

(1985) 11 GUJ CK 0016
In the Gujarat High Court

Girishbhai Babubhai Raja

APPELLANT

Vs

Hansaben Girishchandra and Another

RESPONDENT

Date of Decision : 22-11-1985

Acts Referred:

Constitution of India, 1950 — Article 141, 141

Citation : (1986) 1 GLR 630

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a revision application by the husband of the maintenance proceedings, which were initiated by the opponent-wife

against this petitioner-husband. Now during the pendency of these proceedings, the husband had succeeded in getting a decree for restitution of

conjugal rights, which would mean that the wife is under an obligation to go and stay with the husband. The right to claim maintenance from the

husband ordinarily depends upon the readiness of the wife to fulfil the marital obligation under the roof of the husband. The learned Magistrate had

rejected the wife's application on the ground that the husband having procured a decree for restitution of conjugal rights. The learned Addl.

Sessions Judge in the wife's revision application disagreed with the trial Magistrate and granted the application and awarded Rs. 150/- p.m. as the

amount of maintenance from the date of the application, namely, 12-7-79. This has occasioned the present application by the husband.

2. The judgment of the Supreme Court in the case of Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others, is a clear answer to

this point. In paragraph 6 of the said reported judgment. Justice Krishna Iyer in his pithy and forceful expression has succinctly laid down the law

as follows:

Broadly stated and as an abstract proposition, it is valid to assert, as Shri Desai did, that a final determination of a civil right by a civil court must

prevail against a like decision by a criminal court....

Even if this be treated as an obiter observation, an obiter statement of the Supreme Court is the law of the land under Article 141 of the

Constitution of India.

3. Applying that ratio of the Supreme Court judgment to the present case, I find that the learned Additional Sessions Judge could not embark on

an irrelevant enquiry of the nature undertaken by him in paragraph 6 of his judgment. The learned Judge thought that the wife was helpless because

the husband had refused to pay alimony as ordered by the competent court of matrimonial jurisdiction and, therefore, the wife could not resist that

suit for want of funds and ultimately the decree for restitution of conjugal rights was passed by the court on 24-6-81. The learned Judge's

observation herein is a little astounding. He says that simply because the respondent-husband could successfully play tricks in procuring a decree

for restitution of conjugal rights without giving any opportunity to the petitioner-wife for resisting that suit, it does not give any weapons in hand to

raise a defence against this petitioner for maintenance." A decree of a Civil Court binds the parties. None can go behind the decree nor even the

learned Additional Sessions Judge. If the wife was aggrieved by that decree, her remedy lay in knocking the doors of the court orders the appellate

forum. She took that decree lying down. She persisted in her allegation against the husband that the husband was impotent and, therefore, she was

not prepared to go and stay with him. If there was anything to be stated regarding this particular defence other, it was open to her to plead and

prove the same in those proceedings initiated by the husband for restitution of conjugal rights.

4. In above circumstances, the order of the learned Additional Sessions Judge flying in the face of the order of the Civil forum determining the

rights of the parties cannot be allowed to stand. When the Civil Court orders the wife to go and stay with her husband and fulfil her marital

obligations, it presuppose that she has no justification to be away from the husband and refuse to perform her corresponding marital obligations.

Unfortunately, the learned Judge was carried away by sentiments and that is why he allowed the wife's revision against the order of the learned Magistrate, refusing to grant maintenance.

Mr. Karim urged that as the decree for restitution of conjugal rights remained unexecuted for a period of two years, the wife has already the initiated the proceedings for procuring divorce. Till divorce is procured, the decree for restitution of conjugal rights stands. If any right of maintenance flows from that new decree it will be a matter of future and not of the present.

5. The result is that the Criminal Revision Application is allowed by quashing the order of the learned Additional Sessions Judge and restoring that of the learned Magistrate. Rule is accordingly made absolute.