

(1967) 03 BOM CK 0007
In the Bombay High Court
Case No : A.F.O.D. No. 216 of 1966

Laxmibai Laxmichand Shah

APPELLANT

Vs

Laxmichand Ravaji Shah

RESPONDENT

Date of Decision : 30-03-1967

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1A), 23, 23(1)

Citation : AIR 1968 Bom 332 : (1968) 70 BOMLR 80 : (1969) 72 ITR 157 : (1968) MhLj 338

Hon'ble Judges : Chandrachud, J

Bench : Single Bench

Advocate : M.P. Kenta, instructed by Matubhai Jamientram Mada, for the Appellant; N.P. Vyas, instructed by Khanna and Suryakant, for the Respondent

Judgement

(1) This is an appeal by the wife against the judgment of the City Civil Court Bombay allowing the judgment of the City Civil Court Bombay allowing her husband's petition for divorce on the ground that there was no restitution of conjugal rights between them for a period of two years and more after the decree for restitution of conjugal rights was passed in her favour. The appeal raises an important question of law on which I gather conflicting judgments have been delivered by two learned Judges of the City Civil Court.

(2) It is necessary to state but a few facts for an appreciation of the question which arises in the appeal. The parties were married on the 8th of February 1945 and on the 27th of April 1959 the wife obtained a decree for restitution of conjugal rights in a proceeding instituted by her for that relief. On the 8th of February 1965, the husband initiated the present proceedings for dissolution of the marriage by a decree of divorce on the ground that the decree for restitution was never complied.

(3) It was urged in the trial Court on behalf of the wife that the decree for restitution of conjugal rights remained unexecuted on account of default on the part of the husband and, therefore, it was not open to him to ask that the

marriage be dissolved by a decree of divorce. The wife sought leave to adduce evidence showing that the husband had willfully refused to comply with the decree for restitution, but the learned Judge disallowed that evidence as he took the view that the amendment introduced to Section 13 of the Hindu Marriage Act of 1955 (hereinafter called "The Act"). by amending Act No. 44 of 1964 conferred an unqualified right on either party to a marriage to obtain a decree for divorce if there was no restitution of conjugal rights between the parties to the marriage for a period of two years or upwards after the decree for restitution was passed. The learned Judge has held that it is irrelevant to consider in such a case whether this or that party is to blame for non-compliance with the decree for restitution. The correctness of this view is challenged in this appeal.

(4) The question which arises for decision is whether a decree for divorce must necessarily follow on a decree for restitution of conjugal rights if there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years and "upwards after the decree for restitution was passed, or whether it is open to the Court to refuse to pass a decree of divorce on the ground that the party which is seeking divorce is taking advantage of his or her own wrong, as contemplated by Section 23(1)(a) of the Act. The decision of this question must depend upon the construction of the provisions contained in Sections 13 and 23 of the Act and the effect of the amendment introduced by amending Act No. 44 of 1964 to Section 13. Section 13 of the Act provides by sub-section (1) in so far as is material, that any marriage solemnized whether before or after the commencement of the Act, may, on a petition presented either by the husband or the wife be dissolved by a decree of divorce on the grounds mentioned in that sub-section. Originally to a husband or wife for obtaining a decree of divorce under sub-section (1) of Section 13. Under clause (viii) of sub-section (1), a marriage could be dissolved by a decree of divorce on a petition presented by the husband or the wife on the ground that the other party had not resumed cohabitation for a period of two years or upwards after the passing of a decree of judicial separation against that party. Under clause (ix) of sub-section (1), a marriage could be dissolved by a decree of divorce on a petition presented by the husband or the wife on the ground that the other party had failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of a decree for restitution against that party.

(5) Amending Act No. 44 of 1964 which came into force on the 20th December 1964 effected two significant changes. Clauses (viii) and (ix) which constituted two of the nine grounds on which a marriage could be dissolved by a decree of divorce were deleted from sub-section (1) and secondly, a new sub-section i.e. sub-section (1A) was added to Section 13. That sub-section reads thus:

"(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of two years or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties."

(6) It is clear from these amendments introduced by Act No. 44 of 1964 that whereas prior to the amendment, a petition for divorce could be filed only by the party which had obtained a decree for judicial separation or for restitution of conjugal rights, this right is now available to either party to the marriage, irrespective of whether the party presenting the petition for divorce is a decree-holder or a judgment-debtor under the decree for judicial separation or the decree for restitution of conjugal rights, as the case may be. This position is incontrovertible.

(7) The question really is whether, in a petition for divorce filed under sub-section (1A) of Section 13 it is open to the Court to refuse to pass a decree on any of the grounds specified in Section 23 of the Act, in so far as any one or more of them may be applicable. That section reads thus:

"23. (1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that-

(a) any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (f) of sub-section (1) of Section 10, or in clause (i) of sub-section (1) of Section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(c) the petition is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted,

then and in such a case, but not otherwise, the Court shall decree such relief accordingly."

(8) It is submitted by Mr. Kenia who appears on behalf of the wife that sub-section (1A) of Section 13 is, like the other provisions of the Act, subject to the provisions of Section 23(1) and that, though the present petition filed by the husband for divorce is competent in the sense that he has a right to file that

petition, it is open to the Court to refuse to pass a decree for divorce on any of the grounds specified in Section 23(1) in so far as they may apply. The argument is that if the wife succeeds in establishing in the present proceedings that the husband had refused to comply with the decree for restitution of conjugal rights, the Court would be justified in dismissing his petition for divorce on the ground mentioned in clause (a) of sub-section (1) of Section 23 that the husband was taking advantage of his own wrong. It is, on the other hand contended by Mr. Vyas, who appears on behalf of the husband, that the right conferred by sub-section (1A) of Section 13 is absolute and unqualified and that this newly conferred right is not subject to the provisions of Section 23. It is enough for the husband to show, according to Mr. Vyas, that in fact there has been no restitution of conjugal rights as between himself and his wife for a period of two years and more after the decree for restitution was passed.

(9) On a consideration of the language used in Section 13(1-A) and Section 23(1) of the Act, it is not possible to accept the submission of Mr. Vyas. In the first place, it is necessary to get rid of the notion that to introduce consideration arising u/s 23(1) into the determination of a petition filed under sub-section (1-A) of Section 13 is to render the amendments made by amending Act No. 44 of 1964 wholly meaningless. That is the principal ground on which the learned trial Judge has held that sub-section (1-A) of Section 13 confers an absolute right on a party to get a decree for divorce and that is also one of the main arguments which was urged before me by Mr. Vyas. Prior to the amendments introduced by the amending Act of 1964, the position which obtained under clauses (viii) and (ix) of Section 13(1) was that a marriage could be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the grounds, respectively that the other party had not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party or that the other party had failed to conjugal rights, for a period of two years or upwards after the passing of the decree against that party. Under these clauses, the right to apply for divorce was restricted to the party which had obtained a decree for judicial separation or for restitution of conjugal rights. Such a right was not available to the party against whom the decree was passed. Sub-section (1-A) of Section 13 which was introduced by the amendment confers such a right on either party to the marriage, so that a petition for divorce can after the amendment, be filed not only by the party which had obtained a decree for judicial separation or for restitution of conjugal rights but also by the party against whom such a decree was passed. This, in my opinion, is the limited object and effect of the amendment introduced by Act No. 44 of 1964. The amendment was not introduced in order that the provisions contained in Section 23 should be abrogated and that is not the effect of the amendment.

(10) The purpose of the amendment and the effect of sub-section (1-A) of Section 13 can be appreciated by reference to the provisions contained in Section 13 itself. In the first place, the opening words of sub-section (1) and of sub-section (1-A) of Section 13 provide a sharp contrast, and a comparison of the

respective provisions of the two sub-section (1-A) was merely to enlarge the right to apply for divorce and not to make it compulsive that a petition for divorce presented under sub-section (1-A) must be allowed on mere proof that there was no cohabitation or restitution for the requisite period. Sub-section (1) begins with the words:

"Any marriage solemnized, whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party.....".

whereas sub-section (1A) begins thus:

"Either party to a marriage, whether solemnized before or after the commencement of this Act may also present a petition for the dissolution of the marriage by a decree of divorce on the ground....."

It is clear on a comparison of the opening words of the two sub-sections, that all that sub-section (1A) deals with is the right to for a decree of divorce. It does not provide that a petition for dissolution of a marriage by a decree of divorce shall be allowed on proof of either of the two conditions mentioned in that sub-section. Once it is appreciated that the object of the amendment by which sub-section (1A) was introduced in Section 13 and by which clauses (viii) and (ix) were deleted from sub-section (1) of that section is merely to confer a right to apply for divorce on both the parties to the marriage irrespective of whether the decree for judicial separation or the decree for restitution of conjugal rights was obtained by this or that party, there would be no difficulty in holding that the provisions contained in Section 13(1A) are subject to those contained in Section 23(1). Section 23(1) provides that "in any proceeding" under the Act, if the Court is satisfied regarding the facts and circumstances mentioned in clauses (a) to (e) of sub-section (1), "then, and in such a case, but not otherwise, the Court shall decree such relief accordingly." The very language of this sub-section shows that it governs every proceeding under the Act and a duty is cast on the Court to decree the relief sought only if the conditions mentioned in the sub-section are satisfied, and not otherwise. In fact, it is difficult to see how one can make any distinction between sub-sections (1) and (1A) of Section 13 in so far as the applicability of Section 23(1) is concerned. Sub-section (1) of Section 13 is clearly subject to the provisions contained in Section 23(1). If that be so, sub-section (1A) would equate so subject. There is nothing in the language of the two sub-sections to justify the view that sub-section (1), but not sub-section (1A) is subject to the provisions of Section 23(1).

(11) It is urged by Mr. Vyas that the statement of objects and reasons of the Bill which was introduced in the Parliament would show that the object of the Legislature in enacting sub-section (1A) and in deleting Cls. (viii) and (ix) was not merely to confer on both the parties a right to apply for divorce but to ensure that on mere proof of the circumstances mentioned in clauses (i) and (ii) of sub-section (1A) a decree for divorce should automatically follow. I see no

justification for construing the relevant provisions of the Act by reference to the Statement of Objects and Reasons. In a series of cases the Supreme Court has held that the Statement of Objects and Reasons is not a part of the history of legislation but is merely an expression of what, according to the mover of the Bill, are the scope and purpose of the legislation and that parliamentary history of an enactment is not admissible to construe its meaning (See for example R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), and Jia Lal Vs. The Delhi Administration, .) In The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others, . Their Lordships reserve:

"Statements of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a Statute but in interpreting the Statute they must be ignored."

In P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another, , it is observed, while construing a constitutional provision, that it was common place that a Court cannot construe a provision of the Constitution on the basis of the statement of objects and reasons.

(12) In my opinion, therefore, it is not permissible to look at the statement of objects and reasons in order to find the true meaning of the provisions contained in sub-section (1A) of Section 13 or in order to ascertain whether sub-section (1A) is subject to Section 23(1) of the Act, I would, however, like to add that the statement of objects and reasons far from supporting the construction canvassed by Mr. Vyas emphasizes that the amendment was introduced with the limited object of enlarging the right to apply for divorce. That statement reads thus (Gazette of India Extraordinary, Part 2 Section 2, 1963, p. 86):

"The right to apply for divorce on the ground that cohabitation has not been resumed for a space of two years or more after the passing of a decree for judicial separation or on the ground that conjugal life has not been restored after the expiry of two years or more from the date of decree for restitution of conjugal rights should be available to both the husband and the wife as in such cases it is clear that the marriage has proved a complete failure. There is therefore, no justification for making the right available only to the party who has obtained the decree in each case. Hence the present Bill"

As I have, however, stated, one cannot construe the provisions of a statute by reference to the statement of objects and reasons for the intention of the Legislature must be gathered from the words used in the Statute. As is often said, the statement of the mover of the Bill is no more admissible than a speech made on the floor of the House, for ascertaining that intention. The amendment introduced by Act No. 44 of 1964 was moved by a private Member and the statement of objects and reasons of the Bill can, at the highest assumed to be the object which the mover had in mind when introducing the Bill but the statement of objects and reasons cannot be held to reflect the intention of the

Legislature in passing the Bill.

(13) My attention has been drawn by both the learned Counsel to a number of decisions which taken the view that one must so interpret the different provisions of a statute as to avoid rather than create a conflict or that one must construe the different provisions of an enactment harmoniously. I find it unnecessary to refer to those decisions because, in my opinion, there is no conflict between sub-section (1A) of Section 13 on the one hand and sub-section (1) Section 23 on the other. The two sub-sections deal with different matters, for whereas the former deals with the right of either party to the marriage to apply for divorce on the grounds specified therein, the latter deals with the obligation of the Court. A party may be entitled to apply for divorce under sub-section (1A) of S. 13 and after the amendment of 1964 it would be no defence to a petition for divorce that it has been filed by a party against whom a decree for judicial separation or a decree for restitution of conjugal rights had been passed. Even such a person has a right to apply for divorce under sub-section (1A). But to say that petition for divorce is maintainable at the instance of a person against restitution of conjugal rights has been passed is a far cry from saying that the petition must be allowed at all costs and in all events. I see no warrant in the language of sub-section (1A) for holding that it confers an absolute or unrestricted right on a party to apply for and obtain a decree of divorce. In a petition filed under sub-section (1A), not only is it open to the Court to consider whether the provisions mentioned in sub-section (1) of Section 23 are satisfied but the Court is under an obligation to consider the question. Section 23 is in the nature of an overriding provisions, not only for the reason that it governs "any proceeding" under the Act, but for the more important reason that it provides that it is only if the conditions mentioned in sub-section (1) are satisfied "but not otherwise" that the Court shall decree the relief sought.

(14) The consequences flowing from particular construction of statute are not always relevant in determining what interpretation one must put on the statute. It would however, be interesting to consider how, in practice, the newly conferred right would work if the construction canvassed by Mr. Vyas were accepted. Suppose, as in the present case, a decree for restitution of conjugal rights is passed in favour of the wife. The husband is expected to comply with the decree but greater his defiance of that decree, the better his chances of success in his petition for divorce. It is impossible to hold that the way to success in a petition for divorce can be paved by an outright defiance of the mandate of the Court.

(15) For these reasons, I am of the opinion that the learned trial Judge was in error in taking the view that the considerations arising u/s 23(1) are not relevant in deciding a petition filed under sub-section (1A) of Section 13 of the Act. The husband undoubtedly has a locus to file the present petition, for that is the right which the amendment gives to either spouse. Such a petition was liable to be dismissed in limine prior to the amendment because, it was then not competent to a spouse against whom a decree for restitution or for judicial separation was

passed, to apply for divorce on the ground that there was no compliance with the decree for the stated period. By reason of the amendment, the present petition is maintainable and it must be dealt with on merits.

(16) The question, therefore, is - and that was one of the issues framed by the learned trial Judge - whether the husband who has presented the petition for dissolution of the marriage by a decree of divorce is, as mentioned in clause (a) of sub-section (1) of Section 23, taking advantage of his own wrong. After discussing the evidence of the husband in the rest of this para and paras (17), (18). His Lordship answered the question in the affirmative and proceeded.

(19) In the result, I allow this appeal, set aside the decree passed by the trial Court and direct that the petition filed by the husband for dissolution of the marriage by a decree of divorce shall stand dismissed with costs throughout.

(20) Since I am setting aside the decree passed by the learned Judge the order that the husband should pay Rs. 60/- per month to the wife by way of maintenance must also lapse. That, however, will not affect the order of maintenance which was passed by the Court that awarded the relief of restitution of conjugal rights to the wife. If she is so advised, she may apply for enhancement of the amount of maintenance.

(21) Appeal allowed.