

SUPREME COURT OF INDIA

Kishori Lal

Vs.

Shanti Devi

Crl.A.No.33 of 1951

(Saiyid Fazl Ali,J., Mehr Chand Mahajan and Vivian Bose,JJ.)

18.09.1951

JUDGEMENT

Vivian Bose, J.,

1. This is a quarrel between husband and wife. The appellant is the husband.
2. On 29-3-1946 the respondent obtained an order against the appellant under S.488, Criminal P.C.for payment of maintenance at the rate of Rs. 70 -a month. The order was obtained from the Court of a Magistrate at Lahore which is now in Pakistan. It is not disputed that at that time the Court making the order was a proper and competent Court nor is it disputed that prior to the partition of India the order could have been executed under S. 490. Criminal P. C. in the Court of the First Class Magistrate at Delhi. The order was directed to have effect from 31-3-1947 .
3. The appellant paid the respondent a sum of Rs. 240/- in instalments in pursuance of this order but as, according to the respondent, a further sum of Rs.860/- was due on 18-3-1949 she applied under S. 490 to the Court of the Magistrate, First Class, Delhi, for its enforcement.
4. The appellant resisted on several grounds. We are only concerned with the one which touches jurisdiction. On 15-8-1947 the partition of India came into effect and Lahore became foreign territory and the Lahore Courts foreign Courts. The appellant's contention is that on that date the order of the Lahore Magistrate became a foreign order in executable under S. 490. He failed in the first Court and failed in revision both before the 2nd Additional Sessions Judge at Delhi and in the High Court of East Punjab at Simla. He has appealed here.
5. We are of opinion that the lower Courts and the High Court are right. Confining our remarks to applications under S. 490, with which alone we are concerned, we see no reason why an order which was competent and valid at the time to was made and which could have been enforced in Delhi should cease to be competent simply by reason of the partition.

6. So far as S. 490 is concerned, there is no bar. It is general in its terms and imposes no impediment. The relevant portion is as follows:-

A copy of the order of maintenance shall be given..... to the person in whose favour it is made. . . . and such order may be enforced by any Magistrate in any place where the person against whom it is made may be."

Of course this presupposes a competent order enforceable in India and we agree that a foreign order could not be enforced in this way. But the order here was a competent order of a domestic tribunal when it was made and could then have been enforced in the Delhi Court. In the absence of any specific bar we see no reason why it should lose its Indian nationality simply because the place in which it was born was later made foreign territory.

7. A number of enabling provisions were passed after the partition to meet certain special cases of this kind and of course, where there is specific legislation, effect must be given to it. But where, as here, there is nothing, then in the absence of a specific bar we hold that an order which was and competent when it was made and which was passed by a tribunal which was domestic at the date of its making and which could, at that have been enforced in an Indian Court, does not lose its efficacy by reason of the partition.

8. In argument reliance was placed on a number of provisions of the kind we have referred to above and it was contended that the very fact that such legislation was felt to be necessary indicates that in its absence the special rights and remedies which are either continued or conferred by these Acts and Orders would have been lost. We are not impressed with this because it can equally well be argued, and in fact was so argued for the respondent, that the fact that the Legislature which was so meticulous in providing for these other matters did not consider it necessary to make provision for this indicates that it was unnecessary to do so. In our opinion, where express provision has been made it was either by way at abundant caution or because other factors made it desirable to lay down a special procedure.

9. Take, for example, the Federal Court order of 1947. Before the partition there was only one Federal Court and it exercised jurisdiction over the whole of the territories which now comprise India and Pakistan. It was necessary after partition to divide the Court into two and when that was done it was necessary to enact Ss. 5 and 6 which deal with proceedings then Pending in the old Court and with the enforcement of orders which were concluded. There was therefore special reason for this.

10. So also in the case of the High Courts of Bengal and Punjab. These Courts had to be divided in the same way as the Federal Court because the territories over which they had jurisdiction were being partitioned. That necessitated S. 13 in the Order relating to each of these two Courts. Similar reasons apply to S. 4, Indian Independence (Legal Proceedings) Order, 1947 which applies to proceedings then pending in any Court, civil or criminal (other than a High Court) in the Provinces of Bengal, Punjab or Assam. It is perhaps significant that no provision was made to cover cases which were decided and finished in the lower Courts though the Governor-General was armed with wide powers to make such provisions as

appeared to him "necessary or expedient" in matters of this kind. We can hardly think this was due to oversight. Important matters like the setting of titles, specific performance of decrees 'res judicata' and so forth could hardly have been overlooked.

11. The fact that the Displaced Persons (Legal Proceedings) Act, 1949 was passed does not prove the contrary. That was enacted to meet Special cases which would not have been covered by the general rule we are now applying. For example, S. 3 deals with cases where there has been a dismissal for default of appearance and where restoration to file would not have been possible, or at any rate might have been difficult or doubtful, but for the provisions made. Section 4 makes provision for payment by instalments, S. 5 for stay, and S. 6 for certain restrictions on execution. Section 7 provides for the execution of decrees which could not have been executed in the Courts referred to, in the manner provided, even before the partition. All those are special provisions designed to meet special cases. They do not affect the general law that an order which was competent and enforceable in a particular Court before partition does not cease to be so simply because of the Partition.

12. The following cases were referred to in argument: - '*Chunnilal v. Dundappa*', - '*Dominion of India v. Hiralal*'²- '*Muthukaruppan v. Sellami Achi*'³, and - '*Said-ul-Hamid v. Federal Indian Assurance Co. Ltd., New Delhi*'⁴, We do not intend to examine them because they are not cases under Ss. 488 and 490, Criminal P. C. and it may be that special considerations apply in the provisions of law which the learned Judges had to apply in those cases. We think it would be undesirable to comment on them without a careful analysis of all the factors which obtained there. Such an analysis is not feasible in a case which relates to a different set of circumstances. All we need say is that if those decisions are not based on matters which are special to them and which do not apply here, and if the learned Judges intended to enunciate a general principle which would affect the rights of the parties before us, then, with the greatest respect, we consider that they are, to that extent, wrong.

13. The appeal fails and is dismissed.

14. Appeal dismissed.

Judgment Referred.

¹AIR 1951 Bom 190 (A)

²AIR 1938 Rang 385 (C)

³AIR 1950 cal 12 (B)

⁴AIR 1951 Punj 225 (D)