

(2010) 07 KAR CK 0063
In the Karnataka High Court
Case No : M.F.A. No. 11091 of 2008

Mangala Gowramma

APPELLANT

Vs

C. Gurulingaiah

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Family Courts Act, 1984 — Section 19 (1)

Hindu Adoption and Maintenance Act, 1956 — Section 13 (1) (ia), 13 (1) (ib)

Citation : (2011) 2 DMC 154 : (2010) 5 KarLJ 562 : (2011) 5 RCR(Civil) 84

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

Bench : Division Bench

Advocate : C.N. Raju and S. Shankarappa, for the Appellant;

Judgement

D.V. Shylendra Kumar, J.—This appeal is by the wife u/s 19(1) of the Family Courts Act, as she did not succeed before the I Additional Family Court, Bangalore in her effort to obtain maintenance for herself and for her son, then minor, in the suit filed by her in O.S. No. 192/2002 u/s 18 of the Hindu Adoption and Maintenance Act, which came to be dismissed in terms Judgment and decree dated 25.7.2006 passed in common along with M.C.No.495/2002 filed by the respondent - husband seeking for dissolution of marriage in terms of Section 13(1) (ia) and (ib) of Hindu Marriage Act, 1955 on the grounds of cruelty as well as desertion on the part of the wife.

2. While the petition filed by the husband for dissolution of the marriage came to be allowed under the common judgment, the suit for maintenance by the present appellant for herself and her minor son was dismissed. The appellant though was successful in getting over the decree for dissolution of the marriage by filing an independent appeal in M.FA No. 10350/2006 and this Court in terms of the Order dated 11.9.2009 setting aside the order passed by the Family Court, appellant had inadvertently, as in the wisdom of her learned Counsel, thought that interim application in that appeal would suffice for seeking payment of maintenance. However, when she could not get any relief regarding maintenance in the said

appeal, the appellant has now come up with this appeal to get over the order passed by the trial Court and to get maintenance.

3. The legal profession is considered to be a noble profession and the members of this profession are addressed as learned members. Unfortunately it is no more so. The profession has neither retained the nobility nor the members are necessarily learned.

4. Family courts have been established by the legislature with the object of providing an expeditious remedy for resolving the dispute arising in matrimony and in the relationship between the husband and wife and related matters.

5. The Legislature has made a conscious departure from the customary law, regarding dissolution of marriage between two Hindus, solemnized in accordance with the customary rights, and has provided an avenue to the dissatisfied couples who are unable to see eye to eye and who are unable to live together, to relieve the spouse at the receiving end from the tyranny, inhuman conduct and harassment by the erring spouse.

6. In the present case, while the husband complained of such acts, alleging that the wife was not only cruel, but also deserted him and therefore sought for dissolution of their marriage by a decree of divorce. But the wife on her part denied the same and sought for maintenance.

7. Unfortunately for the wife, before the Family Court she failed on both counts. While she has been successful in getting over the decree for dissolution of marriage, she is still fighting for maintenance for herself and their son. Law has established the Family Courts under the Family Courts Act, for exclusively dealing with family disputes with an object to provide expeditious salvation for such disputes, by the Family Court looking into the matter and providing relief to the parties at the earliest. The legislature also had its reservations in permitting the members of the legal profession to appear in the proceedings before the Family Court as a matter of right, which is otherwise exclusively given to them under the provisions of the Advocates Act, 1961.

8. Section 13 of the Family Courts Act, 1984 reads 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*.

9. It is not a right for a legal practitioner to appear on behalf of any of the parties to a proceeding before the Family Court and while that is the rule, proviso is the exception under which, if the Court considers it necessary in the interest of justice, it may seek legal advice of an *amicus curiae*. However this Court in Mrs.

Komal S. Padukone Vs. Principal Judge, Family Court, Bangalore City and Another, , considering the purport of Section 13 of Family Court's Act in the light of other provisions, has set out the circumstances under which the appearance of the Advocates in the proceedings before the Family Courts can be permitted. The present position is there is a via media not to eliminate appearance of legal practitioners as a rule but to examine the facts and circumstances of each case and pass orders in terms of the proviso to Section 13 of the Act. While it is not a right, it cannot be understood as a total bar either. Therefore appearance by members of legal profession is while not frowned upon per se, in a given case, it may become necessary for the court to permit appearance of a legal practitioner to represent a party, having regard to the circumstances of the case.

10. The present appeal and the manner in which the appeal has been conducted warrants a re-look at the provisions of Section 13 of the Act in the light of the facts of this case. The fact that the wife is fighting for securing maintenance from her husband ever since 1993, shows a sorry state of affair, a very pitiable and penurious state to which the parties are driven to in a matrimonial case. Unfortunately for the appellant, the present appeal has been filed belatedly in the year 2008 may be due to the inadvertence or irresponsibility of the counsel, in not preferring independent appeal against the judgment and decree of the court below in so far as it related to the suit for maintenance filed by the wife being dismissed, while filing the appeal against the very same Judgment in so far as it related to the decree for dissolution of marriage. Being not successful in her attempt through an interim application in that appeal, the wife has come up with this appeal and in the process, there has been a delay of 831 days.

11. Presentation of the appeal being defective, the Registry had listed the matter before the court for not rectifying the defects within the statutory period. This Court granted 4 weeks time for removal of defects in terms of the order dated 25.5.2009 and failing which the appeal to be dismissed, as per the peremptory order passed on that day. Due to noncompliance with the order, appeal stood dismissed.

12. Much later the counsel for the appellant came up with an application seeking for recalling that order along with an application for condonation of delay and this Court as per order dated 19.2.2010 not only condoned the delay but also recalled the order dated 25.5.2009, by restoring the appeal. But even thereafter the learned Counsel for the appellant did not care to rectify the defects in the presentation of the appeal and therefore, the matter had again been listed before this Court on 12.4.2010 for orders regarding non compliance of office objections. Registry has noticed as many as 7 defects as under:

- a. Counsel's name to be stated in cause title of vakalath and beside sign and enrollment number of the counsel to be stated;
- b. Why petitioner -2 in O.S. not party to MFA, clarify;
- c. C.C. of decree in O.S. NO. 192/02 to be furnished and not M.C.495/2002

- d. Residential address of respondent to be stated as in C.C. of judgment.
- e. Details to be stated in aggrieved para nature of suit to be correctly stated
- f. Valuation para to be stated and necessary DCF to be made good under Schedule I Article I of Karnataka Court Fees and Suits Valuation Act
- g. Full cause title to be stated in IA and number of days delay to be correctly stated in IA.

13. On 12/4/2010 this Court directed the matter to be listed finally after a week with the fond hope that the learned Counsel for the appellant waking up at least then would rectify the defects. However there was no improvement even there after. The Registry after noticing that even as on 7.7.2010, the defects have not been rectified, listed the matter before this Court today for orders regarding non-compliance.

14. In the wake of such developments, we find that it is highly desirable that, provisions of Section 13 of the Family Courts Act should be made more meaningful and there should be commensurate provisions made by the Legislature to ensure that appearance by legal practitioner in such matters is properly regulated. It is desirable that only legal practitioners who have sufficient experience at the Bar i.e. at least a minimum of 20 years of practice at the Bar and who are not less than 45 years of age and with some experience in life, alone should be permitted to appeals in matrimonial cases to represent the parties to the dispute.

15. The matrimonial disputes are human problems, which are more due to incompatibility of the parties to a marriage and invariably are charged with emotion, passion and many a times even with acrimony. It calls for special skills and a humane approach both on the part of the lawyer representing the party and on the part of the Judge examining such matters, to bring out a solution for the dispute, of course within the framework of the legal parameters and in the wake of the statutory provisions.

16. Such object can be achieved only if lawyers are well versed in legal methods and legal procedures and are also sufficiently experienced not only in the legal profession but also in life itself, while appearing in such matters and not any ignorant or incompetent lawyers who might have no experience also in life conducting such case.

17. Age limit and minimum number of years in the legal profession is a matter left to the wisdom of the legislation and it is a matter to be debated by the legislators and to be decided upon. But it is the need of the hour. Though separate Family Courts are established under the Family Courts Act, the object of the said legislation is not really being achieved in the wake of the mishandling of Family Court matters by incompetent lawyers who do not show any sense of duty or responsibility either.

18. The present appeal is a glaring example of such unprofessional conduct. A poor lady who is unable to maintain herself and a son to take care of, has been fighting for her maintenance ever since the year 1993 if not earlier, as disputes had arisen between the parties and resulted in the husband filing a petition u/s 9 of the Hindu Marriage Act in M.C. No. 34/93 for restitution of conjugal rights which came to be allowed, perhaps that is the reason as to why the wife held to be disentitled for the maintenance.

19. Be that as it may. It only demonstrates the plight of the litigants who suffer due to cumbersome legal procedures and their misery being compounded by incompetent lawyers mishandling their case and the parties not getting any relief and in the present case the appeal is still to see the light of the day, leave alone parties getting any relief!

20. Shri. Raju, learned Counsel for the appellant submits that though in the petition filed by the wife u/s 125 of Cr.P.C., the Court had ordered for payment of a sum of Rs. 500/- as maintenance, the respondent husband is not paying that amount either. While the court of law can only pass the order, if the order is not obeyed it is for the party through their counsel to approach the court for enforcement of the order in a manner provided under the law. Yet again it is reflective of failure of the system and to the utter misery of the poor hapless, helpless lady like the appellant.

21. We feel pained to notice such developments taking place in the society. Unfortunately the members of the bar also contributing in no small measure.

22. Sri. Raju learned Counsel for the appellant requests at least two more days time to correct the defects as pointed out by the registry and to remove the defects and the appeal to be made presentable etc.

23. The request though does not deserve any consideration having regard to the manner in which the matter is prosecuted, in the interest of justice and seeing the plight of poor litigant, we grant one more weeks time to the learned Counsel for the appellant to make the appeal presentable.

24. But in the wake of the above situation while the legislature may take steps for amending the law suitably, we direct a copy of this order to be sent to the Bar council of Karnataka who have the responsibility of regulating the conduct of the members of the Bar to deliberate the matter and to ascertain the possibilities for the Bar Council to regulate appearance of members of the Bar before the Family Courts, in any manner, pending suitable amendment.

25. Registrar General is directed to forward a copy such of this order to the a) Chief Secretary, Government of Karnataka, b) Secretary, Department of Law and Parliamentary Affairs, c) Secretary to Women and child Welfare Department, d) Secretary, Bar council of Karnataka for ensuring suitable steps to be taken at their end.

26. List the matter after 10 days for further orders to ascertain if the learned

Counsel for the appellant has removed the objections by then.