

Rupa Ashok Hurra

Vs

Ashok Hurra and Another

Writ Petition (C) No. 509 of 1997 with CAs. Nos. 1843 and 1835 of 1997

(S. C. Agarwal, S. Saghair, M. Srinivasan JJ)

05.08.1998

ORDER

1. In this writ petition filed under Article 32 of the Constitution, the petitioner is seeking to challenge the validity of the judgment of this Court dated 10-3-1997 in Civil Appeal No. 1843 of 1997 (Ashok Hurra v. Rupa Bipin Zaveri, (1997) 4 SCC 226) whereby the said appeal filed by the respondent was allowed and a decree of divorce for dissolution of marriage between the petitioner and the respondent was passed under Section 13-B of the Hindu Marriage Act, 1955 and it was declared that all pending proceedings and more particularly those referred to in para 9 of the judgment including the proceedings under Section 494 IPC read with Section 17 of the Hindu Marriage Act, 1955 between the parties shall stand terminated on payment or deposit of the amount ordered by the Court in the said judgment.
2. Shri Shanti Bhushan, the learned Senior Counsel appearing for the petitioner submits that in the said judgment, this Court has exceeded the jurisdiction vested in it under Article 142 of the Constitution and the said judgment being without jurisdiction is a nullity and the validity of the same can be assailed in a petition under Article 32 of the Constitution.
3. Shri K. K. Venugopal, the learned Senior Counsel appearing for Respondent 1 has, however, raised a preliminary objection regarding the maintainability of the writ petition and has pointed out that a review petition was filed by the petitioner seeking review of the said judgment and that the said review petition was dismissed by order dated 6-8-1997. The learned counsel has submitted that in a case where a party has availed the remedy of filing a review petition against the judgment, it is not open to the said party to challenge the said judgment by filing a writ petition under Article 32 of the Constitution. Shri Venugopal has also submitted that in the facts and circumstances of this case, it is not a fit case in which this Court should entertain a petition under Article 32 of the Constitution because after the dismissal of the review petition, the respondent has contracted another marriage and has also adopted a child. Shri Shanti Bhushan has, however, submitted that the respondent had earlier in 1985, contracted marriage with the person with whom he claims to have contracted the marriage after the dismissal of the review petition.
4. Whether the judgment of this Court dated 10-3-1997 in Civil Appeal No. 1843 of 1997 (Ashok Hurra v. Rupa Bipin Zaveri, (1997) 4 SCC 226) can be regarded as a nullity and whether a writ petition under Article 32 of the Constitution can be maintained to question the validity of a judgment of this Court after the petition for review of the said judgment has been dismissed are, in our opinion, questions which need to be considered by a Constitution Bench of this Court. In the circumstances, it is directed that this matter may be placed for consideration before a Constitution Bench.

5. Shri Venugopal states that in pursuance of the direction contained in the judgment of this Court dated 10-3-1997 (*Ashok Hurra v. Rupa Bipin Zaveri*, (1997) 4 SCC 226), the respondent has deposited in this Court a sum of Rs. 10,50,000 (Rupees ten lakhs fifty thousand only). He submits that the respondent may be permitted to withdraw the said amount subject to his furnishing a bank guarantee for the said amount to the satisfaction of the Registrar of this Court and that this will be without prejudice to the contention of the parties. The respondent is permitted to do so.

Court Masters