

(1990) 07 MP CK 0031
In the Madhya Pradesh High Court
Case No : F.A. No. 222 of 1986

Rohini Prasad

APPELLANT

Vs

Sushila Bai and Others

RESPONDENT

Date of Decision : 05-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Hindu Adoptions and Maintenance Act, 1956 — Section 18

Citation : (1991) 1 DMC 444

Hon'ble Judges : P.C. Pathak, J

Bench : Single Bench

Advocate : S.P. Sinha, for the Appellant; Shimla Jain, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pathak, J.—This appeal is filed by the main contesting defendant against the judgment and decree of the trial Court passing decree for maintenance in favour of respondents Nos. 1 and 2 at the rate of Rs. 200/-p.m. from the date of suit.

2. Respondents No. 1 and 2 filed the suit on 17-10-1973 claiming maintenance of Rs. 34,750/- on the allegations that respondent No. 1 is the legally married wife of the appellant and through their wedlock respondent No. 2 was born. Since the appellant neglected to maintain, she for herself and as guardian of the minor son filed the suit claiming maintenance.

3. The suit was contested by the appellant. During the pendency of the suit, the trial Court fixed interim maintenance at the rate of Rs. 100/-per month by order dated 3-9-1985 to both the respondents. Since who appellant failed to pay that amount, the learned trial Court, by order dated 19-3-1986, struck off the defence and adjourned the suit for evidence of both the parties to 4-4-1986. On this date, the plaintiffs alone appeared. The defendants did not appear and their advocate reported no instructions Therefore, the learned trial Court proceeded ex parte against the defendants.

4. After recording evidence of respondents Nos. 1 and 2, the learned trial Court passed decree in their favour as indicated above and also created charge on the agricultural lands belonging to the appellant. Aggrieved by this judgment, defendant No. 1, namely the husband and father of respondents Nos. 1 and 2 respectively, has filed the present appeal.

5. Learned counsel for the appellant argued that the learned trial Court has no jurisdiction to strike off the defence of the appellant in the event of non-payment of the interim maintenance. There is no force in the argument. The Court can in the exercise of its inherent powers u/s 151 of the CPC passed in order striking out the defence of a respondent husband if he deliberately and contumaciously flouts the order of the court. These cases have been annotated at page 874, u/s 24 of the Hindu Marriage Act, 1955, by Mulla in Principles of Hindu Law, Fifteenth Edition. The same principles Would apply to the non-payment of interim maintenance under the Hindu Adoption and Maintenance Act, 1956.

6. It was next argued that in Guardian and Ward Case No. 1 of 1982 (Rohini Prasad v. Sushilabai) dated 24-11-1983, the Addl. District Judge, Jabalpur, passed decree directing respondent No. 1 to restore custody of the minor to the appellant, it is alleged that the respondent declined to obey the said decree. Therefore, they are not entitled to award or maintenance at least in respect of respondent No. 2. Argument cannot be accepted. Even through the judgment was rendered in the year 1983, much before the judgment under challenge was delivered, the appellant did not raise any plea in the written statement based on the said judgment. Therefore, the appellant has filed I.A. No. 2553 of 1990 before this Court seeking to incorporate two new paragraphs 7 and 8 in the written statement. By the proposed amendment of para 7, the plea based on Murwara Court's judgment is sought to be raised. The appellant has, however, not explained as to why this defence, though available when this case was pending in the trial Court, was not raised. This apart so long as custody of the minor remains with respondent No. 1, right to claim maintenance is not annulled and maintenance has to be paid to him even though his custody with respondent No. 1 may be in contravention of Murwara Court's judgment. Since the delay in filing I.A. No. 2553 of 1990 has not been explained, the application is rejected.

7. It was next argued that the minor must have attained the age of Majority, i.e., 18 years by today if one calculates his age as shown in the plaint. On perusal of the judgment, I find that no issue was ever framed to determine the age of respondent No. 2. Admittedly, the minor is entitled to maintenance upto the age of attaining majority. The impugned judgment is silent on this count. If the appellant feels that maintenance on behalf of respondent No. 2 is being claimed from him even for the period after he has attained majority, he shall be free to raise objections before the Executing Court and that Court shall decide the age after affording an opportunity to both the parties. The age shown in the plaint is merely an estimate and that no definite finding can be recorded on that basis.

8. It was also argued that the parties had entered into a compromise on

30-6-1985 and the marriage between them was dissolved before the Panches after accepting a sum of Rs. 5000/- towards a lampsum payment of the maintenance. A plea to that effect is sought to be introduced in the written statement through I.A. No. 1553 of 1990, for the reasons detailed above, I have already rejected I.A. No. 2553 of 1990. The amendment to introduce this plea as well cannot be allowed since it is highly belated and there is no explanation for the same. As seen above, the suit was tiled in the 1973 and the appellant had successfully been protracting the disposal of the suit on one ground or the other. The alleged agreement which 31-6-1985, which was placed for my perusal, is on a plain paper. The amendment, if allowed, will result in serious injustice to respondent Nos. 1 and 2.

9. No other point was argued.

10. In view of the foregoing discussions, the appeal fails and is hereby dismissed with costs. Counsel's fee according to the Schedule, if certified.