

(2006) 05 DEL CK 0230

Delhi High Court

Case No: FAO 154 of 1998

Smt. Santosh Sehgal

APPELLANT

Vs

Shri Murari Lal Sehgal

RESPONDENT

Date of Decision: May 12, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 37
- Hindu Marriage Act, 1955 - Section 13, 13(1), 24

Citation: AIR 2007 Delhi 210 : (2006) 4 CivCC 473 : (2006) 130 DLT 643 : (2006) 2 DMC 179 : (2006) 144 PLR 12 : (2006) 3 RCR(Civil) 829

Hon'ble Judges: V.K. Jain, Acting C.J.; S.N. Aggarwal, J

Bench: Division Bench

Advocate: Pradeep Kumar, for the Appellant; Shri Murari Lal Sehgal, for the Respondent

Judgement

S.N. Aggarwal, J.

The question that we need to answer in this appeal has been referred to us by brother Sodhi, J who on 04.08.2004 when the matter came for hearing before him passed the following order:

Vide order dated 6th May 2004, Hon'ble Mr. Justice Madan B. Lokur has expressed his dissent against the judgment in [Bani Vs. Parkash Singh](#), which appears to have been followed by a judgment of this Court in [P. Srinivasa Rao Vs. P. Indira and Another](#). In this view of the matter, it would be appropriate that this matter is referred to a Larger Bench. List this matter before the Larger Bench.

2. We have seen the order dated 06.05.2004 of brother Lokur, J and we find no crystallized dissent in the said order that there is no prestige descent against the judgment in Bani's case (Supra). Faced with this situation, we have two options before us, either to answer the reference ourselves or to remand the case back to the learned Single Judge for decision of the appeal in accordance with law. We prefer to follow the former as it would advance the cause of justice and would save

the parties botheration of on going litigation.

3. The question referred before us is whether the appeal against the decree of divorce filed by the appellant-wife can be allowed straightway without hearing the respondent-husband in the event of his failing to pay interim maintenance and litigation expenses granted to the wife during the pendency of the appeal.

4. The question we are confronted with has not arisen for the first time but the said question has already been examined in number of cases not only by Delhi High Court but also by other High courts. In this context, it would be significant to refer to para 7 of the judgment in Bani's case (Supra) which is reproduced here-in-below:

No doubt, wife can file a petition under Order 21 Rule 37 CPC for the recovery of this amount and the husband can be hauled up under the Contempt of Courts also for disobedience of the aforesaid Court's order, but Section 24 of the Act empowers the matrimonial Court to make an order for maintenance pendente lite and for expenses of proceedings to a needy and indigent spouse. If this amount is not made available to the applicant, then the object and purpose of this provision stand defeated. Wife cannot be forced to take time consuming execution proceedings for Realizing this amount. The conduct of the respondent husband amounts to contumacy. Law is not that powerless as to not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to the wife, his defense can be struck out. No doubt, in this appeal he is respondent. His defense is contained in his petition filed u/s 13 of the Act. in a plethora of decisions of this Court Smt. Swarno Devi v. Piara Ram 1975 HLR 15; Gurdev Kaur v. Dalip singh 1980 HLR 240; Smt. Surinder Kaur v. Baldev singh 1980 HLR 514, Sheela Devi v. Madan Lal 1981 HLR 126 and Sumarti Devi v. Jai Parkash 1985 (1) HLR 84 it is held that when the husband fails to pay maintenance and litigation expenses to the wife, his defense is to be struck out. The consequence is that the appeal is to be allowed and his petition u/s 13 of the Act is to be dismissed.

5. The reference to the portion of the judgment in Bani's case extracted here-in-above would show that the Punjab and Haryana High Court and Orissa High Court have taken an unanimous view that in case the husband commits default in payment of interim maintenance to his wife and children then he is not entitled to any matrimonial relief in proceedings by or against him. The view taken by Punjab and Haryana High Court in Bani's case has been followed by a Single Judge of this Court in [P. Srinivasa Rao Vs. P. Indira and Another](#), . We tend to agree with this view as it is in consonance with the first principle of law. We are of the view that when a husband is negligent and does not pay maintenance to his wife as awarded by the Court, then how such a person is entitled to the relief claimed by him in the matrimonial proceedings. We have no hesitation in holding that in case the husband fails to pay maintenance and litigation expenses to his wife granted by the Court during the pendency of the appeal, then the appeal filed by the wife against the decree of divorce granted by the trial court in favor of the husband has to be

allowed. Hence the question referred to us for decision is answered in the affirmative.

6. For application of the above rule, it may be necessary to give a brief background of the present case and the same is as under:

7. The appellant is the wife. She was married to the respondent-husband according to Hindu rites and ceremonies at Lajpat Nagar on 26.03.1982. Two daughters were born to the parties from their wedlock. They are Ms. Veena and Ms. Kanu. There were disputes and differences between the couple since beginning of their marriage. They separated from each other on 25.07.1986 and ever since then they are living separate from each other. Both the daughters born to the parties from their wedlock are presently in the custody of the mother, appellant herein. The respondent (husband) had filed a petition for divorce against the appellant on the ground of cruelty and desertion u/s 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955. Shri M.C. Garg, then Additional District Judge, Delhi vide judgment and decree dated 02.03.1998 allowed the petition of the husband and dissolved the marriage of the parties. During the pendency of this appeal, vide order dated 25.11.1999, the appellant was granted an interim maintenance at Rs. 1,000/- per month for the maintenance and education of her two daughters. The respondent admittedly did not pay any maintenance to the appellant till date despite order was passed in this regard on 25.11.1999. He is thus a contumacious defaulter. The counsel for the respondent-husband has very fairly conceded before us at the time of hearing of this appeal that since her client has no money to pay maintenance to the appellant, the Court may allow the appeal of the appellant. Even otherwise we are of the view that since the respondent has not complied with the order of payment of maintenance passed by this Court on 25.11.1999, his defense is liable to be struck down and consequent thereto the appeal of the appellant has to be allowed.

8. In view of the above, the impugned judgment and decree is hereby set aside. This appeal is allowed. No costs.