

(2006) 09 GUJ CK 0067

In the Gujarat High Court

Case No : Special Civil Application No. 19248 of 2006

Mr. Pushkar Navnitlal Shah

APPELLANT

Vs

Mrs. Rakhi Pushkar Shah

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14
Constitution of India, 1950 — Article 226, 227
Hindu Adoptions and Maintenance Act, 1956 — Section 18
Hindu Marriage Act, 1955 — Section 24
Hindu Succession Act, 1956 — Section 23, 29A, 6

Citation : AIR 2007 Guj 5 : (2007) 1 GLR 859

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : Nachiketa S. Joshi, for the Appellant; None for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—This petition, though styled as a petition under Articles 226 and 227 of the Constitution of India, is in effect a petition under Article 227 of the Constitution of India. The petitioner herein is the original applicant of application exhibit 29 made in HMP No. 341 of 2005 while the respondent herein is the original opponent in the application. Hereinafter the parties shall be referred to as per their respective description in the application for the sake of convenience.

2. The opponent during pendency of HMP No. 341 of 2005 moved an application for maintenance pendente lite under the provisions of Section 24 of the Hindu Marriage Act, 1955 (The Marriage Act). The applicant herein has already submitted his reply and his objections to the said application. The present application came to be moved by the petitioner-applicant under the provisions of Order XI Rule 14 of the Code of Civil Procedure, 1908 (CPC) for a direction to the opponent to produce the following five documents:

1 Latest balance sheet and profit & loss account of M/s. Rajkumar Agencies & Wholesale Pharmaceutical Firm.

2 Latest balance sheet and profit & loss account of M/s. Rajkumar Medical Stores Retail Firm.

3 Latest Income Tax return of brother of the Respondent Dr. Santosh Govardhanbhai Gujarathi.

4 Latest Income Tax return of brother of the Respondent Dr. Vinod Govardhanbhai Gujarathi.

5 Latest Income Tax returns of the Respondent.

After hearing the petitioners the Trial Court has rejected the said application vide impugned order dated 29.7. 2006 and hence this petition.

3. Mr. Sudhakar Joshi, appearing on behalf of the petitioner-applicant assailed the impugned order with a special reference to the following grounds taken in the memo of petition:

(vi) That, the impugned order is required to be set aside because the reasons given while rejecting the Ex. 29 are that, the documents are relating to family business. These documents are required in support of the defences taken by petitioner husband in his reply that, the Respondent wife is protected by the recent amendments in the Hindu Succession Act, 1956 which has also given equal rights to daughters in movable as well as immovable ancestral properties of parental family including rights in business as well as assets of the business of father.

(vii) That, the impugned order is illegal because reason is given that, the documents are relating to family business. By the recent amendments in the Hindu Succession Act, 1956, a uniform and comprehensive system of inheritance is established in favour of the Respondent wife. By these amendments discrimination on ground of gender is also sought to be removed from the law.

(viii) That, the impugned order is required to be set aside because the application for production of documents is pertaining to ancestral family business of the father's family. The Respondent wife has legal rights in business of the father, share in income, legal rights and interest in movable and Immovable properties of the father which is independent income of the wife, sufficient for support and to meet the necessary expenses for proceedings. By amendment in the Hindu Succession Act, 1956, oppression and negation of fundamental right or equality are removed, the Respondent wife has acquired equal rights in movable and immovable properties of father. By amendment she got social justice, equal right with man, personal, individual rights in properties. The woman has acquired right to partition the immovable property i.e. dwelling house of the joint family of the father also.

(ix) That, the Civil Court ought to have considered the equality envisage in

provisions of Section 24 of the Hindu Marriage Act, 1955. The petitioner husband wanted to prove on basis of the demanded documents that, the Respondent wife has independent income sufficient for her support and the necessary expenses of the proceeding and therefore, the application u/s 24 of Hindu Marriage Act, 1955 filed by wife is not tenable as per the provisions of Section 24 as well as by amendment in the Hindu Succession Act, 1956 by removing Section 6 and 23 of the old Act in favour of the woman.

(x) That, the Civil Court ought to have considered the equality before law provided in Section 24 of the Hindu Marriage Act, 1955 and equal rights in properties by amendment in the Hindu Succession Act, 1956 provided to Respondent wife which are required to prove on basis of the documents and the Court shall decide as per the procedure provided in Order 11 Rule 14 for the purpose of production of documents which are necessary to prove the defences of the petitioner husband.

3.1. The first contention was that in light of insertion of Section 29A by the State of Maharashtra in the Hindu Succession Act, 1956 (The Succession Act) the entire approach for determination of an application u/s 24 of the Marriage Act was required to undergo change and the lower Court had failed to take the same into consideration. In support of this submission, by referring to amended Section 6 of the Succession Act with effect from 9.9.2005, it was submitted that once a daughter has the same right in coparcenary property as if she would have had if she had been a son the application for maintenance requires to be decided accordingly. Referring to Section 24 of the Marriage Act, it was submitted that the said provision was for the purpose of support and necessary expenses of the proceedings and was equally applicable to either spouse and not only to the wife. That for this purpose the Trial Court was required to consider the source of income of each spouse and then determine as to whether wife was entitled to any maintenance or expenses of proceedings during pendency of proceedings.

4. He also submitted that the concept of maintenance u/s 18 of the Hindu Adoption and Maintenance Act, 1956 cannot be projected while determining an application moved u/s 24 of the Marriage Act. The next submission was that the procedural law had to be interpreted so as to advance the object of the substantial provision, which in this case was Section 24 of the Marriage Act. That, therefore the Court was required to exercise its power under provisions of Rule 14 of Order 11 in that direction. In support of the submissions he has placed reliance on the following decisions:

- (1) Sasanagouda Vs. Dr. S.B. Amarkhed and others,
- (2) P.A. Anbu Anandan Vs. D. Sivakumari,
- (3) Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others,
- (4) Manokaran @ Ramamoorthy Vs. M. Devaki,
- (5) Ashit Mukherjee Vs. Smt. Susmita Mukherjee (Nee Roy) and Another,

- (6) Pradeep Kumar Kapoor Vs. Sbailja Kapoor,
- (7) Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI),
- (8) Bharat Petroleum Corporation Ltd. Vs. P. Kesavan and Another,
- (9) Chand Dhawan (Smt) Vs. Jawaharlal Dhawan,

5. On merits it was submitted that the father and the brothers of opponent wife were carrying on a very lucrative business since nearly five decades and there were established firms having agencies of various reputed Pharmaceutical Companies; the business was of a joint family. Referring to paragraph No. 4 of the application exhibit 29, it was submitted that the opponent wife was a qualified person and had already been doing service prior to marriage. From this it was submitted that now a days it is very common that women are active in commercial activities and therefore the documents relating to the business carried on by the father and brothers were relevant being part and parcel of the family business wherein wife was entitled to a share. When a query was put to the learned Advocate in relation to this submission as to whether there was any evidence that opponent wife was actually involved in conducting the business in any manner or was having any share in any of the firms, it was submitted that on perusal of the documents like balance sheet and profit and loss account of the said business there was likelihood of her name appearing somewhere either in the expenses incurred or in any other manner. That these documents were necessary for the purpose of establishing that the application moved u/s 24 of the Marriage Act by opponent wife was not required to be granted.

6. Lastly it was submitted that the Trial Court had granted the application moved by the opponent wife for production of the salary certificate of the petitioner-husband but the same Court was refusing to grant the application moved by the applicant-husband and hence the impugned order was required to be quashed and set aside directing the Trial Court to grant application exhibit 29. This contention requires to be stated to be rejected. As the discussion which follows hereinafter will show, the Court in the first instance has to determine whether the documents whose production is sought are within the possession or power of the person from whom they are sought. Merely because an application qua a document which was admittedly within the possession of the applicant husband has been granted no such parity can be claimed merely because of provisions of Section 24 of the Marriage Act without fulfilling the pre-requisite condition laid down in Rule 14 of Order XI of the Code of Civil Procedure.

7. There can be no dispute as to various general propositions canvassed by the learned Advocate for the petitioner-applicant, but the High Court has a limited role to play in a petition under Article 227 of the Constitution. The jurisdiction available to the High Court is in the first instance to examine as to whether the impugned order suffers from any jurisdictional error; if not, whether the order is one which a reasonable person could have made in the facts and circumstances of the case. On going through the impugned order it is not possible to state that

the same suffers from any jurisdictional error or is perverse in any manner. It is equally well settled that even if on the same set of facts, circumstances, and evidence on record it is possible for the High Court to take a different view of the matter that by itself would not be sufficient to permit the High Court to intervene in exercise of powers under Article 227 of the Constitution. The High Court is not expected to function as an Appellate Court in these proceedings.

8. During the course of arguments reliance had been placed on the language employed by Order XI, Rules 12 & 14 of CPC to emphasise that the discretion which vested with the Court under Rule 14 was only after the documents had been produced and there was no discretion vested in the Court prior thereto. Rule 14 of Order XI of the CPC reads as under:

14. Production of documents - It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

On a plain reading of the said Rule it becomes apparent that it shall be lawful for the Court to order production of such documents which are in possession or power of any party to the suit and such direction can be made by the Court at any time during pendency of the suit provided the Court thinks it right to do so. The portion which follows the semi-colon relates to the power of the Court which is to be exercised after production of the documents. The Rule has been divided into two parts and to read as suggested by the Counsel that in the first part there is no discretion is not warranted by the plain language employed by the legislature. But even before the Court exercises powers vested in it the Court is required to be satisfied, at least prima facie, that such documents are in possession of or within power of the person who is to be called upon to produce such documents. As the facts at hand show the said condition cannot be said to have been fulfilled by the applicant.

9. Only for the limited purpose of examining whether any error has been committed in exercise of discretion which may result in grave error or palpable injustice one may look into the list of the documents called for. It becomes apparent that on going through the list there is no suggestion that these are documents which are required for the purpose of determination of the pending application moved by the opponent wife. When Rule 14 of Order XI of the CPC states that the Court may (shall be lawful) order production of any documents as the Court shall think right, the Rule only provides that the Court exercise its discretion after determining the relevancy or necessity of such documents having regard to any matter in the suit. The provision is not available to an applicant to make a fishing or roving inquiry, and in case of such an application, like in the present case, the Court is justified in rejecting such an application.

10. Before parting it is necessary to record that it is not possible to express any

opinion in relation to the provisions of Section 6 of the Succession Act and Section 29A of the Maharashtra Amendment to the Succession Act as admittedly those provisions are not applicable inter-vivos and come into play only at the stage of opening of a succession. Even if a daughter is equated with a coparcener of a Hindu Undivided Family it is well settled that no coparcener can predicate his share in the joint family property till actual partition takes place. Thus this contention, in context of the present proceedings, is, to say the least, misconceived.

11. The petition does not merit acceptance on any ground. The petition is accordingly summarily rejected.