent in her turn filed I.A. No. 1068/1971 u/s 24 of the Act for maintenance pendente lite at the rate of Rs. 100/- per month and a sum of Rs. 600/- to meet her legal expenses. On 2-8-1973 on this Interlocutory Applications the Court directed the appellant to pay the 1st respondent interim maintenance at the rate of Rs. 40/- per month and a sum of Rs. 100/- towards legal expenses. It is against that order CMA. No. 393 of 1973 has been filed. On 20-9-1973, the main O.P. stood posted. When it came up for hearing on that day, the appellant sought an adjournment on the ground that he was intending to prefer an appeal against the order of 2nd August, 1973 made on the Interlocutory Application. On that day, the court passed the following order in the main O.P. :--

Payment is not made. The petitioner filed a petition for adjournment. Suit is dismissed, since the order in I.A. No 1068 of 1972 is not complied. The petition is

dismissed with costs.

CMA. No. 34/74 is against this order :--

While granting maintenance at the rate of Rs. 40/- per month pendente lite and a sum of Rs. 100/- towards legal expenses, the court took into consideration every relevant factor. On an examination of the position, it came to the conclusion that 1st respondent was doing coaly work, but unfortunately owing to the drought situation she was not able to secure any work and that she had no properties, whereas her husband had some immoveable property, Acs. 3 in extent. Taking these two circumstances together the lower court fixed a sum of Rs. 40/- as maintenance pendente lite and Rs. 100/- towards legal expenses. There is no doubt that she is entitled to interim maintenance and also to the legal expenses. Otherwise she would be starved to death, while the divorce proceedings are going on. Moreover, the amounts awarded are quite reasonable, having regard to the circumstances of the case. Therefore, we see no reason to interfere with this order in this Civil Miscellaneous Appeal CMA. No. 393 of 1973 is dismissed.

2. Then coming to CMA No. 34/74, we have read the order of the lower court in its entirety. Manifestly, the lower Court has no jurisdiction to pass such an order of dismissal on the ground that the directions in the order in LA. No. 1068/1972 were not complied with. If we notice the order in I.A. No. 1068/1972, we find that there are no conditions or pre-conditions at all provided therein. It is not even stated therein that the other proceedings in the main O.P. would be taken up only on the compliance by the appellant with the order in the Interlocutory Application

3. Sri K. Krishna Rao who appears for the wife 1st respondent, invites our attention to the decision of Ramaswami, J. in Mahalingam Pillai v. Amsavali (1956) 11 MLJ 289 where the learned Judge expressed the view that orders granting alimony pendente lite could not only be executed by the wife, but where the payments are made a condition precedent for the taking up of the trial of the petition or hearing of an appeal therefrom and if these are not complied with, the petition or appeal can be dismissed. That was a case which arose under Madras Act VI of 1949 and the court while making a direction for payment of alimony pendente lite, fixed its payment as a condition precedent for taking up the trial of the petition. Even supposing that there is such a power in the Court in the present Act there is no such condition precedent in the order made in IA. No. 1068/72.

4. The learned counsel also relies on a Bench decision of the Punjab High Court in Malkan Rani v. Krishna Kumar AIR 1961 Pun 42. The learned Judges opined that the object and purpose of Section 24 of the Hindu Marriage Act is to enable the Court to see that the indigent spouse is put in a financial condition in which the party concerned may produce proper material and evidence in the case and that a party is not handicapped in or prevented from bringing all the relevant facts before the Court for decision of the case because of his or her poverty. If these amounts are

not made available to the applicant u/s 24 of the Act immediately, then its object and purpose will stand defeated. Courts are not helpless in such eventualities and can use their inherent jurisdiction to avoid such consequences. Though Section 28 of the Act provides for execution of the orders, it does not, in the opinion of the learned Judges of the Punjab High Court, affect the Court's power to exercise its process. It is not here necessary to express any opinion on this view taken by the Punjab High Court. As we have pointed out, if the Court felt that the respondent would have been put to a great handicap if the amount which had been awarded to her were not paid, then it could have imposed a condition precedent that unless the amounts were paid, the case would not be proceeded with. Even on 20-9-1973, it did not say so. It merely dismissed the O.P. itself for non-compliance with the order. This is obviously and patently without jurisdiction. There is no provision in the Hindu Marriage Act which empowers the Court to dismiss a petition for divorce on the ground that interim orders have not been complied with. Even the Division Bench of the Punjab High court thought that the court could exercise its inherent jurisdiction to prevent abuse of its process, obviously meaning that the hearing of the main petition be postponed until the compliance with the interim directions was reported. It is thus clear that there is no power either statutory or inherent that vests in the lower court to dismiss the main O.P. on the simple ground of non-compliance with the interim directions. In the result, the order of dismissal of O.P. passed by the lower Court is set aside and C.M.A. No. 34/74 is allowed and the O.P. is directed to be resorted to file. The lower Court will now restore the O.P. and proceed to hear the same in accordance with law and in the light of the observations made above. The respondent-wife will get her costs in C.M.A No. 393 of 1973. There will be no order as to costs in C.M.A. No. 34 of 1974.