
(1989) 11 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 130 of 1989

Smt. Aruna Kumari

APPELLANT

Vs

Ajay Kumar

RESPONDENT

Date of Decision : 02-11-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 1(2), Order 14 Rule 2

Citation : AIR 1991 J&K 1

Hon'ble Judges : K.K. Gupta, J

Bench : Single Bench

Advocate : B.M. Gupta, for the Appellant; J.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Gupta, J.—Ajay Kumar respondent herein has filed petition for dissolution of marriage against his wife Shrimati Aruna Kumari

petitioner herein which is pending disposal in the Court of District Judge, Kathua. The said petition has been resisted by the petitioner herein on

various grounds. The trial Court on November 15, 1988 framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty? O.P.P.
2. Whether this Court has no jurisdiction to (try) this petition? O.P.R.
3. Relief.

Issue No. 2 was, however, recast as under.-

Whether the parties to the petition last resided at Kathua and this Court as such has jurisdiction to try the petition? OPP

The parties were directed to furnish list of witnesses within 15 days and the

respondent herein was directed to lead evidence first. The petitioner herein moved an application before the trial Court on August 19, 1989 for treating , issue of jurisdiction as preliminary to be decided first. The other side opposed to this prayer of the petitioner herein and the learned District Judge Kathua vide his order dated August 19, 1989 rejected the application holding that the issue cannot be decided without taking evidence of the parties and as such it cannot be treated as preliminary issue. Aggrieved by this order the petitioner herein has come up in revision before this Court.

2. I have heard the learned counsel for the parties and perused the record before me. Mr. B. M. Gupta learned counsel appearing for the petitioner has argued that issue No. 2 framed in the case is regarding jurisdiction of the Court to try the case and in view of provision contained in Order XIV, Rule 2, CPC it is to be treated as preliminary issue and it is required to be disposed of as such. In support of his contention he has cited Ramdayal Umraomal Partnership Firm, Raipur Vs. Pannalal Jagannathji Partnership Firm, Mandsaur, . Mr. J. P. Singh learned counsel for the respondent, on the other hand, has contended that issue of jurisdiction framed in the case is a mixed question of law and fact which requires recording of evidence to be led by both the sides and as such it cannot be tried as a preliminary issue. In support of his contention he has referred to Ramdayal Umraomal Vs. Pannalal Jagannathji,

3. Order XIV, Rule 2 of CPC reads as under,-

(2) (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of in

an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the

suit in accordance with the decision on that issue.

In (1987) 2 CLJ 1 (supra) Delhi High Court has taken a view that even a mixed issue of fact and law but which pertains to the jurisdiction of the

Court to try the suit, would be covered by Order XIV, Rule 2(2). In the case in hand the Court, however, held that once the issues are settled then

the Court would not be justified to order that one of the issues be tried as a preliminary issue when the Court had not treated any issue as

preliminary at that time. In (1988) 2 RLR 423 (supra) Punjab and Haryana High Court has held that failure of trial Court to decide issue relating to

jurisdiction of Court as preliminary issue which requires no evidence is against the provisions of Order XIV, Rule 2, Civil Procedure Code. In

(1982) 84 PLR 191 (supra) the Punjab and Haryana High Court observed that question regarding territorial jurisdiction of Court should be

decided as a preliminary issue particularly when the defendant on whom the onus to prove the same was placed does not want any evidence.

Ramdayal Umraomal Partnership Firm, Raipur Vs. Pannalal Jagannathji Partnership Firm, Mandsaur, has been reversed by Full Bench of that High

Court in Ramdayal Umraomal Vs. Pannalal Jagannathji, in which their Lordships have come to the conclusion that issue relating to the jurisdiction

can be tried as preliminary issue only if it can be disposed of without recording any evidence and where issue of jurisdiction is a mixed question of

law and fact requiring recording of evidence, same cannot be tried as a preliminary issue. (1988) 1 CCC 299 (supra) Guwahati High Court has

taken the view that where issue is a mixed issue of law and fact for which evidence is necessary, that cannot be decided as a preliminary issue. This

Court in 1967 KLJ 356 : AIR 1968 J&K 71 has also taken the same view that whenever there are mixed questions of law and fact they shall not

be tried as preliminary issue.

4. Order XIV, Rule 1 makes it obligatory for the Court to pronounce judgment on all issues. But it is subject to the provisions of sub-rule (2)

which gives a discretion to the Court to frame issue of law only if it relates to the jurisdiction of the Court or to a bar to the institution of the suit

itself. In order to treat an issue as a preliminary issue, two conditions have to be satisfied, firstly it has to be an issue of law and secondly it must

pertain to the jurisdiction of the court to try the suit or to pertain to institution of the suit itself by reason of a bar created by law. The intention of the

Legislature as is apparent from the wording of Order XIV, Rule 2, CPC is clear that the disposal of the suit should be expedited. It has, therefore,

been left to the discretion of the Court to frame an issue of jurisdiction as a preliminary issue if the Court thinks that the suit should be disposed of

on that very issue. The Full Bench of Madhya Pradesh High Court in Ramdayal Umraomal Vs. Pannalal Jagannathji, in this regard has held as

under (at p. 155 of AIR).-

This provision makes it clear that the issue as to jurisdiction may be an issue of law or of fact or a mixed issue. The obligation to try the issue of

jurisdiction as preliminary arises only when it is an issue of law. Issue of jurisdiction depending on question of fact and/or mixed question of law and

fact, must be decided on merits at one and the same time, along with the other issues. If the Court finds, on a trial on merits so far as this issue of

jurisdiction goes, that the case is not cognizable by the Court because of want of territorial or pecuniary jurisdiction, the plaint will be ordered to be

returned for presentation to the proper Court, and if, on the other hand, it finds that having regard to the nature of the suit, it is not cognizable by

the class of Courts to which the Court belongs, the plaintiffs suit will have to be dismissed in its entirety. Discretion to try preliminary issue of law

relating to jurisdiction or bar of suit should be exercised only when it is so clear that the decision will decide the suit finally once and for all without

recording of any evidence.

The Court has further observed as under (at p. 157 of AIR): -

Therefore after reviewing the entire case law on the point we are of opinion that under Order 14, Rule 2, C.P. Code an issue relating to

jurisdiction of the Court can be tried as a preliminary issue only if it can be disposed of without recording any evidence. If the issue about

jurisdiction is a mixed question of law and fact requiring recording of evidence, the same cannot be tried as a preliminary issue.

The facts of the present case are that the respondent herein seeks dissolution of marriage by a decree of divorce on the ground of cruelty and

according to him the parties last resided at Kathua. The petitioner herein in her objections has, however, denied the said facts. As observed above

only two issues have been raised in the case firstly regarding the cruelty and second about the jurisdiction of the Court at Kathua to try case. The

trial Court at the time of framing of issue did not treat issue of jurisdiction as preliminary issue. The petitioner herein then moved an application for treating the said issue as preliminary. Admittedly both the parties have to lead evidence regarding both the issues. In case issue No. 2 is allowed to be treated as preliminary the parties will certainly lead evidence in the case and instead of disposing of the case expeditiously it will prolong the matter and frustrate the very basis of law contained in Order XIV, Rule 2, Civil Procedure Code. The evidence to be led by both the parties will almost cover both the issues and it cannot, therefore, be said that by allowing issue No. 2 to be treated as preliminary the trial of the case would be expedited. When we review the whole law on the point it becomes clear that where issue of jurisdiction is a mixed question of law and fact requiring evidence to be recorded by both the sides same cannot be treated as a preliminary issue.

5. For the aforesaid reasons this Revision Petition is without any merit and it is dismissed as such. The record of the trial Court shall be remitted back immediately. The parties are directed to appear before the trial Court on 30th Nov., 1989.