
(1982) 11 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 2903 of 1982

Dilipbhai Chhaganlal Patel

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 24-11-1982

Acts Referred:

Hindu Marriage Act, 1955 — Section 23(2), 23(3), 24

Citation : AIR 1983 Bom 128 : (1984) 2 BomCR 338

Hon'ble Judges : C.S. Dharmadhikari, J

Bench : Single Bench

Advocate : R.R. Vyas and H.S. Patel, for the Appellant; A.M. Salik, A.G.P. for respondent No. 1 and M.D. Vichare, for the Respondent

Judgement

C.S. Dharmadhikari, J.—The respondent No. 2 Bhanumati filed a petition u/s 13 of the Hindu Marriage Act, 1955, for divorce. She also took out a notice of motion bearing No. 4551 of 1981 for interim alimony u/s 24 of the Hindu Marriage Act. It appears that initially the said notice of motion came to be decided ex parte. However, the said ex parte order was set aside and ultimately after hearing both sides the learned Judge of the City Civil Court, Bombay by his order dated 20th January, 1982 made the notice of motion absolute and granted Rs. 150/- per month as interim maintenance to the petitioner-wife from 1st October, 1981. He also granted Rs. 500/- towards expenses. It is this order of the City Civil Court, Bombay which is challenged in this writ petition.

2. Shri Vyas the learned Counsel appearing for the original respondent-husband contended before me that the order passed by the learned Judge of the City Civil Court, Bombay is without jurisdiction since the learned Judge has failed to follow the mandatory provisions of section 23(2) and (3) of the Hindu Marriage Act. According to Shri Vyas unless this procedure was followed it was not open to the Court to proceed further in the matter and grant relief u/s 24. He also contended that the attention of the Court was specifically drawn towards this provision of the Act and inspite of this the learned Judge without making any efforts to bring

about reconciliation has passed the order u/s 24 which is wholly without jurisdiction.

3. On the other hand it is contended by Shri Vichare the learned Counsel for respondent wife that section 24 of the Act is an independent provision and is not controlled by section 23(2). In support of his contention he has placed reliance upon the decision of the Delhi High Court in *Arti Singh Vs. Kanwar Pal Singh*, , *Chitra Lekha Vs. Ranjit Rai*, , *Smt Chitra Lekha v. Ranjit Raj*. Shri Salik the learned Assistant Government Pleader supported the contention raised by Shri Vichare and also placed reliance upon a decision of this Court in *Gangu Pundlik Waghmare Vs. Pundlik Maroti Waghmare and Another*, , *Smt. Gangu Pundlik Waghmare v. Pundlik Maroti Waghmare & anr*. Section 23(2) and (3) of the Hindu Marriage Act of the Hindu Marriage Act reads as under :---

"23(2) Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties;

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in Clause (ii) Clause (iii) Clause (iv), Clause (v), Clause (vi) or Clause (vii) of sub-section (1) of section 13.

(3) For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties so desire or if the Court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name any person, with directions to report to the Court as to whether reconciliation can be and has been, effected and the Court shall in disposing of the proceeding have due regard to the report."

Then comes section 24 which deals with the maintenance pendente lite and expenses of proceedings. Section 24 reads as under :

"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 proceeding, 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."

4. From the bare reading of these two provisions it is quite obvious that the word "proceeding" referred to in sub-section (2) of section 23 deals with the proceedings where substantive relief is asked for by the petitioner under the Act for restitution of conjugal rights, judicial separation, nullity of marriage or divorce etc. In section 24 the legislature has again used the phraseology i.e. "where in

any proceeding under this Act" which clearly indicates that in the substantive proceedings, such as judicial separation, divorce, restitution of conjugal rights or nullity of marriage etc. an application for maintenance pendente lite can be filed. In such proceedings a power is conferred upon either party i.e. wife or husband who has no independent income, sufficient for her or his support and the necessary expenses of the proceedings, to approach the Court for payment of maintenance pendente lite and expenses of the proceedings. The nature of proceedings contemplated by section 24 are obviously summary in nature. No appeal is provided for against the order passed u/s 24. The objection behind the section 24 appears to be two-fold, firstly to prevent vagrancy resulting from the strained relationship between the husband and wife and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case for want of money. That is why courts have always insisted that whenever an application is made u/s 24 it must be disposed of before any further steps are taken in the main case. In a given case, depending upon the facts and circumstances of the case an attempt to bring about a reconciliation might become difficult, if not impossible, unless some provision is made for maintenance and expenses. Such a provision might become necessary even for an active participation in reconciliation proceedings by the concerned spouse. Therefore, in my opinion it can be said that the words used in section 23(2) i.e. "before proceeding to grant any relief under this Act" will cover the summary proceeding u/s 24. If the provisions of sections 23 and 24 are read harmoniously it is more than clear that the expression used in section 24 i.e. "when in any proceeding under this Act" make it clear beyond doubt that an application for maintenance pendente lite and expenses of the proceedings could be filed even before the procedure prescribed u/s 23(2) is followed. If it is construed that the order u/s 24 for maintenance pendente lite cannot be passed unless the procedure prescribed by sub-sections (2) and (3) of section 23 is followed then the very purpose and object of section 24 will be frustrated. Therefore, it is not possible for me to accept the contention of Shri Vyas that the impugned order is without jurisdiction.

5. Even otherwise an order passed u/s 24 of the Act, could not be termed as illegal only because the Court did not make any endeavour to bring about a reconciliation between the parties. The provisions of section 23(2) are not absolute in nature. While casting a duty upon the Court to make every endeavour to bring about reconciliation between the parties discretion is left to the Court, by the use of qualifying phrase, "where it is possible to do consistently with the nature and circumstances of the case." Similar provision is made in Order XXXII-A of CPC for the suits relating to matters concerning family. An attempt to bring about a reconciliation is always laudable but failure to do so, before granting maintenance pendente lite, will not vitiate the order, passed u/s 24 of the Act. To say the least, section 24 is independent of other provisions of the Act, and is not controlled by section 23. The order passed u/s 24 is interim in nature and does not amount to final determination of the right or/of the case.

This incidental and interim direction to pay maintenance pendente lite is not a final and comprehensive adjudication of the rights of the parties within the contemplation of section 23 of the Act.

6. So far as the other contentions raised and sought to be argued before me are concerned, they relate to the merits of the matter with which I am not concerned at this stage. Once it is held that the order passed is wholly within the jurisdiction of the trial Court then obviously this is not a fit case wherein any interference is called for under the extra-ordinary jurisdiction of this Court under Article 227 of the Constitution of India.

Hence this writ petition is summarily rejected.