
(2011) 09 MAD CK 0068

In the Madras High Court

Case No : Matrimo. Causes (MD) No. 1 of 2011 in I.A. No. 113 of 2010 in
I.D.O.P. No. 9 of 2000

D. Anthony Marianathan

APPELLANT

Vs

Josephine Sahayarani
Josephine Sahayarani Vs D.
Anthony Marianathan

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Divorce Act, 1869 — Section 10, 17, 20
General Clauses Act, 1897 — Section 6

Citation : (2011) 7 MLJ 417

Hon'ble Judges : P. Jyothimani, J;M. Durai Swamy, J;Aruna Jagadee San, J

Bench : Full Bench

Advocate : S. Siva Ilayaraja, for the Appellant; R. Devaraj, Amicus Curiae, for the Respondent

Judgement

P. Jyothimani, J.—The husband/Petitioner herein filed I.D.O.P. No. 82 of 1995 against the wife/ Respondent herein for judicial separation

on the ground of cruelty. The decree of judicial separation was granted on 26.04.1996. Thereafter the wife filed I.D.O.P. No. 9 of 2000 u/s 10 of

the Divorce Act, 1869 on the ground of adultery coupled with cruelty. That was filed on the file of the learned Principal District Judge, Thanjavur.

In the said O.P. filed by the wife, the co-adulterer has been made as second Respondent. The learned Principal District Judge, Thanjavur has

passed an order on 10.08.2000, after analysing the documents filed and evidence submitted on behalf of the Petitioner granting divorce on the

above said grounds. Since the O.P. was filed under the Divorce Act, unamended, it required confirmation of the High Court by three Judges as per

Section 17 of the Act. Accordingly, this application has been preferred before this

Court for confirmation.

2. It is not in dispute that after the order was passed by the learned Principal District Judge granting divorce, which was on 10.08.2000, the

Divorce Act, 1869 stood amended with effect from 03.10.2001 and thereafter, the confirmation by three Judges of High Court has been

dispensed with. Since order in the O.P was passed before the date of amendment, this application filed for confirmation. Admittedly, the

amendment which was brought in to the Indian Divorce Act, 1869 with effect from 03.10.2001 is not retrospective.

3. The question as to whether the amendment carried out to the Divorce Act with effect from 03.10.2001 is prospective or retrospective came to

be considered by few of the High Courts in India, even though there is no direct decision of this Court. But on a reading of the amendment and

statement of objects and reasons appended to the proposed amendment, we are satisfied that the amendment is intended to be only prospective.

This is also evidenced from the statement of objects and reasons, which reads as follows:

2. With a view to ascertaining the views of the Christian community on proposal for a unified law on marriage and divorce, the Central Government

convened a meeting of leaders of prominent Churches in India and the Members of Parliament belonging to the Christian community on the 28th

April, 2000 but there was no consensus for bringing in a comprehensive legislation on Christian marriages and matrimonial causes. However, there

is no opposition from any one to amend Sections 10, 17 and 20 of the Indian Divorce Act, 1869 suitably to remove the gender inequality as

contained in Section 10 and to do away with the procedural delays in obtaining divorce due to the provisions contained in Sections 17 and 20 of

the Act. The Government, therefore, proposes to make suitable changes in the Indian Divorce Act, 1869 for removing hardship to all concerned.

4. The Indian Divorce Act, (Amended Act), 2001 as stated above, while repealing the previous Act has not saved the acts taken under the

previous Act. In the absence of such saving clause in the amended Act, by applying Section 6(b) of the General Clauses Act, 1897, which reads

as follows:

6. Effect of repeal: Where this Act, or any (Central Act) or Regulation made after

the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

b) affect the previous operation of any enactment so repealed or anything duly done or suffered there under.

it is also clear that the amendment is not retrospective.

It also adds to strengthen our view that the intention of the amendment is only prospective with the result in respect of cases which were filed

before amendment, the amended act would not apply.

5. Mr. R. Devaraj, learned Amicus curiae, who was appointed by this Court to assist the Court has brought to the notice of this Court about few

of the judgments of the other High Courts.

i) A Full Bench of the Delhi High Court in Mrs. Nisha Ribero Vs. Mr. George Mario Ribeiro, , held that the amendment is prospective and

therefore when the order was forwarded for the purpose of confirmation, the old Section 17 was very much in force holding that it required

confirmation of three Judges. The operative portion of the judgment reads as follows:

The said amendment Act also altered the name of the Act from ""Indian Divorce Act"" to ""Divorce Act, 1869"". Thus, after the amendment, which

took effect on 03.10.2001, no confirmation by the High Court of a decree of dissolution passed by the trial Court was necessary. The question,

therefore, is whether the present decree needs to be confirmed by this Court or not? It is clear that on 25.09.2001 when the judgment and order

was made by the learned Additional District Judge the amendment had not come into effect. As such, the date on which the order forwarding the

records to this Court was passed for the purposes of confirmation of the decree, the provisions of the old Section 17 were very much in force.

This petition would, therefore, have to be disposed of under the old provisions of Section 17 and, therefore, a confirmation of the decree would be

necessary.

ii) Likewise, a Full Bench of the Patna High Court has also taken the same view in Deepa Raj Kumar Singh Vs. Deepak Kumar, , holding that

every statute is prima facie prospective, unless it is expressed or by necessary implication made applicable retrospectively, thereby deciding that

Section 17 of the old Act will apply in cases like one on hand in requiring confirmation. The operative portion of the judgment reads as follows:

At this juncture it would not be out of place to mention here that Section 17 of the Divorce Act, 1869 deals with confirmation of judgment and

decree by the High Court passed by the Court below. The said provision has been deleted by the Indian Divorce (Amendment) Act, 2001.

However, the divorce case was filed in 1993 when Section 17 of the Divorce Act, 1869 was in force. The decree was also passed in the year

1988 when the said provision was in force. It is well settled rule of law that the provision/statute is prospective unless it is expressly made

retrospective. In this regard reference may be made to a decision in the case of Mrs. Larley v. Mr. John @ Johnny C.A. 2004 (1) PLJR 564 (FB).

The Full Bench while considering Section 17 of the Divorce Act and amendment/deletion of Section 17 by Amendment Act, 2001 has held that it

is well settled rule of interpretation that every statute is prima facie prospective, unless it is expressly or by necessary implication made to have

retrospective effect and has also held that there is no such clause in the amendment by Indian Divorce Act, 1869 the Court below has referred the

judgment and decree u/s 17 of the Divorce Act for confirmation by this Court and no party has entered appearance in spite of the publication of

notice in the newspapers, the Court has no option but to confirm the decree.

6. While agreeing with the decision taken by the Full Bench of the Patna and Delhi High Courts, we hold that the amendment carried out to the

Divorce Act, is only prospective and it would not have effect on an application already filed under the unamended Act and pending. On the facts of

the present case, as stated above, when the trial court passed order of divorce, which was on 10.08.2000, the amendment did not come into

effect. The amendment having come into effect on 03.10.2001 and the 8 matter being filed u/s 17 of the Divorce Act, we are of the view that it

requires confirmation of three judges of the High Court, as per the unamended Act.

7. We have perused the order passed by the learned Principal District Judge as a trial Court. The trial court has taken note of the evidence of P.

Ws.1 & 2, P.W. 1 being the Petitioner in the O.P and also considered the various exhibits particularly Ex. P.5 dated 26.04.1996, which is an

order passed in I.D.O.P. No. 82 of 1995 filed by the husband for judicial separation on the ground of cruelty and has granted decree of divorce.

There is no contra evidence on the side of the husband before the trial court since he remained exparte before the trial court. In the present

application for confirmation, the husband is represented by the counsel.

8. We have heard the Learned Counsel for the husband also, who also submitted that his client stood exparte before the trial court and there is no contra evidence even now.

9. We have carefully considered the pleadings and also evidence let in by the wife and another witness on her behalf and we are in agreement with the finding of the learned trial Judge in granting divorce.

10. We place on record our deep appreciation to the sincere efforts made by Mr. R. Devaraj, Learned Counsel who was appointed as amicus

curiae by this Court, who has taken enormous efforts to find out various judgments from various High Courts apart from bringing out the amended

provisions in a proper manner. Hence the decree passed by the learned trial Judge granting divorce is made absolute. Confirmation shall take effect

from the date of passing of the judgment and decree by the trial court.