

## Suman Bala Vs O.P. Arora

**Court:** Delhi High Court

**Date of Decision:** Jan. 21, 1997

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 125

Hindu Adoptions and Maintenance Act, 1956 â€” Section 18

Hindu Marriage Act, 1955 â€” Section 24

**Citation:** (1997) 2 AD 775 : (1997) 66 DLT 460 : (1997) 1 DMC 457 : (1997) 41 DRJ 235 : (1997) 116 PLR 56

**Hon'ble Judges:** S.N. Kapoor, J

**Bench:** Single Bench

**Advocate:** I.S. Mathur and Rahul Gupta, for the Appellant;

### Judgement

S.N. Kapoor, J.

(1) This revision petition is directed against an order partly dismissing the application by disallowing maintenance with effect from 3rd May 1977 till

18th September 1980, the date of decree for divorce.

(2) The learned Additional District Judge passed the impugned order on the ground that on 2nd May 1977 the case of the husband for restitution

of conjugal rights was adjourned sine die on account of non-compliance of the order dated 22nd March 1977 to pay maintenance and litigation

expenses. The case of the petitioner for restitution of conjugal rights remained pending. Only counter claim of the Decree Holder seeking divorce

was revived and divorce decree was passed on 18th September 1980. Since, the defense of the Judgment Debtor/husband was struck off, he

could not be penalised (twice?) by recovery of maintenance in respect of the same period (during which he was not allowed to prosecute his

defense and case for restitution of conjugal rights u/s 97th of the Hindu Marriage Act).

(3) To further appreciate the points involved in the matter, before proceeding further, it would be desirable to have a glance at the facts of the case.

These are as under: 3.1 The marriage of the couple took place on 2nd March 1975. On 14th June 1976, a daughter was born. That created some

problems and the revision petitioner was forced to leave. The husband/respondent filed a petition for restitution of conjugal rights on 19th January

1977. On 17th February 1977 the petitioner/wife contested the claim for conjugal rights filed written statement and she instead claimed divorce.

On that very date, she moved an application u/s 24 for litigation expenses and maintenance. On 22nd March 1977 Shri K.B. Andley, the then

Additional District Judge awarded maintenance at the rate of Rs. 300 per month along with litigation expenses amounting to Rs. 750. On account

of non-payment of maintenance, the proceedings in that matter were stayed on 2nd May 1977 sine die. The petitioner/wife had not filed any

application separately for grant of maintenance in her counter claim for divorce. 3.2 The petitioner/wife moved an application for revival of her

counter claim and the application was allowed on 1st February 1980. An application for striking off the defense of the husband in the counter claim

and the petition for divorce of the wife was allowed on 12th August 1980. On 18th September 1980, a decree of divorce was passed. 3.3. The

first appeal against the decree of divorce was filed but that appeal is said to have been dismissed on 10th November 1980. On 9th March 1981

SLP filed before the Supreme Court against the order of dismissal of appeal by the High Court was also dismissed. 3.4 On 18th March 1981 the

petitioner/wife moved an application for execution of the order u/s 24 of the Hindu Marriage Act. The learned Additional District Judge by

impugned order dated 9th November 1981 allowed the claim of maintenance only for the period from 12th February 1972 till 2nd May 1977

Along with litigation expenditure of Rs. 750. The claim of the petitioner/wife for an amount relating to period from 3rd May 1977 till 18th

September 1980 has been dismissed. 3.5 Feeling aggrieved by the above said order this CM(M) has been filed inter alias on the ground that the

view taken by the learned Additional District Judge was not justified. It did not amount to double penalty. The order of striking off the defense was

passed for the contumacious conduct of the respondent in not paying the expenses and maintenance pendent lite, and it did not absolve the

husband/respondent from paying the said amount. The purpose for staying the proceedings was just to ensure the payment.

(4) Shri Ishwar Sahai, learned counsel for the petitioner submitted that just by staying the proceedings on account of non-compliance of Section 24

of the Hindu Marriage Act, the respondent could not absolve himself from the responsibility to maintain wife who had nothing to bank upon and to

support herself. It was a moral as well as legal duty u/s 24 of Hindu Marriage Act as well as u/s 125 Criminal Procedure Code . Shri Ishwar Sahai

also contended that the court had inherent powers to secure enforcement of its order, by staying the proceedings, he also referred to a pari

materia. Section 35B CPC specifically provided that the plaintiff or the defendant, as the case might be, in case of non-compliance of an order

imposing costs, shall not be allowed to prosecute his suit or defense, and the cost remained executable and it could be recovered irrespective of

the fact that the suit never got revived. In the same fashion, in case ordered maintenance was not paid and even court stayed the proceedings in

exercise of its inherent powers, the orders continued to be in force and was not suspended simply because the proceedings have been suspended

for their subject to revival on payment of maintenance allowance. This was just a way of ensuring the compliance of the order passed by the court;

it was not a penalty. He placed reliance on Bhuneshwar Prasad Vs. Dropta Bai, and B.M. Muniratnam Naidu Vs. Shantamma, Air 1971 Mys 25.

(5) Having heard the learned counsel for the petitioner and having gone through the record, I am of the considered view that. by no stretch of

imagination, the impugned order could have been passed disallowing the maintenance. The two grounds given by the learned Additional District

Judge have no substance. So far as the contention that the petition for restitution of conjugal rights was not revived and only the counter claim had

been ordered to be revived, is concerned, it is of no consequence. In counter claim filed for divorce also, the wife was entitled to get maintenance;

there was no need to file an application separately for only one order could have been passed in this consolidated matter. On the point of double

penalty of staying the proceedings and at the same time forcing the husband to pay the maintenance, one has to accept, that it is a civil matter, and

not a criminal matter wherein penalty could be imposed and where this question could have been considered by the learned Additional District

Judge.

(6) I find a lot of force in the submissions of Shri Ishwar Sahai, the learned counsel for the petitioner. He referred to Bhuneshwar Prasad Vs.

Dropta Bai, which reads as under:

4. Section 28 on which reliance was placed by the petitioner does not stand in the way of enforcement of an order under S. 24, by staying the

proceedings until the order is carried out. That provision only says that all decrees and orders made by the court in any proceeding under the Act

shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may

be appealed from under any law for the time being in force. The proceedings are stayed for non-compliance with an order under S. 24. The stay

itself is clearly not the execution of the order. The proceedings are stayed for purpose of enabling the party in whose favor the order has been

made to execute it in the manner provided in S. 28 and recover the amount of maintenance pendente lite and expenses of the proceeding so that he

or she may be in a position to defend the proceeding. The view I have taken is fully supported by the decision of Smt. Malkan Rani Vs. Krishan

Kumar, and Anita Karmokar and Another Vs. Birendra Chandra Karmokar, , where it has been held that if there is any non-compliance with an

order under S. 24 of the Act, the Court can in exercise of its inherent powers stay the matrimonial action.

(7) Shri Ishwar Sahai also referred to P.M. Muniratnam Noida vs. Shantamma, Air 1971 Mys 25. The following observations in para 4 of the

judgment are noteworthy: 4. ""....It is clear from a reading of this Section that maintenance and expenses of litigation could be ordered to be paid to

the wife or husband, as the case may be, during the pendency of the proceeding. This provision has been made by the Legislature to see that if the

husband or the wife is to contest an application under any of the provisions of this Act if he or she has no means for his or her maintenance or to

meet the cost of litigation, the other spouse should be ordered to maintain the indigent spouse and also pay the expenses of the litigation. This has

been done on considerations of public policy. When once an order has been passed under this Section, no matter what happens to the petition

thereafter, the liability to pay maintenance and expenses of the litigation in respect of the period during which the proceedings were pending, cannot

be avoided. The subsequent dismissal of the petition does not exonerate the liability already incurred.

(8) It may further be mentioned that it is not that the petitioner/husband at his end did not pursue the matter at all; he moved a revision petition on

30th April 1977 and that was dismissed on 19th October 1979. Nor could it be said that in respect of those proceedings, the petitioner/wife was

not entitled to any maintenance for that period also fell within the period for which maintenance has been claimed and which was disallowed by the

learned Additional District Judge. He filed an application for review and that was dismissed during this period. On 3rd September 1980, he moved

again the revision petition which was also dismissed. In the light of these facts Shri Ishwar Sahai further submitted that the order passed by the

learned Additional District Judge was absolutely unjustified.

(9) Provisions under Sections 24, 25, 26 of the Hindu Marriage Act; Sections 18, 19, 20 and 22 of the Hindu Adoption and Maintenance Act

1956; and Section 125 Criminal Procedure Code as well as similar provisions in other enactments, indicate a definite intention of the Legislature to

project and pursue a public policy against vagrancy. Neither by forced separation, nor by staying the proceedings under the Hindu Marriage Act

or any other"" similar provision, hunger is stopped. Hunger does not breed reform, it breeds madness and all the ugly distempers that make an

ordered life impossible. Similarly nor needs of clothing and shelter are suspended during the stay. Consequently, complementary moral and legal

obligation on the husband to support his wife does not cease to exist, by staying the proceedings. Section 24 and other similar provisions just

recognise and enforce this obligation. Court dealing with matrimonial matters while staying proceedings and while refusing to allow defense, are not

enforcing this obligation. They are just enforcing rules of equity. Equity acts on the conscience and conduct of a person who is guilty of neglecting

his family, wife and children, is so unconscionable that the court feels that he should not be allowed to pursue his case. "He who seeks equity, must

do equity", is another maxim of equity. Still another maxim "Equity imports an intent to fulfill an obligation". And a person who is not equitable in

discharging his family obligation is not entitled to any relief from a matrimonial court. All these maxims of equity are invoked while exercising

inherent powers of the court, for staying the proceedings, striking off the defense or dismissing the suit. By just passing the said orders, only the

dignity of the Court is ensured, while by enforcing the order obligations to the family, wife and children are saved from vagrancy. These are two

sets of obligations and they obviously require two remedies. As such, two sets of civil remedies should not be equated with double penalty.

(10) In view of the above, I feel that this petition has to be allowed firstly for the reason that the learned Additional District Judge by misdirected

approach has exercised his jurisdiction improperly; secondly, it has led to miscarriage of justice; and thirdly, in view of the revision petition, the

order is factually incorrect.

(11) Accordingly, CM(M) 19/1982 is allowed. The applicant is entitled to execute the order for maintenance dated 22nd March 1977 for the

period 3rd May 1977 to 18th September 1980 for recovery of maintenance at the rate of Rs. 300.00 per month.

(12) A copy of this order be sent to the learned Trial Court along with trial court record, for information and to proceed in accordance with law.