
(1997) 10 AP CK 0044
In the Andhra Pradesh High Court
Case No : R.C. No. 120 of 1996

N. Sarada Mani

APPELLANT

Vs

G. Alexander and Another

RESPONDENT

Date of Decision : 21-10-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Divorce Act, 1869 — Section 10

Citation : AIR 1998 AP 157 : (1997) 6 ALT 270 : (1998) 1 APLJ 445

Hon'ble Judges : P.S. Mishra, C.J.; P. Ramakrishnam Raju, J.; G. Bikshapathy, J

Bench : Full Bench

Advocate : G. Ramesh, for the Appellant;

Judgement

P. Ramakrishnam Raju, J.—This is an application filed by the wife u/s 10 of the Indian Divorce Act (hereinafter referred to as "Act") seeking divorce on the ground that her husband, the first respondent, is living in adultery with the second respondent and that he treated her with cruelty, beating her and threatening to kill her. The first respondent-husband, while admitting his marriage with the petitioner on 28-6-1989, denied that he received any dowry nor treated the petitioner with any cruelty. He also further denied that he had any illicit intimacy with the second respondent. He alleges that the petitioner herself deserted him two years back. Of course, he does not oppose the petition for divorce, but rests contented by saying that because of the suspicious nature of the petitioner, he got vexed and therefore, he also prays the Court to pass a decree for divorce declaring dissolution of marriage between them. After filing the counter, he remained ex parte during the course of the trial.

2. The second respondent in her counter-affidavit states that she is a married woman living with her husband in 257, Housing Board Colony at Rajahmundry. The allegation that when the first respondent took the petitioner after marriage to his house in Hyderabad, to her surprise and dismay, she found the second respondent living in the same house is false. She further states that all these

allegations are false, vexatious and malicious.

3. The petitioner examined herself as P.W. 1, besides examining P.W. 2, her brother; while the second respondent examined herself as R. W. 1, besides examining R.W. 2. In addition, she marked Exs.B-1 to B-6.

4. The learned District Judge, on a consideration of the entire material on record, came to the conclusion that the petitioner failed to prove adultery muchless incestuous adultery as well as adultery, coupled with cruelty and desertion. However, he felt that the marriage tie between the petitioner and the first respondent has broken down irretrievably, and the parties have been living apart for the last more than 8 years, and as such, there is no justification to stand in the way of their seeking dissolution of the marriage, as it would be laudable for an orderly society to allow them to marry again the spouse of their choice and accordingly allowed the petition and granted a decree of divorce in favour of the petitioner against the first respondent subject to the confirmation of the High Court. This is how this case is posted before this Special Bench u/s 20 of the Act.

5. A Full Bench of this Court in YOUTH WELFARE FEDERATION represented by its Chairman, Youth Welfare Federation Vs. Union of India (UOI) and Another, , felt that Section 10 of the Act is inconsistent with Article 14 of the Constitution, inasmuch as pronounced discrimination between the husband and wife who is subjected to more onerous grounds to obtain divorce than the husband, and as such, in view of the sex discrimination, the offending portions of Section 10 of the Act which are easily severable without affecting the other parts of the Section, should be removed and accordingly struck down the words "incestuous" and "adultery coupled with" occurring in Section 10 of the Act. After tailoring, as done by the Full Bench, the Section reads as follows :

"10. When husband may present petition for dissolution :

Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may present petition for dissolution :

Any wife may present a petition to the District Courts or to the High Court praying that her marriage may be dissolved on the ground that, since the solemnization thereof her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman ;

or has been guilty of adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy or bestiality,

or of such cruelty as without adultery would have entitled her to a divorce a mensa et itoro,

or of desertion, without reasonable excuse for two years or upwards."

6. When read so, we noticed some anomalies. For instance, the wife may present a petition for dissolution of her marriage on the ground that her husband is guilty of such cruelty as without adultery would have entitled her to divorce a mensa et itoro or that he is guilty of desertion without reasonable excuse for two years or upwards. But, precisely these grounds are not available to the husband who intends to file a petition for dissolution of his marriage. Discrimination is writ large if the situation continues in a manner like this. Therefore, the situation certainly calls for remedial measures if possible without transgressing the well-established principles of statutory interpretation. In this judgment, we endeavour to reconcile the extreme situations brought into existence.

7. We are aware that it is well settled principle of law that while resorting to interpreting some of the provisions of a statute, Courts should be loath and adopt a construction which tends to make any part of the statute otious. Courts should always strive for arriving at a balanced view by adopting the rule of liberal construction so as to ensure its full meaning to all parts of the provision and make as far as possible the whole of it effective and operative. The Courts also would not usually disperse or restructure the Section unless it is essential or it is the only rational method by which the whole of it can be given its full meaning and content. Even when there is causes omissus, it is for the Parliament than Courts to remedy the defect. But, when bad and defective draftsmanship is noticed by the Court very often, it becomes imperative for the Court to probe into the Objects and Reasons and the intention of the Legislature to give effect to the provision instead of declaring it.as illegal or unconstitutional. There is a growing necessity for this attitude in changed times to cope up with the aspirations and desires of the people having regard to the socio-political and economic developments taking place in the country, which were not existing at the time when the statute was enacted. In Seaford Court Estates Ltd. v. Asher (1949) 2 ALLER 155, Lord Denning said :

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..... and then he must supplement the written word so as to give "force and life" to the intention of the legislature..... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out. He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

This view of Lord Denning has the approval of the Supreme Court in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, . Again the Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, ,

reiterated the same view. In *Magor and St. Meltons v. New Port Borough Council* 1951 (2) ALLER 839, it is pointed out :

"We sit here to find out the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analyses."

8. In *Pickstone v. Freeman PLC* (1988) 2 ALLER 803, it is observed :

"Application of mischief rule or purposive construction may also enable reading of words by implication when there is in doubt about the purpose which the Parliament intended to achieve. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words should have been inserted by the Draftsman and approved by Parliament had their attention been drawn to the omission before the Act passed into law."

In *R.v.R.*, (1991) 4 All ER 481, it is observed that "the literal reading of words would have frustrated substantially the purpose of enactment and would have led to the absurdity of supposing that the intention of legislation was to subject to licensing control, only those establishments conducted in the least offensive way and to leave those which pander more outrageously from any control or legal restraint."

9. A reading of Section 10 of the Act, 1869 shows that the Act remained on the Statute book without undergoing slightest change for all these years. The provisions of the Act are highly antiquated and had not kept pace with similar enactments like Hindu Marriage Act, 1955; Parsi Marriage and Divorce Act, 1936; Muslim Wives under the Dissolution of Muslim Marriage Act, 1939; Special Marriage Act, 1955 and Foreign Marriage Act, 1969 which also confer matrimonial reliefs. Therefore, the Full Bench of this Court exhaustively considered several important questions of law raised before the Court by bestowing its anxious thought. The institution of matrimony itself has undergone a sea change in the recent past from ritual and sacrament to reality and contract. Mutual respect, love and care are foundations for successful marriage. But, when the foundation are shaken, it is difficult to resurrect them and protect the edifice. Therefore, one school of thought always encourages relief of divorce on lighter and easier grounds. Even in Britain, Matrimonial Causes Act, 1973 has removed the vigours of earlier law that stood in the way of seeking divorce liberally. Although the Parliament in India has introduced the Christian Marriage and Matrimonial Causes Bill as early as in 1960, the same has not seen the light of the day for all these years for some reason or the other. The Government is sitting over the Bill saying that it is examining the question of bringing in, a comprehensive legislation on the subject.

10. There is no gainsaying that it is the duty of the Courts to ascertain and give effect to the will of the Parliament as expressed in its enactments. It is said that in the performance of this duty, the Judges do not act as computers into which are fed the statute and the rules of construction of statutes and from whom

issues forth the mathematically correct answer. The interpretation of statutes is a craft as much as a science and the Judges as craftsmen select and apply the appropriate rules as the tools of their trade. They are not legislators but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degree of further processing. A piece of social legislation conceived to give effect to the socio-economic object should not be narrowly construed so as to defeat its object. The Court must so construe an enactment from the point of view of furthering the social interest which is purpose of the legislation to promote.

11. It is well settled law that when the language is plain and unambiguous, the Court must give effect to it whatever may be the consequences. The words of the statutes speak the intention of the Legislature. The inconvenience and hardship are not irrelevant considerations. It is the function of the Court to interpret the law and not to legislate it. If the Court finds any deficiency in the statute, it is the duty of the Legislature to fill-up and it is no part of the duty of the Court to supply the deficiency. However, a careless omission made by the Legislature may be supplied in order to give the Legislature an effective meaning and to prevent it from becoming devoid of effect. The construction which would lead to an anomalous result should not be accepted. But, however, it is the duty of the Court to give coherence to the statutory provisions set within the bounds imposed by a fair reading of a legislation.

12. *Argumentum inconvenienti*, principle of hardship, absurdity, have no application, while interpreting the statutes. But, however the cardinal principle is that the statute should be interpreted in such a way as to avoid absurdity and to have harmonious effect. The Court must construe a section, unless it is impossible to do so to make it workable rather than make it meaningless. Thus, an attempt must always be made to reconcile the relevant provision as to advance the remedy by the statute. Therefore, where the literal meaning of the words in a statutory provision, would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the liberal construction so as to give meaning to all parts of the provisions and to make whole of it effective and operative. Especially in cases of Pre-constitutional statutes. Courts are to find and follow the interpretation which will be in tune with the provisions of the Constitution and thereby avoid striking down the Pre-constitutional statute being in conflict with the Part III of the Constitution. If the language of Act is such as to admit of a choice between two constructions, either of which is unreasonable, one ought to unquestionably be inclined to that construction which is in consonance with the common law than to that which is dissonant from it (*Rex. v. Salisbury* (1901) 1 *Kin Ben* 573). Where there is a choice between the adoption of wide and a narrower application, one has to see from the Act whether the narrower or the wider meaning was intended by the Legislature. If the words used are capable of a narrow as well as broad construction, each construction being reasonably possible and it appears that the broad construction would help the furtherance of the object, then it

would be necessary to prefer the broad construction.

13. In case where the Courts are dealing with the rights of spouses, it should be interpreted in such a manner as both the parties will have the equal rights for remedies and thus the Court should adopt a beneficent rule of construction. It is permissible for the Court to strike down as a statute if it is in conflict with the Part III, but however, if it is possible to harmonise and synthesise the provisions of a Pre-constitutional enactment in conformity with the provisions of the Chapter III, it is always desirable.

14. As already stated, reference to the circumstances existing at the time of the passing of the Statute, does not, however, mean that the language used, at any rate, in modern statute, should be held to be inapplicable to social, political and economic developments or to scientific inventions not known at the time of passing the statute. Therefore, a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of the enactment of the Statute.

15. Therefore, we are of the opinion that the grounds which are available to the wife u/s 10 should also be made available to the husband in a petition filed by him seeking divorce and the Parliament should immediately take note of the discrimination writ large :between the grounds available to the wife and the husband in a petition for divorce. It is for the Parliament to take note of this anomaly and fill-in the void by suitable legislation. A pre-constitution discrimination by the provision in Section 10 of the Indian Divorce Act, 1869, it is rightly held by the Full Bench in Youth Welfare Federation case (supra), cannot survive the test of equality between men and women as envisaged under Articles 14 and 15 of the Constitution of India. Unless special provision is made for men and women as contemplated under Article 15(3) of the Constitution of India and which passes the test of reasonableness for survival it is irresistible that men and women have to be provided similar grounds for dissolution of marriage except one which is unique for men or women in the existing provision after the words "incestuous" "adultery coupled with" at two places in the said section are omitted, read with the existence of such words in the section which separate the grounds for husband and wife for seeking dissolution of marriage, the above cannot be achieved. To harmonise thus the surviving provision of Section 10 for dissolution of marriage, since dissolution of marriage has to be continued as a provision in the Indian Divorce Act, such words in the Section which appear to separate the grounds for divorce by dissolution of marriage between husband and wife have to be deleted and the sentences organised to read harmoniously in a manner that common grounds become available to husband and the wife. Section 10 as it was originally enacted was not suffering any anomaly and literal construction could be done to give full meaning to all the words used for providing the grounds for dissolution of marriage. Deletion the words of discrimination by the Full Bench in Youth Welfare Federation case (supra), we have reasons to hold is not intended to introduce a new kind of discrimination

between the husband and the wife while seeking dissolution of marriage. That we read the Section to introduce the grounds in the second part of the Section 10 by overlooking the words which appear to introduce separate grounds for husband and wife as common grounds for dissolution of marriage both for husband and wife is no violation either of the intention of the Legislature or the statute as such. We thus hold as held by us earlier in the judgment that the Parliament should immediately take note of the discrimination writ large between the grounds available to the wife and husband in a petition for divorce. So long a new legislation does not come to occupy the field, the grounds available to the wife for divorce shall be, available to husband as well. We do so, as unquestionably that construction which is in consonance with the common law and in our country with the Constitution of India has to be accepted which would promote the intentions of the Constitution and the common law and not one which would conflict with the same. Suffice it for the present that the wife, who is the petitioner herein, has established that there is desertion by her husband without reasonable excuse for two years or upwards. On this basis, we are inclined to affirm the decree for divorce granted by the learned District Judge although not on the ground that there is irretrievable incompatibility between the spouses. The decree is accordingly affirmed. No costs.