

PUNJAB AND HARYANA HIGH COURT

Rama Kanta

Vs

Asok Kumar

Civil Misc. No. 2-M of 1977

(O. Chinnappa, Reddy, J.)

31.01.1977

JUDGMENT

O. Chinnappa Reddy, J.

1. The applicant is the wife of the respondent. On 29th September, 1976, she filed a petition in the Court of the District Judge, Chandigarh, praying for a decree of divorce. The respondent appeared in response to the summons issued to him and filed a written statement. The petition was transferred by the District Judge to the Additional District Judge. Before the Additional District Judge, there was an unsuccessful attempt for reconciliation. Thereafter, the respondent on 3rd December, 1976, filed a petition in the Court of the District Judge, Hoshiarpur, for restitution of conjugal rights. Alleging that the petition for restitution of conjugal rights has only been filed with a view to harass her, the petitioner has filed the present application under Section 24 of the Civil Procedure Code for transfer of the petition for restitution of conjugal rights now pending in the Court of the District Judge, Hoshiarpur, to the Court of the Additional District Judge, Chandigarh.

2. Shri Y.P. Gandhi, learned counsel for the respondent, has raised a preliminary objection that in view of Section 21-A of the Hindu Marriage Act, no application under Section 24 of the Civil Procedure Code is maintainable. He relies on the decision of a Special Bench of the Calcutta High Court in *Surendra Nath v. Malati*¹,

Section 21 and 21-A of the Hindu Marriage Act which are both relevant may be usefully extracted here :-

"21. Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated as far as may be, by the Civil Procedure Code, 1908.

21-A. Power to transfer petitions in certain cases.

(1) Where –

(a) a petition under this Act has been presented to a District Court having jurisdiction by a party to a marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13, and

(b) another petition under this Act has been presented thereafter by the other party to a marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13 on any ground, whether in the same District Court or in a different District Court, in the same State or in a different State, the petition shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies, -

(a) if the petitions are presented in the same district, both the petitions shall be tried and heard together by that District Court;

(b) if the petitions are presented to different District Courts, the petition presented later shall be transferred to the District Court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the District Court in which the earlier petition was presented.

3. In a case where clause (b) of sub-section (2) applies, the Court or the Government, as the case may be, competent under the Civil Procedure Code, 1908 (5 of 1908) to transfer any suit or proceeding from the District Court in which the later petition has been presented to the District Court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code."

Section 21-A makes special provision for the transfer of certain proceedings under the Hindu Marriage Act. By virtue of Section 21, it is to be taken that this special provision excludes the general provisions in the Civil Procedure Code relating to transfer. The learned counsel for the applicant argued that Section 21-A would apply only to the situations mentioned therein and that other situations would continue to be governed by Section 24 of the Civil Procedure Code. To accept the contention of the learned counsel would be to render the provisions of Section 21-A superfluous and practically meaningless since what can be done under Section 21-A of the Hindu Marriage Act could always be done under Section 24 Civil Procedure Code and there would be no point in Section 21-A of the Hindu Marriage Act governing some situation and Section 24 Civil Procedure Code governing other situations. A somewhat similar question arose before the Special Bench of the Calcutta High Court under the Indian Divorce Act. Section 8 of the Divorce Act contains a provision enabling a High Court to withdraw and try as a Court of Original Jurisdiction any suit or proceeding under the Act pending in the Court of any District Judge and also to withdraw and transfer such suit or proceeding for trial or disposal to the Court of another District Judge. Section 45 provides that all proceedings under the Act shall be regulated by the Civil Procedure Code subject to the provisions contained in the Act. A question arose whether it was the Appellate Bench of the High Court or a Judge sitting Singly on the original side that had the power to transfer a proceeding under the Divorce Act. If Section 24 of the Civil Procedure

Code was applicable, the Appellate Bench would have the power, If Section 8 of the Divorce Act was applicable, the Judge sitting singly on the original side would have the power. The Calcutta High Court held that Section 24 of the Civil Procedure Code was excluded by the special provision contained in Section 8 of the Divorce Act read with Section 45 of that Act. They said, -

"Section 8, Divorce Act, contains an express provision enabling the High Court, whenever it thinks fit, to remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act and also to withdraw any such suit or proceedings and transfer it for trial or disposal to the Court of any other such District Judge. Section 45 of the Act provides that :

"Subject to the provisions herein contained all proceedings under this Act between party and party shall be regulated by the Civil Procedure Code."

It, therefore, follows that, as the Act contains an express provision regulating the transfer of a suit from the Court of one District Judge to that of another District Judge, Section 24, Civil Procedure Code can have no application"

The opinion of the Calcutta High Court fully supports the submission of the learned counsel for the respondent. The application is, therefore, dismissed, but in the circumstances without costs.

Appeal dismissed.

Cases Referred.

¹AIR 1942 Cal 546