
(2016) 12 PAT CK 0047

In the Patna High Court

Case No : Matrimonial Reference No. 1 of 2007

Ranjana Mina (Siman) Jones

APPELLANT

Vs

Arun Kumar Stauly

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Divorce Act, 1869 — Section 17

Citation : (2017) 171 AIC 703 : (2017) AIR(Patna) 105 : (2017) 1 BBCJ 400 : (2017) 1 BLJud 227 : (2017) 1 PLJR 282 : (2017) 1 RCRCivil 1006

Hon'ble Judges : Hemant Gupta, ACJ., Vikash Jain and Ahsanuddin Amanullah, JJ.

Bench : Full Bench

Advocate : Rajesh Kumar and Mrs. Bandana Sinha, Advocates, for the Petitioners

Final Decision : Disposed Off

Judgement

Hemant Gupta, Actg. C.J. - The present reference has been sent by Principal Judge, Family Court, Bhojpur, Arrah on 24th of February, 2007 for confirmation of decree of divorce in Divorce Suit No. 33/98 instituted on 2nd of November, 1998.

2. The decree for divorce was granted on 5th of June, 2006 and thereafter the matter has been referred to this Court under Section 17 of the Indian Divorce Act, 1869, since repealed by Central Act No. 51 of 2001 with effect from 3rd of October, 2001. The said reference was sent to this Court for confirmation of decree of divorce in view of the decision of this Court in a case reported as Mrs. Larley v. Mr. John @ Johny C.A., 2004 (1) P.L.J.R. 564 wherein, it has been, inter alia, held that right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences, although it may actually be exercised when the adverse judgment is pronounced.

3. We find that said judgment is not applicable to the facts of the present case as Section 17 of the Divorce Act, 1869 was substituted vide Central Act No. 51 of

2001 with effect from 3rd of October, 2001. As per the original provision of Section 17, the decree for divorce could not be given effect to unless it is confirmed by the High Court. Such provision stands substituted with other provision conferring power on the High Court to remove a suit filed under the provisions of the said Act itself under the substituted Section 17 of the Act. Section 55 of the Divorce Act, 1869 as amended, confers right of appeal to an aggrieved person against the decree granted by the District Judge.

4. The Full Bench of this Court was seized of a matter where the decree for divorce was granted on 30th of November, 1998. It was, thus, held that in view of the decree having been granted prior to the amendment in the Divorce Act by Central Act No. 51 of 2001, such decree of divorce cannot be given effect to unless it is confirmed by the High Court. The Court relied upon the Supreme Court judgment reported as *Garikapati Veeraya v. N. Subbiah Choudhry and others*, AIR 1957 Supreme Court 540. But in the present case, the decree petition for divorce was instituted in the year 1998 but decree for divorce was granted in the year 2006. In 2006, the aggrieved person had a right to file an appeal against the order passed by the District Judge. Since the right of appeal has been conferred instead of confirmation, therefore, it does not affect any of the vested right of any of the parties to avail a particular forum. The fact is that now an appeal lies to the High Court instead of reference. The right of appeal is statutory right as it exists on the date of filing of suit but such right can be curtailed or abolished by Statute. It is so held in *Nahar Industrial Enterprises Limited v. Hong Kong and Shanghai Banking Corporation*, (2009) 8 SCC 646, wherein the Court said to the following effect:-

"126. The right of appeal has been recognised by judicial decisions as a right which vests in a suitor at the time of institution of original proceedings. The Privy Council in *Colonial Sugar Refining Co. v. Irving*, 1905 AC 369 noted that: (AC p. 372)

"... To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure."

127. When a person files a civil suit his right to prosecute the same in terms of the provisions of the Code as also his right of appeal by way of first appeal, second appeal, etc. are preserved. Such rights cannot be curtailed, far less taken away except by reason of an express provision contained in the statute. Such a provision in the statute must be express or must be found out by necessary implication. In *Garikapati Veeraya v. N. Subbiah Choudhry*, AIR 1957 SC 540 this Court opined: (SCC p. 553, para 23)

"23. From the decisions cited above the following principle clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

(See also Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528)"

In another judgment reported as Kamal Kumar Dutta and another v. Ruby General Hospital Ltd. and others, (2006) 7 SCC 613 the Supreme Court held as follows:-

"22. So far as the general proposition of law is concerned that the appeal is a vested right there is no quarrel with the proposition but it is clarified that such right can be taken away by a subsequent enactment, either expressly or by necessary intendment. Parliament while amending Section 100-A of the Code of Civil Procedure, by amending Act 22 of 2002 with effect from 1-7-2002, took away the Letters Patent power of the High Court in the matter of appeal against an order of the learned Single Judge to the Division Bench. Section 100-A of the Code of Civil Procedure reads as follows:

"100-A. No further appeal in certain cases.-Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

23. Therefore, where appeal has been decided from an original order by a Single Judge, no further appeal has been provided and that power which used to be there under the Letters Patent of the High Court has been subsequently withdrawn. The present order which has been passed by CLB and against that an appeal has been provided before the High Court under Section 10-F of the Act, that is, an appeal from the original order. Then in that case no further letters patent appeal shall lie to the Division Bench of the same High Court. This amendment has taken away the power of the Letters Patent in the matter where the learned Single Judge hears an appeal from the original order. Original order

in the present case was passed by CLB exercising the power under Sections 397 and 398 of the Act and appeal has been preferred under Section 10-F of the Act before the High Court. The learned Single Judge having passed an order, no further appeal will lie as Parliament in its wisdom has taken away its power. Learned counsel for the respondents invited our attention to a letter from the then Law Minister. That letter cannot override the statutory provision. When the statute is very clear, whatever statement by the Law Minister made on the floor of the House, cannot change the words and intendment which is borne out from the words. The letter of the Law Minister cannot be read to interpret the provisions of Section 100-A. The intendment of the legislature is more than clear in the words and the same has to be given its natural meaning and cannot be subject to any statement made by the Law Minister in any communication. The words speak for themselves. It does not require any further interpretation by any statement made in any manner. Therefore, the power of the High Court in exercising the Letters Patent in a matter where a Single Judge has decided the appeal from the original order, has been taken away and it cannot be invoked in the present context. There are no two opinions in the matter that when CLB exercised its power under Sections 397 and 398 of the Act, it exercised its quasi-judicial power as original authority. It may not be a court but it has all the trapping of a court. Therefore, CLB while exercising its original jurisdiction under Sections 397 and 398 of the Act passed the order and against that order appeal lies to the learned Single Judge of the High Court and thereafter no further appeal could be filed."

5. In view of the specific provisions of the amending Act, the requirement to seek confirmation of decree by the High Court is not required.

6. Since the appeal was not preferred by the aggrieved person, and the confirmation of decree is not required from the High Court in terms of repealed provision of Section 17 of the Divorce Act, 1869, therefore, the decree granted by the Learned District Judge has attained finality.

7. As a consequence thereof, since the decree for divorce granted by the District Judge is legal and valid and requires no confirmation and has come into force from the day it was granted, the reference is thus not required to be answered.