

(2004) 09 AHC CK 0113

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12472 of 1982

Smt. Santosh

APPELLANT

Vs

The District Judge, II Additional Civil Judge and Jogendra
Singh

RESPONDENT

Date of Decision : 24-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Hindu Marriage Act, 1955 — Section 13, 24, 25

Citation : AIR 2005 All 240 : (2005) 3 CivCC 567 : (2005) 3 RCR(Civil) 567

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : B. Dayal, for the Appellant; S.A. Gilani and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri B. Dayal, learned counsel for the petitioner and Sri S.A. Ginali, learned counsel for the District Judge, Meerut.

2. In this petition prayer has been made to quash the order dated 22.7.1982 (Annexure-5 to the writ petition) passed by the II Additional Civil Judge, Meerut whereby the petitioner u/s 24 of Hindu Marriage Act filed by the petitioner against her husband Sri Jogender Singh for maintenance and legal expenses for contesting the petition no. 302 of 1979 preferred u/s 13 of the Hindu Marriage Act, 1955 was rejected after taking into considerations the facts, averments, pleadings, records and the affidavit of the Manager of Janta Junior High School, Khakurpur, Meerut where the petitioner was said to have been deployed as a Assistant Teacher. The Addl. Civil Judge did not find any merit to award any maintenance to the petitioner. The revision preferred by the petitioner before the District Judge, Meerut has also been carefully considered and it was held that the revision against the order dated 22.7.1982 is not maintainable in view of the decision of this Court ub Smt. Madhvi Sirothia Vs. Narendra Nath Sirothia, where the Addl. District Judge, Allahabad u/s 24 of the Hindu Marriage Act awarded Rs.

200/- per month as maintenance pendente lite and Rs. 500/- towards expenses of the litigation to the applicant Smt. Madhvi Sirothia which was challenged by way of revision before the District Judge and the said revision was said to be not maintainable u/s 115 of Civil Procedure Code. This High Court in Smt. Madhvi Sirothia (Supra) has observed in para 2 and 3 as below :

"2. The second proviso to Section 115 of the CPC as amended in Uttar Pradesh lays down that the High Court shall not vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceeding, except where, (i) the order, if so varied or reversed, would finally dispose off the suit or other proceeding; or (ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. The proceeding by way of the application u/s 24 did stand finally decided by the order sought to be revised. But that was a proceeding in the original petition for divorce in which it was made. The proceeding referred to in the proviso is the original proceeding and not a proceeding in a suit. This would be clear from the fact that throughout Section 115 as it now stands the word "proceeding" occurs along with the word "suit" which means that the proceeding must be an original proceeding other than a suit. It cannot mean a proceeding in a suit. The proceeding u/s 24 was merely an inter-locutory proceeding and not an original proceeding.

3. Moreover, the rights of the parties are not finally adjudicated upon on an application u/s 24 of the Hindu Marriage Act. It is only an aid to the final decision of the suit or other proceeding for a decree of one of the four kinds contemplated by the Hindu Marriage Act. The rights of the parties to maintenance or costs are finally adjudicated upon at the time of passing of a decree or thereafter u/s 25 of the Hindu Marriage Act. No irreparable injury will be caused to the petitioner even if the rate at which maintenance pendente lite allowed to her is less than what she is finally found to be entitled to u/s 25 of the Hindu Marriage Act or (if the provision for expenses of a proceeding made u/s 24 is found to be less than that allowable to her on the conclusion of the petition for divorce. The object of an order u/s 24 is to enable an indigent spouse to prosecute his/her case properly. It has not been shown to me that the rate at which maintenance pendente lite has been awarded or the provision made for the expenses of the proceeding is so meager or so arbitrarily low as to prevent her from effectively defending the petition for divorce that has been filed against her and is pending. In view of these facts and circumstances, the revision is dismissed as not maintainable. There will be no order as to costs."

3. According to the learned counsel for the petitioner the finding and the presumption of Additional Civil Judge is erroneous and based on no evidence whereas the revision was maintainable and without any maintenance pendente lite the petitioner is not able to defend her stand in the divorce petition filed by the respondents. Learned counsel for the petitioner has also indicated that in view of Uttar Pradesh Recognised Basic Schools (Recruitment and conditions of

Service of Teachers and other conditions) Rules, 1975 a proper procedure was to be adopted for giving appointment and the genuinity of appointment was to be tested in view of different provisions provided which are made applicable by the State of Uttar Pradesh for Basic Schools and without ascertaining the provisions of the appointment the only affidavit of the Manager of school has wrongly been produced that the petitioner was in unemployment and are not getting earning. It has been contended on behalf of Sri Gilani that it was the petitioner who herself has got stayed the divorce suit pending before the trial court and has managed to linger on and by virtue of her deployment cannot come forward to say that for the lack of maintenance she is not able to defend her case. The revision has rightly been not found to be maintainable. According to the learned counsel for the respondents the petitioner could have come forward for expediting the pending suit.

4. According to the learned counsel for the petitioner on the basis of material on record and documentary evidence and evidences produced before the trial court the order dated 22.7.1982 has been passed which is protected by the decision of this Court passed in Smt. Madhvi Sirothia(supra).

5. I have heard learned counsel for the parties. I find force in the contention of learned counsel for the respondents, I also find that the proceeding u/s 24 of the Hindu Marriage Act was merely inter locutory proceeding and not an original proceeding and granting a meager or no maintenance towards the expenses of litigation, in the facts and circumstances shall not debar the petitioner to give an occasion a failure of justice or cause irreparable injury to the party against whom such order was made. I do not find any scope of interference in the impugned order. If the petitioner was aggrieved of any error on the face of record or any material error he could have brought before the same court for appropriate modification or rectification in the order dated 22.7.1982, which she failed and it was by the endeavourance of petitioner the irrelevant suit pending adjudication before trial court.

6. In view of the above observations, writ petition is dismissed and the trial court is directed to proceed to decide the suit No. 302 of 1979 pending u/s 24 of the Hindu Marriage Act expeditiously within a period of one year and the parties are expected to cooperate for the same.