
(2004) 02 CAL CK 0053

Calcutta High Court

Case No: C.O. No. 314 of 1999

Sushil Mukherjee

APPELLANT

Vs

Sagarika Mukherjee

RESPONDENT

Date of Decision: Feb. 18, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Hindu Marriage Act, 1955 - Section 24

Citation: (2004) 3 CHN 621

Hon'ble Judges: Arun Kumar Bhattacharya, J

Bench: Single Bench

Advocate: Gurudas Mitra and Atanu Roy Chowdhury, for the Appellant;

Final Decision: Allowed

Judgement

Arun Kumar Bhattacharya, J.

The hearing stems from an application filed by the petitioner/husband praying for revision of the order being No. 12 dated 3.12.98 passed by the learned Additional District Judge, 3rd Court, Barasat, 24-Parganas (North) in Mat. Suit No. 59 of 1997, by way of setting aside the same.

2. The circumstances leading to the present application are that the petitioner filed the aforesaid suit for divorce where the respondent/O.P on her entering into appearance filed an application u/s 24 of the Hindu Marriage Act for maintenance pendente lite to the tune of Rs. 1,500/- p.m. & Rs. 300/-p.m. for self and her child respectively and Rs. 10,000/- as litigation cost. Due to non-appearance of the petitioner, the suit was dismissed for default on 1.6.1998. The respondent/O.P. filed an application u/s 151, C.P. Code on 26.6.98 praying for restoration of the suit and for disposal of her application u/s 24 of the Act which was allowed by the impugned order setting aside the order of dismissal passed on 1.6.98.

3. Being aggrieved by and dissatisfied with the said order, the petitioner/husband has preferred the present revision.

4. All that now requires to be considered is whether the learned Court below was justified in passing the said order.

5. As none appeared on behalf of the respondent/O.P., the application was heard ex parte.

6. Mr. Gurudas Mitra, learned Counsel for the petitioner advanced argument contending that though his client did not take any step for restoration of the suit, it was done at the instance of respondent/wife by filing an application u/s 151, C.P Code only for the purpose of disposal of her application u/s 24 of the Hindu Marriage Act which was legally not permissible. It is his further contention that though it has been observed by the learned Court below that as per legal principle any application filed by any of the parties to the suit should be disposed of first before final adjudication of the suit, no such legal principle has been disclosed nor any decision cited.

7. Now, Section 24 of the Hindu Marriage Act, 1955 lays down :

"Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceedings, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court, to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be".

8. The words "in any proceeding under this Act" as used in the above Section are significant, as it denote that for exercising power of granting maintenance pendente lite and expenses of the proceedings to the wife or husband, as the case may be, there must be a proceeding pending. If the main proceeding i.e. application for divorce or judicial separation has been disposed of keeping the application u/s 24 pending decision, there is possibly no scope for deciding the said application u/s 24 which is a subordinate proceeding, as it dies with the disposal of the main application. Indubitably, the object of Section 24 is to prevent sufferings of an indigent spouse during pendency of the proceedings, and such application u/s 24 should be disposed of expeditiously. But the said object cannot be permitted to override the express provision of the Act so as to construe that even if the main application is disposed of finally, the application u/s 24 which is pending decision

can continue. As such, in the present case, since the suit was dismissed for default, there was no scope on the part of the learned Court below to review the same by exercising power u/s 151, C.P. Code for the purpose of hearing the application u/s 24 of the Act, and to that extent the impugned order suffers from jurisdictional error.

9. Accordingly, viewed in the light of the above discussion, the impugned order is not sustainable.

10. In the premises, the revisional application be allowed ex parte. The impugned order being No. 12 dated 3.12.98 passed by the learned Court below in Mat Suit No. 59/97 be set aside.