

SUPREME COURT OF INDIA

Vishwas Narhari Sahastrabudhe

Vs.

Varda Vishwas Sahastrabudhe

C.A.No.447 of 2009

(Tarun Chatterjee and H. L. Dattu)

27.01.2009

ORDER

1. Leave granted.

2. This appeal is directed against the Judgment and order dated 31st of August, 2006 passed by the High Court of Judicature at Bombay in Family Court Appeal No. 15 of 2006, by which the decree passed by the Family Court at Pune, granting divorce under Section 13(1) (1-a) of the *Hindu Marriage Act, 1955* was affirmed but had remanded the matter back to the Family Court for proper determination of issues of permanent alimony and ownership of flat in Triveni Nagar. Against the aforesaid order of remand, the husband/appellant had filed a Special Leave Petition, which on grant of leave, was heard in presence of the learned counsel for the parties. It is to be noted that while issuing notice on this Special Leave Petition on 12th of March, 2007, this Court passed the following order :-

“Delay condoned.

Issue notice.

Learned counsel for the petitioner states that he does not challenge the finding on divorce and monthly maintenance.”

3. The issues that were framed by the impugned Judgment of the High Court are as follows:-

"(a) Whether the original petitioner will in law be entitled to seek declaration as prayed for from Family Court under Family Court's Act?

(b) If yes, whether in the facts and circumstances of this case, the original petitioner should be given such declaration of Family Court or any other order as Family Court may deem fit?

(c) Whether Family Court can record any finding about flat at Mhatre Bridge and Triveni Nagar in the absence of Narhari alias Kishor, father of the appellant?

(d) Whether in facts and circumstances of the case, the original petitioner proves that flat at Mhatre Bridge and Triveni Nagar were/are owned by the appellant?

(e) What should be the amount of permanent alimony in the facts and circumstances of this case?"

4. Considering the issues framed by the High Court, we find that the question of jurisdiction of the Family Court has to be taken into consideration by it and that being the position, at this stage, we are not inclined to interfere with the order passed by the High Court. However, we make it clear that the Family Court shall not be influenced by any of the observations made by the High Court in the impugned Judgment while deciding the issues as directed by the High Court and the Family Court shall decide the same in accordance with law including the question whether Section 27 of the Hindu Marriage Act, which deals with disposal of property is applicable in the facts of this case or not.

“4 A. However, the amount of Rs. 6,00,000/- (Six Lacs), which has been directed to be paid by the High Court to the respondent, is stayed till the disposal of the Family Court proceeding after remand. At the same time, we modify the order dated 10th of August, 2007 of this Court to the extent that instead of Rs. 2000/- as maintenance to each of the child of the parties, a sum of Rs. 5000/- by way of maintenance to each child shall be paid by the husband to the respondent/wife regularly from 1st of February, 2009 onwards or till the Family Court decides the disputes after remand.”

5. The appeal is thus disposed of. There will be no order as to costs.