

(2010) 07 KAR CK 0064

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4392 of 2010

B. Surendra Setty

APPELLANT

Vs

Smt. Sujatha S. Setty @ Ratna S. Setty

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Family Courts Act, 1984 — Section 13, 19

Citation : (2011) 1 DMC 718 : (2010) 6 KarLJ 287

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Revanna Bellary and Manjula N.V, for the Appellant;

Judgement

D.V. Shylendra Kumar, J.—This appeal u/s 19 of the Family Courts Act, 1984 [for short "the Act"] is by the seventh defendant in the suit O.S. No. 16/2008. on the file of the Judge, Family Court, Davangere, a suit which had been filed by the plaintiff - wife of the seventh defendant, claiming maintenance towards her personal expenditure at the rate of Rs. 7,500/- per month and to create a charge on the plaint A and B schedule properties, which had come to be decreed in part to the extent of allowing maintenance at the rate of Rs. 3.000/- per month and the charge being created in respect of plaint "B" schedule property.

2. The husband, as of now a retired Junior Engineer residing at Bellary is in appeal contending, inter alia, that the Judgment of the trial court is not based on either facts or the findings proper on the evidence placed before the court by the parties; that it suffers from several infirmities in law; that it is liable to be set aside; that the suit should have been dismissed etc...

3. The appeal on behalf of the seventh defendant is presented before this Court by Advocates Sri Revanna Bellary and Smt. N.V. Manjula. The memorandum of appeal in its first paragraph reads as under:

1. The addresses of (he parties for the purposes of the service of notice on the parties above and the additional address of the appellant is care of their counsels

Sri Revanna Bellary. MA. LLB., CCE Law. M Nagendra, Doddahalappa. M.N. Madhura. M.N. Hema. Nagarajaiah. Advocates. 57/2F. Opposite Halemane Hotel. II Main. P.J. Extension. Akkamahadevi Road, Davangere - 577 002, Phone 08192 231873. Mob: 9448339322

4. Though in the suit there were as many as seven defendants and the present appellant himself is the seventh defendant, in the memorandum of appeal, the plaintiff alone has been indicated as respondent and defendants I to 6 have not been arrayed as parties in the appeal.

5. The registry of this Court, on noticing the defects in the presentation of the appeal, had notified the matter for rectification and there were several other defects which had been notified by the registry along with the cause title in the appeal being not in conformity with the cause title in the suit, in the sense, some of the parties in the suit are missing in the appeal.

6. We notice from the checklist prepared by the registry that the learned Counsel for the appellant: has made the following endorsement on 14.6.2010.

Suit against defendant No. 1 to 6 is dismissed only contesting Defendant No. 7. Defendant No. 1 to 6 not necessary this appeal. Kindly accept the same.

7. In this background and state of affairs, the appeal was listed before the court for acceptance of the submission made by the learned Counsel for the appellant and also for orders on IA No. I of 2010 for condonation of 34 days delay in preferring this appeal as also IA No. II of 2010 for stay.

8. When the matter had been listed before the court yesterday and though was passed over once and called second time, there was no representation for the appellant and therefore we directed the registry to re-list the matter today and in the meanwhile to notify the learned Counsel who have filed vakalath for the appellant about the matter being listed and necessity of their presence before the court.

9. We had earlier indicated in several such matters where learned Members of the Bar who had filed power were not appearing in the matter and the matter could, go for default to re-list the matter the next day or the day after and in the meanwhile to inform the Advocates who had filed vakalath and wherever they were available in the court by sending a messenger or if they had a telephone number by ringing up and informing them.

10. We are not aware as to what developments take place in the registry though we had directed the concerned Registrar to follow this practice henceforth so that the litigants interest do not suffer only because of the negligence or carelessness of their lawyers.

11. We also notice that the address for service as indicated in paragraph-1 of the memorandum of appeal shows the address of the Advocates for the appellant for service being at No. 57/2F. Opposite Halemane Hotel, II Main, P J Extension,

Akkamahadevi Road, Davangere 577 002, We do not find any local Advocate also being on record with the local address for such purpose notwithstanding Rule 3 of Chapter-VI of the High Court of Karnataka Rules, 1959, reading as under:

When the appellant is represented by an Advocate, the memorandum of appeal shall give an address for service within the City of Bangalore at which service of any notice, order or process may be made on the party filing such memorandum.

requiring that the memorandum of appeal should necessarily give the address of lawyer at Bangalore.

12. A perusal of the vakalath signed by the Advocates for the appellant while does show the name of one Advocate. namely, Smt. N.V. Manjula with roll number 1157 of 2009, having a local address at No. 55/24, 51st Cross, 7th Main, Rajajinagar, Bangalore - 560 010, even the local Advocate has not appeared either yesterday or today when the matter was taken up.

13. From the roll number given against the name of Mr. Revanna Bellary, Advocate, it is not discernible as to which year he had been enrolled and how many years of practice he has to his credit in the profession.

14. The Family Courts Act, 1984, is a piece of social welfare legislation enacted by the Parliament for the specific purpose of providing a forum which can devote its attention and time exclusively to the disputes that arise within a family, particularly, relating to matrimonial matters and to resolve such disputes as expeditiously as possible so that the litigant members of the public who approach the court for relief before the family courts get such relief at the earliest.

15. The Act with this object, has also taken care of regulating the appearance of the members of the legal profession before a family court in terms of Section 13 of the Act, reading as under:

13. Right to legal Representation - Notwithstanding anything contained in any law no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner:

Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

16. It is to be noticed that the appearance for a member of the Bar in the family court matters is not a matter of right or a matter of course though learned members of the Bar have the exclusive prerogative to appear before the courts and to practice law. A restriction is to be found on such right in Section 13 of the Act and in the wake of the section opening with a non-obstante clause obviously it should be taken that the provisions of Section 13 of the Act will prevail over the provisions of the Advocates Act, 1961.

17. However, the proviso gives an opening to enable the members of the Bar to appear in the form of assistance of a legal expert as *Amicus Curiae*. On the other hand, the practice has been that lawyers continue to appear as legal practitioners

as a matter of right and not as Amicus Curiae to the court. It is presumed or taken for granted that members of the Bar have the permission of the court to appear and normally as a matter of practice such understanding is also not in any way affected as the courts have been permitting appearance of lawyers more as a matter of course.

18. However, the stage has reached when this Court has to inevitably examine these provisions, particularly, in the background of the experience of many younger members of the Bar who have put in only few years at the Bar and who may not have seen much life nor have gained any experience in family matters also appearing for the parties to a family dispute and filing vakalath and riot necessarily paving way for a possible conciliatory resolution of the problem of the parties, but rather taking up a confrontational stand and contesting family disputes by the parties as any other litigation.

19. A matter before a family court or an appeal from the order of the family court cannot be examined as a matter involving commercial dispute and as any other litigation of adversary nature. Family disputes involve human problems and calls for handling in a very sensitive manner with proper understanding of the nature of the problem and with a little compassion and even as the Act suggests when the parties approach the court for separation etc.. to make all possible attempts to retain the relationship than to allow a petition for separation as a matter of course.

20. The Act. also, particularly, the provisions of the Hindu Marriage Act, 1955 and analogous enactments seek to ensure that vagrancy is avoided even in a situation where parties for any reason are unable to live together or intend to live separately, but an earning member of the couple is compelled to pay at least the minimum amount for a living by way of maintenance, if not more, in favour of the non-earning dependent member.

21. The present appeal is one which arises against such order passed by the family court directing the appellant to pay Rs. 3,000/- per month towards maintenance in favour of the respondent - wife who is living separately.

22. In matters of this nature, if learned members of the Bar who have filed power do not appear at all, the case can go for default and decision not on merits is not a satisfactory resolution of the dispute between the parties.

23. We are quite aware of the fact that a question of this nature had come up before the single Bench of this Court earlier which had been considered by this Court in a. reported case of Mrs. Komal S. Padukone Vs. Principal Judge, Family Court, Bangalore City and Another, .

24. This Court after examining the relevant facts had concluded as under:

13. A combined reading of the Act and the Rules with relevant provisions of CPC make the following evident:

(i) A petition to the Family Court may be presented by a petitioner either in person or through an Authorised Agent. The petition may be presented even by an Advocate as an Authorised Agent. But if the petitioner wants "representation by a legal practitioner, he/she should seek and obtain the permission of the Family Court.

(ii) A respondent, who is served with notice of the proceedings, may either appear in person or enter appearance through an Authorised Agent (including a Legal Practitioner). But if the respondent wants to be represented by a Legal Practitioner in the proceedings, he/she should seek and obtain the permission of the Family Court

(iii) In regard to proceedings before the Family Court, "entering appearance" in response to a notice/summons through an Authorised Agent (including a Legal Practitioner), is different from being represented in the proceedings by a legal practitioner.

(iv) While representation through Legal Practitioner without permission is barred, entering appearance in a case, in response to a notice/summons, through a Legal Practitioner is not barred, if a Legal Practitioner, having entered appearance, wants to represent party in the proceedings, permission of the Family Court should be obtained for such representation.

(v) When one party has been permitted to be represented by a Legal Practitioner, such permission cannot under any circumstances, be denied to the other party.

(vi) The Authorised Agent (or the Legal Practitioner permitted to represent a party) can prosecute or defend (the proceedings and represent the party unless and until the Family Court makes a specific order to the parties to appear in person, either on a specified date or on further hearing dates, depending on the facts of the case and stage of the case. Once an order for personal appearance has been specifically made, a party will have to seek exemption from appearance, if he/she is not able to appear in the matter.

(vii) Where a Family Court has a large backlog of cases, and then there is no possibility of taking up all cases, listed on a day it may restrict the requirement of personal appearance of parties to specified stages like conciliation and evidence.

(viii) Where it is possible to do so consistent with the nature and circumstances of the case, the Family Court, either directly or through Counselors, in the first instance, assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the proceedings.

25. Notwithstanding this legal position having been noticed by this Court, we have found in practice it has not been working at all to the satisfaction of either the court or to the advantage of the litigant public and it has therefore become necessary for us to pass further orders and issue directions.

26. In such circumstances, we are constrained to direct the Registrar General of this Court to notify in the registry and also to forward copy of this order to the Bar Council of Karnataka as also the Advocates Association. Bangalore and other Bar Associations at all places where family courts are located inviting consent from the learned members of the Bar who have put in a minimum of twenty years of practice at the Bar and who are not less than 45 years of age. If such members of the Bar are willing to act as Amicus Curiae to the court and to assist the court, a panel of the names of such members should be maintained not only at the High Court but also at all places where there are family courts and even (when an Advocate has filed power for any of the party in a matter before the family court or in appeal or revision etc., before the High Court arising under the Family Courts Act. it will be in the discretion of the court to either permit the very member of the Bar to appear in the case or to appoint Amicus Curiae in addition to such advocate or even in place of the Member of the Bar who has filed power for the party and to seek assistance of the Amicus Curiae.

27. Such course of action, in our opinion, will be not only in consonance with the letter and spirit of the Family Courts Act, 1984 but also will pave way for satisfactory. expeditious disposal of the disputes arising amongst the members of the family and which come up before the family court or in further appeal before this Court.

28. Registrar General of this Court is also directed to ensure that a panel of members of the Bar who are ready and willing to act as Amicus Curiae and assist the court in all such family court matters and the appeal before this Court are prepared at the earliest, but not later than three months from today and to bring to the notice of the court hearing the appeals and family disputes in the High Court, further developments in this regard for further directions, if need be in the matter.

29. Insofar as the present appeal is concerned, as we have noticed that the learned Advocate who has presented this appeal has also given the details of the telephone numbers, the Registrar (Judicial) is directed to ensure that the Advocate is contacted over the telephone, apprised of these developments and to indicate that the matter would be coming up for orders again on 26.7.2010 and apprise the lawyer that if they are still interested to appear in the matter on that day.

30. List this matter for orders on 26.7.2010.

31. Copy of this order also to be forwarded directly to the appellant Mr. B Surendra Setty, forthwith.