

Smt. Nandarani Mazumdar

Vs

Indian Airlines and Others

Civil Appeal No. 1092 of 1980

(A. N. Sen, Ranganath Misra, P. N. Bhagwati JJ)

01.09.1983

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal by certificate under Article 133 of the Constitution seeks to challenge the appellate decree of the Calcutta High Court upholding the dismissal of her suit for declaration that the plaintiff was entitled to a charge on the estate of her deceased husband Captain Mazumdar for the payment of permanent alimony of Rs. 350 p.m. in terms of the decree dated May 31, 1966. While granting a decree for dissolution of marriage, the Court had directed that the plaintiff would get permanent alimony and maintenance of Rs. 350 p.m. from the date of the decree till her death or her re-marriage or any other act which would disentitle her from getting the amount. Maintenance was paid up to October 1972 by the husband who was a Pilot in the Indian Airlines. He died on December 18, 1972, leaving behind inter alia, an asset of Rs. 2,00,916 lying to his credit with his employer. The plaintiff instituted Title Suit No. 1582 of 1974 for creation of a charge and also asked for recovery of Rs. 8750 claimed to be due as outstanding maintenance until the date of the suit and for an injunction against withdrawal of the money lying with the Indian Airlines until adequate arrangement was made for payment of alimony to her. The claim was contested by the ex-employer (defendant 1) and two ladies impleaded as defendants 2 and 3 on the disclosure by the defendant 1 that they were the wives of late Capt. Mazumdar. Resistance was mainly on two grounds : (1) that the order for payment of alimony lapsed with the death of the husband; and (2) that a separate suit for this claim was not maintainable in view of Section 47 of the Code of Civil Procedure.

2. The trial Court took the view that there was no substance in the plea of bar of a separate suit. But as the order for payment of alimony in its view had terminated with the husband's death, the plaintiff could recover only a sum of Rs. 700 being the dues for two months prior to the death of the husband.

3. The plaintiff's appeal and a separate Civil Revision involving the common question about the sustainability of the order for payment of alimony beyond the husband's death came to be disposed of by a common judgment by a Division Bench of the High Court. The Court held that the death of the husband did not affect the order for payment of alimony and the same could be recovered from his estate in the hands of the heirs and successors. The Court further held that an independent suit was barred and the plaintiff was not, therefore, entitled to the reliefs claimed. The High Court granted leave to appeal to this Court in both the matters. In the connected appeal being Civil Appeal No. 1997 of 1980 (Aruna Basu Mullick v. Dorothea Mitra [(1983) 3 SCC 522 : 1983 SCC (Cri) 739]), this Court has already upheld the view of the High Court that a decree for permanent alimony is not extinguished with the death of the husband and the estate is liable to be proceeded against in

the hands of the heirs for the satisfaction of the decree.

4. This appeal was taken up separately as in course of hearing terms of settlement were mooted. We indicated to the counsel for the respondents that even if there be some force in the plea that a separate suit did not lie (though the argument advanced by Mr. Govindan Nair for the appellant in support of the stand that a separate suit for the reliefs claimed lay was forceful), the suit could as a measure of ex debito justicæ be treated as an execution petition. There is good authority for converting an execution application into a suit and there could, in our opinion, be no valid objection to the counter process of converting a suit into an execution proceeding, particularly when an ill-advised widow on account of some procedural error be likely to be deprived of the fruits of an order of maintenance. Respondents' counsel has also fairly conceded this position. We direct that the suit be treated as an execution application. That being done, there is no question of any limitation.

5. Captain Mazumdar had left behind a sum of more than two lakhs rupees with his employer at the time of his death. Defendants 2 and 3 had withdrawn this sum but under orders of the Court, a sum of Rs. 75,000 has been kept in fixed deposit with the State Bank of India at its Gariahat Branch in Calcutta. Out of this amount, under an order of this Court dated December 7, 1982, a sum of Rs. 5000 has been paid to the plaintiff leaving the balance sum of Rs. 70,000 with the Bank. According to Mr. Govindan Nair, the dues of the plaintiff under the decree up to July 1983 work out to Rs. 39,400 after adjustment of Rs. 5000. We direct that the plaintiff shall be paid a sum of Rs. 35,000 against the arrears due in full satisfaction of her claim up to July 1983. This leaves a sum of Rs. 35,000 and perhaps some amount of interest on the deposit the exact quantum of which is not known. The entire balance amount shall be placed as a term deposit in the name of the Registrar of the Calcutta High Court on the Appellate Side. This amount may be invested in the discretion of the Registrar, but after consulting the parties, in a company of repute as a term deposit at higher interest than the prevailing bank rate. Worked out this way, the annual interest earned on the amount should be more than Rs. 4200 (which is the appellant's annual maintenance). The appellant should be paid the entire interest so that she may have the benefit of enhanced alimony to meet the rising cost of living and the cost of litigation over the years. We have also taken into consideration the fact that the co-widows have appropriated about Rs. 1,25,000 from their husband's estate apart from enjoying other assets if any of Capt. Mazumdar. The said Registrar shall ensure quarterly or half yearly payments of interest to the plaintiff depending upon the arrangement with the company or the institution holding the money, so long as she is alive or leads a life which would not otherwise disentitle her to the maintenance. After the death of the plaintiff, the legal heirs of deceased Capt. Mazumdar would become entitled to the amount held in deposit after due inquiry and satisfaction. Leave is given to the parties to move the Calcutta High Court for directions in the matter of giving effect to this order as and when necessary but the High Court would not be entitled to make any modification in the basic frame of this order.

6. We direct that the parties shall bear their own costs of this litigation throughout.

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