

(2004) 10 BOM CK 0116

In the Bombay High Court

Case No : Writ Petition No. 1866 of 2004

Nagorao Onkar Tayade

APPELLANT

Vs

Ranjana Nagorao Tayade

RESPONDENT

Date of Decision : 14-10-2004

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 18, 19
Hindu Marriage Act, 1955 — Section 25

Citation : (2005) 2 ALLMR 218 : (2005) 2 BomCR 185 : (2005) 2 DMC 17

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : C.A. Joshi, for the Appellant; A.S. Mardikar, for the Respondent

Final Decision : Allowed

Judgement

Dharmadhikari B.P., J.—Very small issue falls for consideration of this Court, hence, Rule. Rule made returnable forthwith and heard finally by consent of parties.

2. The challenge in this petition under Articles 226 and 227 of Constitution of India is to the order dated 2-4-2004 passed by 2nd Joint Civil Judge, Senior Division, Akola in Special Civil Suit No. 143/2003. By the said order, the learned trial Court has rejected the application, Exhibit-19 which was preliminary objection to the tenability of suit filed by present petitioner/husband. Necessary facts in this respect can be briefly summarized as under:

3. The above mentioned RCS 143/2003 is filed by present respondent, a divorced wife of petitioner, u/s 18 of Hindu Adoption and Maintenance Act read with Section 25 of Hindu Marriage Act for grant of maintenance. By the said application, she has stated that she is married with petitioner and their marriage took place on 27-2-1994. By prayer clause, she has asked for a decree of past arrears of maintenance of Rs. 1,08,000/- and a direction to pay and to continue to pay Rs. 3,000/- as maintenance every month in future. The petitioner

appeared in response to the said suit and filed his written statement. In his written statement he has pointed out that he had filed Hindu Marriage Petition No. 72/2001 before the Court of Civil Judge, Senior Division, at Kalyan for dissolution of marriage u/s 13(l)(ia) of Hindu Marriage Act and the said Court allowed his petition by its judgment dated 30th January, 2002 and accordingly the marriage between them is already dissolved. He further pointed out that in such circumstances, the Civil Court at Akola, which has taken cognizance of RCS No. 143/2003 had no jurisdiction and the matter ought to have been filed before the Civil Judge, Senior Division, at Kalyan, who granted the decree of divorce.

4. It appears that on 12-3-2004 the petitioner, filed a preliminary objection and pointed out that the Court at Akola had no jurisdiction and the proceedings ought to have been filed before Kalyan Court u/s 25 of Hindu Marriage Act. The learned trial Court has considered said preliminary objection (Exhibit 19) and has rejected it on 2-4-2004.

5. I have heard Advocate C.A. Joshi for petitioner/husband. By placing reliance upon the judgment of this Court reported at 1983 Mh.L. J. 754, Jagdish Premji Ruparel v. Bhanumati Jagdish Ruparel, he contends that it is only the Court at Kalyan which had jurisdiction to take cognizance of application u/s 25. He contends that the learned Court below has not followed the law correctly. He contends that Section 19 of Hindu Marriage Act is considered by this Court and the Court has found that Section 25 is worded differently and jurisdiction to entertain application u/s 25 is given to the Court exercising jurisdiction at the time of passing of any decree or at any time subsequent thereto. He states that Section 19 speaks of petitions to be filed under Hindu Marriage Act and relies upon the observations of learned Single Judge, as contained in para Nos. 16, 17 and 18 of that judgment. The said observations read as under :

"16. I am unable to agree with the contention of the non-applicant-wife that the word "any Court exercising jurisdiction under this Act" could be referable to the one defined in Section 19 of the Act. In fact, I feel that the word "any Court" is used advisedly to include any Court within the definition of Section 13-B. However, once a petitioner for substantive relief is filed in one of the courts who have jurisdiction to deal with the substantive relief as defined u/s 19, then the consequential relief under sections 24, 25 and 26 have to be sought for only from the Court exercising jurisdiction at the time of passing a decree or subsequent thereto.

17. It also cannot be lost sight of that Hindu Marriage Act is a special Legislation codifying the ancient Hindu Law. The object of codification of the particular branch of law is that on any matter specifically dealt with by it, the law should be sought for in the codifying enactment itself. Thus, apart from other enactment, such as Hindu Adoption and Maintenance Act, 1956, where Section 18 also gives a right to a Hindu wife to claim maintenance, the proceedings under the Hindu Marriage Act, 1955 will have to be strictly dealt with under that Act and not under any other law. Since in my view, Section 25 of the Hindu Marriage Act

itself prescribes the forum before which the consequential relief of permanent alimony is to be secured, no reference to Section 19 of the Hindu Marriage Act is necessary, particularly when it only refers to petition under the Act viz. those governed by sections 9 to 13-B.

18. In the facts and circumstances of the case, it is apparent that for filing a petition for substantive relief, the Court at Nagpur as well as at Sambalpur had jurisdiction to deal with the matter. However, the decree for dissolution of marriage has been passed by the Court at Sambalpur and it is that Court which at the time of passing a decree or subsequent thereto could also grant the consequential relief of permanent alimony u/s 25 by an application made to it. The Court at Nagpur even though it has original civil jurisdiction to deal with the substantial matrimonial relief, cannot be approached for the consequential relief of permanent alimony u/s 25 of the Act. The Court at Sambalpur alone can deal with that subject in the facts and circumstances of the case."

6. As against this, Advocate Mardikar appearing for respondent/wife states that the wife is residing with her parents at Akola and, therefore, she can maintain the proceedings at Akola. He points out that proceedings filed by him are also u/s 18 of Hindu Adoption and Maintenance Act. He contends that Section 25 of Hindu Marriage Act has application only when the Court passes a decree in proceedings under the provisions of Hindu Marriage Act. According to him, right of respondent/wife to claim maintenance u/s 18 is not affected by said Section 25. He relied upon the judgment of this Court reported at Panditrao Chimaji Kalure Vs. Gayabai Panditrao Kalure, , and Apex Court ruling reported at 1993 Bom.C.R. 487: 1993 Mh.L.J. 1731, Chand Dhawan v. Jawanharlal Dhawan.

7. The arguments of Advocate Mardikar about scope of Section 25 need not detain this Court more because here it is an admitted position that the marriage between the parties has been dissolved by the competent Court at Kalyan under the provisions of Section 13(I)(ia) of Hindu Marriage Act. The argument that if marriage is dissolved in any other manner, which is not prescribed under the Hindu Marriage Act, Section 25 of the Hindu Marriage Act about the bar of jurisdiction relied upon by petitioner, is not applicable, therefore, has no relevance in the facts and circumstances of the present case. In so far the ruling reported at Panditrao Chimaji Kalure Vs. Gayabai Panditrao Kalure, , is concerned, in that case, the defendant/husband filed written statement contending that he had divorced his wife by executing a Divorce deed on 5-5-1967 as per prevailing customs. It appears that the trial Court there granted maintenance of Rs. 60/- per month to the wife and husband preferred No. 88/1975 before the District Judge. The learned District Judge remanded the matter back to the trial Court to find out whether marriage between the parties was subsisting on the date of filing of the suit. It appears that thereafter the learned lower Court recorded the evidence and sent the matter to District Court and the District Court found that there was a divorce deed between the parties as per the customary practice. The learned District Judge thereafter considered

the issue of grant of maintenance and found that petition for maintenance u/s 18 of Hindu Adoption and Maintenance Act, 1956 can be considered even u/s 25 of Hindu Marriage Act. The learned Single Judge, after hearing both the sides, found that one a wife is divorced, her remedy is to seek maintenance under Hindu Marriage Act and not under Hindu Adoption and Maintenance Act. Para 23 of the said judgment is relevant and it reads as under:

"I have heard both the learned Counsel at length, with regard to the aforesaid two substantial questions of law raised by Mr. Milind Patil, appearing on behalf of the appellant in Second Appeal No. 73/1984. The judgment of the Apex Court in the case of Chand Dhawan (supra) makes it abundantly clear that Section 18 of the Hindu Adoptions and Maintenance Act operates in a different level and the marriage has to be subsisting and in that case, the marriage was subsisting. In any event, in view of the judgment of the Apex Court in the case of Chand Dhawan (supra) there is absolutely no ambiguity. There is no question of interchangeability, the same cannot be permitted so as to destroy the distinction on the subject of maintenance. Therefore, once a wife is divorced, her remedy to seek maintenance is at the time of divorce in a matrimonial petition or subsequent thereto is only under Hindu Marriage Act, 1955 and she cannot have any recourse under Hindu Adoptions and Maintenance Act, 1956, in as much as, the precondition for application of Hindu Adoptions and Maintenance Act, 1956, for a wife to seek maintenance is that the marriage must be subsisting. Under these circumstances, I answer the first substantial question of law to the effect that a divorced wife cannot claim any maintenance under Hindu Adoptions and Maintenance Act, 1956, and her only remedy is under Hindu Marriage Act, 1955."

8. Advocate Mardikar has also relied upon the judgment of Apex Court, reported at 1993 Mh.L.J. 731 (supra). This ruling is considered in above referred judgment and it also does not help the present respondent/wife. Portion of para No. 23 of the said judgment is relevant which reads as under:

"So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated on the pendency of a litigation of the kind envisaged under sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity of divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the Court does so by passing a decree for or against her. On or at the time of the happening of that event, the Court, being seisin of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the Court retains the jurisdiction at subsequent stages to fulfil this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The Court further retains the power to change

or alter the order in view of the changed circumstances. Thus the whole exercise is within the gambit of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of* the husband or the wife, as the case may be, dependent on the Court passing a decree of the kind as envisaged under sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial Court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same sociolegal scheme revolutionizing the law applicable to Hindus."

Similarly, para 25 of the said ruling is important and the said para reads as under:

"25. We have thus, in this light, no hesitation in coming to the view that when by Court intervention under the Hindu Marriage Act, affectation or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that Court, to be altered or modified as further situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification u/s 18(1) of the Hindu Adoptions and Maintenance Act. The Court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation interchangeability cannot be permitted so as to destroy the distinction on the subject of maintenance."

9. Thus, from the law as emerging, it is apparent that once the marriage is dissolved, Section 18 of Hindu Adoptions and Maintenance Act has no application and the respondent/wife has to move an application only u/s 25 of Hindu Marriage Act. That application must be moved by her in the Court of Civil Judge, Senior Division, Kalyan, which has granted the decree of divorce in HMP No. 72/2001. Thus, the view taken by the learned trial Court is totally erroneous and unsustainable. The impugned order dated 2-4-2004 is, therefore, quashed and set aside. The objections raised by the petitioner/husband, vide Exhibit 19, in RCS No. 143/2003 before the 2nd Joint Civil Judge, Senior Division, Akola, is hereby allowed. The said civil suit is dismissed. Rule made absolute in the above terms with no order as to costs.