

(2016) 09 PAT CK 0082

In the Patna High Court

Case No : Civil Miscellaneous Jurisdiction No. 915 of 2016

Priyanka Devi

APPELLANT

Vs

Kaushal Kishor Gautam

RESPONDENT

Date of Decision : 26-09-2016

Acts Referred:

Hindu Marriage Act, 1955 — Section 24

Citation : (2017) 172 AIC 411 : (2017) 1 BBCJ 76 : (2017) 1 CivillJ 553 :
(2016) 4 PLJR 925

Hon'ble Judges : Mr. Mungeshwar Sahoo, J.

Bench : Single Bench

Advocate : Mr. Chandra Kant, Advocate, for the Appellant; Mr. Rakesh Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Mungeshwar Sahoo, J. - I have already heard the learned counsel, Mr. Chandra Kant for the petitioner and the learned counsel, Mr. Rakesh Kumar for the respondent.

2. This Civil Miscellaneous application has been filed by the wife-petitioner for setting aside the order dated 08.06.2016 passed by Principal Judge, Family Court, West Champaran, Bettiah in Divorce Case No.138 of 2007 whereby the learned Court below rejected the application filed by the petitioner for recovery of arrears of maintenance amount of Rs.2,27,200 from the respondent-husband and till then stay of proceeding.

3. It appears that the husband-respondent filed the aforesaid divorce case under Section 12(i)(d) of the Hindu Marriage Act. The cases of the parties are not required to be mentioned here. The wife appeared and is contesting the said case. During the pendency of the said divorce case, an application under Section 24 of the Hindu Marriage Act was filed by the wife who is petitioner herein. After hearing both the parties, the learned Family Court by order dated 26.06.2009

directed the husband respondent herein to pay Rs.4,000 per month as maintenance and also Rs.15,000 lump sum as litigation cost.

4. This order dated 26.06.2009 was challenged before this High Court by the husband in civil revision. The High Court set aside the order and remanded the matter directing to pass a fresh order after recording finding on the question of income of husband. After remand, the Family Court by order dated 13.01.2010 recorded finding about the income and then again directed the husband to pay Rs.4,000 as maintenance and Rs.15,000 as litigation cost. Against the said order, the husband filed CWJC No.20647 of 2011. After hearing both the parties, the said writ application was dismissed on 21.06.2012 which is Annexure 2 to this Civil Miscellaneous application.

5. After the above order, the husband filed an application before the Family Court for recall of the order dated 13.01.2010. The said application was rejected by the Family Judge on 27.07.2013 and the husband-respondent was directed to comply the order.

6. On 02.08.2014, the wife filed application for directing the husband to pay Rs.1,76,000, the arrears of maintenance, stating that because of paucity of money, she is unable to contest the case and if maintenance is not paid, she may be permitted to leave the case. Thereafter, the husband again filed CWJC No.2161 of 2014 which was dismissed on 21.04.2015 and while dismissing this writ application this Court directed the Court below to decide the case within six months. Again, CWJC No.1471 of 2016 was filed by the husband-respondent for directing the Court below to decide the matter as early as possible which was again dismissed by order dated 16.05.2016. Thereafter, the wife-petitioner filed application praying for a direction to the husband to pay the arrears of maintenance as directed by the Court. The arrears of maintenance is Rs.2,27,200/- and the wife has no money to contest the case but the learned Court below by the impugned order rejected the application and proceeded to decide the divorce case.

7. The learned counsel for the petitioner submitted that the order under Section 24 of the Hindu Marriage Act was passed in the year 2009. After some payment, the husband stopped the payment of maintenance. He challenged the order repeatedly before the High Court which has already been rejected but instead of paying that huge amount of arrear, the husband is proceeding for the disposal of the case expeditiously. The petitioner has no money, therefore, she is unable to contest and if amount is not paid, as directed by the Court, it will be denial of justice to the petitioner.

8. On the other hand, the learned counsel for the respondent submitted that there is already an order by this Court for expeditious disposal of the divorce case. It is incorrect to say that the wife-petitioner has got no money to contest the suit. According to the learned counsel, the wife is not entitled to get the maintenance amount. It cannot be said that unless the arrear amount is paid,

the case cannot be decided. The Court below is proceeding to decide the case, therefore, the further proceeding cannot be withheld or stayed because of non-payment of the arrears of maintenance and also the current monthly maintenance. The Court below is deciding the case in view of the direction of the High Court. If the petitioner has no money then how she is filing this case before the High Court. Therefore, the intention of the wife is only to delay the disposal of divorce case. Moreover, the order passed by the Court below is legal and valid, therefore, it cannot be interfered with in exercise of supervisory jurisdiction.

9. It is admitted fact that the husband has been directed to pay Rs.4,000 per month as maintenance under Section 24 of the Hindu Marriage Act in the year 2009. After some payment, he stopped the payment. Now, there is huge amount of arrears as claimed by the petitioner and this amount, which is an arrear, is not denied by the husband. The wife is repeatedly filing the application and praying for directing the husband to comply the order otherwise she will be unable to contest the suit. The order passed by the Family Court directing the husband to pay the arrears of maintenance and current monthly maintenance has been upheld by the High Court but the husband is not complying the direction of the Court which is upheld by the High Court. The divorce suit is proceeding. Since the wife had no source of income for her maintenance and to defend her in the divorce suit, the Court directed the husband to provide the cost of maintenance and litigation. If the cost of maintenance and the litigation cost is not paid by the husband then the wife will be defenceless. In other words, she will be unable to defend the case filed by the husband and the case will be ex parte against her. However, from the facts stated above, now it becomes clear that intentionally the husband is not obeying the order of the Court and thereby he is depriving the wife of her right to defend the case. In one hand, he is insisting the Court to proceed and decide the case expeditiously and on the other hand, he is disobeying the order of the Court. This conduct of the husband shows that his intention is to get the case decided without the defence of the wife. No doubt, wife can file a petition under Order 21, Rule 37 C.P.C. for recovery of the amount and the husband can be proceeded against the contempt of Court also for disobedience of the Court's order, but Section 24 of the Hindu Marriage Act empowers the Court to make an order for maintenance and for expenses to a needy and indigent wife. If the amount is not made available then the very object and purpose of this provision shall be defeated. Wife cannot be directed in all cases to proceed for execution for recovery of the amount which will take much time and thereby again it will delay the disposal of the case. Law is not so powerless to bring the husband to book. If the husband has failed to make the payment, as directed by the Court, his defence/case can be struck out. The person who is disobeying the order of the Court cannot be allowed to be heard on merit considering his conduct. After all he is approaching the Court for justice as claimed by him but at the same time, Court has to administer justice to both the parties. The wife is also entitled equally to get justice and for that she needs the maintenance and litigation cost and, therefore, the Court has directed the

husband. If the husband is not obeying the order of the Court then why the Court should oblige and proceed to hear his case.

10. A Division Bench of the Himachal Pradesh High Court in the case of Jai Singh v. Smt. Khimi Bhiklu, AIR 1978 Himachal Pradesh 45 has held that the husband who was ordered to pay interim alimony and expenses pendente lite, deliberately and contumaciously flouted the order, it is open to the court to pass an order striking out the defence of the husband by invoking inherent powers under Section 151 C.P.C.

11. The Odissa High Court also expressed the same view in the case of Ghasiram Das v. Srimati Arundhati Das, AIR 1994 Orissa 15. It has been held that the purpose of Section 28 could not be allowed to defeat by driving the indigent spouse to enforce the order of maintenance pendente lite in an execution proceeding in every case. The court in appropriate circumstance can enforce its order by striking out the pleadings of defaulting party.

12. The Kolkata High Court in AIR 1962 Calcutta 88 Smt. Anita Karmokar v. Birendra Chandra Karmokar has held that "the object of Section 24 of the Hindu Marriage Act is to enable an indigent spouse, who has no independent means or income of her own, to conduct her defence without being handicapped in any way by poverty. A husband, on whom an order under Section 24 has been made, but who refuses to pay under the order and aspires yet to go on with his suit must not be encouraged. The English principle, followed in matrimonial causes, of staying the suit in such circumstances is the best way of dealing with such a situation and the said principle should be applied in proceedings under the Hindu Marriage Act, 1955 as a rule of justice, equity and good conscience."

13. A Division Bench of High Court of Punjab in the case of Smt. Malkan Rani v. Krishan Kumar, AIR 1961 Punjab 42 has held that "if the court directed the husband under Section 24 of the Hindu Marriage Act to pay the wife maintenance pendente lite and the litigation expenses, the court has inherent power to stay the proceedings till the husband paid the amount which he has been ordered to pay under Section 24. The enforcement of the order otherwise than by execution is not prohibited or excluded by Section 28."

14. In view of the above decisions of the various High Courts, in my opinion, the orders passed by the Court below, in not staying the further proceeding till the arrears and current monthly maintenance and litigation cost is paid by the petitioner, will occasion failure of justice and put the wife in a position as if she has not defended the case. As stated above, intentionally the husband is disobeying the order of the Court.

15. In the result, this Civil Miscellaneous application is allowed with cost of Rs.10,000 to be paid by the husband respondent to the wife-petitioner. The impugned order is set aside. The further proceeding in Divorce Case No.138 of 2007 pending in the Court of Principal Judge, Family Court, West Champaran shall remain stayed till the arrear amounts of maintenance and aforesaid cost is

deposited/paid by the husband to the wife within a reasonable time. The Court shall fix the said reasonable time and if within that reasonable time, the arrear and current maintenance with cost awarded above is not deposited or paid, the Court shall dismiss the divorce case for disobedience of the order of the trial court merged in the order of the High Court.