

(1960) 07 RAJ CK 0003

In the Rajasthan High Court

Case No : Misc. Application in First Appeal No. 111 of 1959

Mst. Mukan Kanwar

APPELLANT

Vs

Ajit Chand

RESPONDENT

Date of Decision : 28-07-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 107, 24
Hindu Marriage Act, 1955 — Section 24

Citation : AIR 1961 Raj 51 : (1960) RLW 667

Hon'ble Judges : I.N. Modi, J

Bench : Single Bench

Advocate : Noratanmal, for the Appellant; Gumanmal, for the Respondent

Final Decision : Dismissed

Judgement

I.N. Modi, J.—This is an application filed by Mst. Mukan Kanwar for grant of alimony pending the decision of the appeal filed by her against the judgment of the learned District Judge by which he annulled the petitioner's marriage with the respondent Ajit Chand.

2. The contention of learned counsel as raised by him during the course of arguments before me is that the order dated the 19th March, 1958, passed by a learned single Judge in the petitioner's revision against the order of the learned District Judge refusing her alimony pending the proceeding in the trial court vide Mukan Kunwar Vs. Ajeetchand, stands, and that his client is entitled to receive the same alimony pending the decision of the appeal.

Learned counsel argues that the appeal filed by his client is nothing but a continuation of the suit, and, therefore, the order made in the pendency of the suit automatically enures for the duration of the appeal also. In support of his submission, learned counsel has drawn my attention to the decision of the Andhra Pradesh High Court in Jalasutram Annapurnamma Vs. Jalasutram Ramakrishna Sastry, I may state at once that this case offers no parallel to the

case before me inasmuch the wife there had not made any application for grant of alimony in the trial court and had made it only at the stage of appeal.

An argument there was raised on behalf of the husband that such an application could not lie u/s 24 of the Hindu Marriage Act, 1955 (XXV of 1955). This argument was repelled and it was held that the appellate court had jurisdiction to make an interim order in terms of Section 24 of the Act. The present case is somewhat different inasmuch as here the wife was allowed interim relief by an order of this Court during the course of the proceedings in the trial court, and the contention is raised that that order still continues in force.

3. I have given the matter my careful consideration and am disposed to hold the view that the order of this Court dated the 19th March, 1958, cannot be held to be effectual after the termination of the proceeding in the trial court. I am prepared to accept that an appeal is a continuation of the proceeding in the original court; but this principle cannot be over-stretched to hold that any interim order passed at the stage of the proceeding in the primary court automatically can operate even after the proceeding is decided by that court.

Let me illustrate what I mean by a simple example. Suppose in a suit for permanent injunction the plaintiff applies for an ad interim injunction in the trial court. The trial court refuses it, but on appeal the injunction is granted by the appellate Court. Such injunction will certainly have force during the pendency of the suit in the trial court; but as soon as the suit is decided against the plaintiff, the injunction must fall along with the suit. If thereafter the plaintiff files an appeal and if he should further seek the relief of a temporary injunction, the only proper course for him is to apply afresh to the appellate court for the grant of such injunction.

He cannot be heard to insist that as the appeal is a continuation of the suit, therefore, the order passed by the appellate court pending the decision of the suit in the trial court must hold good even after the suit happens to be decided by the trial court. I have, therefore, arrived at the conclusion that the correct legal position would be to hold that the order for temporary alimony passed by this Court earlier enured during the life of this suit in the trial court only and cannot survive it. I hold accordingly.

When I say this, however, I do not mean that it is not open to the wife in this, case to make an independent application for the grant of the relief which she seeks during the pendency of the appeal in this Court. As at present advised, I am clearly of the view that such an application can be made u/s 24 of the Hindu Marriage Act read with Section 107 C. P. C. If and when such an application is properly made in accordance with the rules of this Court, it would be considered on the merits, but so far as the present application is concerned, it fails and I hereby dismiss it.