

RAJASTHAN HIGH COURT

Rajneesh Rajpurohit

Vs.

Savita

Civil Revn. Petn. No. 371 of 2005

(Prakash Tatia, J.)

04.04.2008

ORDER

Prakash Tatia, J.

1. The petitioner has challenged the order passed by the learned Addl. District Judge No. 1, Bikaner, whereby the learned Addl. District Judge No. 1 Bikaner vide order dated 8-7-2005 decided the issue Nos. 2 to 8 in the petition under Section 25 of the Hindu Marriage Act and refused to dismiss the petition of the non-petitioner for grant of maintenance.

2. The facts leading to preferring this revision petition by the petitioner husband of the non-petitioner No. 1 and father of the non-petitioner No. 2 are that the marriage of the petitioner with non-petitioner No. 1 was solemnized on 27-4-1996 at Bikaner. Out of wedlock, one son-non-petitioner No.2 born. According to the petitioner, the petitioner's father was reformist, in favor of simple marriage and was against taking dowry. The petitioner's father was also of the view that the marriage should be solemnized without any show. The non-petitioner No. 1's father approached petitioner's father in the month of April, 1996 and after obtaining assurance of secrecy, told the petitioner's father that because of financial constraints, he can solemnize his daughter's marriage in minimum expenditure. The petitioner's father, who was reformist, decided to send the Barat of the petitioner in one car only and did so and there was no pomp and show of any type in the marriage of the petitioner. The marriage was solemnized without dowry. At the time of marriage, non-petitioner No. 1 was student of LL.B. First year and she pursued her studies of law of First Year and Second year as regular student, but when she failed in the Second year LL. B. Course, she was allowed to pursue her study as Ex-student from the residence of petitioner's

father. For this purpose, the non-petitioner used to go to the college from petitioner's father's house by petitioner's father's car by travelling 12 kms. The non-petitioner was also availing all comforts in the matrimonial house including the telephone facilities etc. The non-petitioner, after failing in completing law education, in the year 1998, she insisted for joining M. A. in Music. For this purpose, she insisted that she will live with one Ram Chandra Goyal at Prabhu Kunj, Second Polo, Jodhpur. When this request was not accepted then non-petitioner No. 1 threatened that she will involve the petitioner and his father in litigation. However, because of persuasion of the petitioner and his father, who was also advocate, the non-petitioner lived in her matrimonial house, gave examination of LL.B. Second Year course and within one week thereafter, she called her brother and left for her parents' house at Bikaner and since then she did not come back. According to the petitioner, non-petitioner No. 1 gave her LL. B. Final year examination in the year 1999-2000 by living in the house of above mentioned Ram Chandra Goyal against the wishes of the petitioner and his family members. According to the petitioner, the non-petitioner committed grave cruelty against him and his family members.

3. The non-petitioner's case was that she was subjected to grave cruelty by the petitioner and she was beaten by the petitioner and his family members. She was turned out from her matrimonial house in the month of April, 1999 and since then the non-petitioner is residing with her father. Non-petitioner No. 1, on the ground of cruelty and desertion, submitted a divorce petition in the Court of the District Judge, Bikaner on 26-5-2001.

4. In said divorce petition, decree for divorce has been passed by the Family Court and she is entitled to maintenance under Section 25 of the Hindu Marriage Act, 1956. It will be worthwhile to mention here that in the divorce petition filed by the non-petitioner No. 1, the petitioner, forthwith, on 11-7-2001 submitted an application in the said Court stating therein that the allegations of the cruelty as alleged by non-petitioner No. 1 are wrong and are denied but reserving right to file detail reply, the petitioner is prepared to obtain the divorce by mutual consent under Section 13B of the Hindu Marriage Act. Non-petitioner No. 1 submitted reply to the petitioner's said application on 19-7-2001 and took objection about maintainability of the application of the petitioner. The non-petitioner also stated that since her stridhan has not been returned by the petitioner and the petitioner and his family members committed cruelty and demanded dowry and, therefore, she is proposing to initiate criminal proceedings against the petitioner. In the said reply, the non-petitioner stated that the

petitioner should tender apology. Thereafter only, non-petitioner No. 1 can consider the petitioner's request made in the application referred above.

5. In the divorce petition, filed by non-petitioner No. 1, the petitioner thereafter submitted detail reply along with the counter claim for the same relief of divorce as claimed by the non-petitioner No. 1. The petitioner also sought decree for divorce on the ground of cruelty but because of the cruelty committed by non-petitioner No. 1. In the divorce proceedings, that is in the divorce petition filed by non-petitioner No. 1 and the counter claim submitted by the petitioner, the counter issues were framed about committing of cruelty and desertion against each other.

6. It will be further relevant to mention here that in the petition under Section 13 of the Hindu Marriage Act, the petitioner who was non-petitioner in the said divorce petition proceedings, requested that since all the ingredients for passing divorce decree under Section 13B are available on record in view of the facts pleaded by the parties, therefore, the divorce decree may be passed under Section 13B of the Hindu Marriage Act, 1956. The trial Court in said proceeding, considered the petitioner's said prayer in the final judgment dated 4-2-2004 and held that there are allegations and counter allegations of the petitioner and the respondent and there is criminal case launched by non-petitioner No. 1 which is pending, therefore, there is no reasonable reason for granting divorce decree under Section 13B and it will be necessary to decide the divorce petition and counter claim on merits. The trial Court also observed that the result of the decree under Section 13B and under Section 13 is the same but it may affect the right of maintenance of the parties.

7. In view of the above reasons, the Family Court, Jodhpur proceeded with the trial of divorce petition filed by the non petitioner and counter claim filed by the petitioner for seeking divorce. The trial Court vide Judgment and decree dated 4-2-2004 allowed both the petitions (one filed by the non- petitioner under Section 13 of the Hindu Marriage Act and another filed as counter claim by the petitioner for seeking relief of divorce) and granted divorce decree against each other. Not only this but the trial Court also in operative portion of the Judgment clearly granted decree for divorce under Section 13B of the Hindu Marriage Act. While doing so, the trial Court allowed the respondent to move application under Section 25 of the Hindu Marriage Act for maintenance. The judgment of the trial Court dated 4-2-2004 has not been challenged by either of the party and, therefore, the decree for divorce attained the finality.

8. It will be worthwhile to mention here that the trial Court in the judgment dated 4-2-

2004 observed that the case in hand is different than any other litigation inasmuch as that both the parties are seeking divorce but are not prepared to move joint petition under Section 13B for obtaining divorce decree by consent. Both the parties have leveled allegation of cruelty as well as desertion. From the conduct of both the parties, it is proved that all the ingredients of Section 13B of the Hindu Marriage Act are present as both the parties are admittedly living separate from each other since last more than one year and there is no possibility that they will live together in future. However, the trial Court proceeded to decide the allegations of both the parties on the ground that though the effect of grant of divorce decree under Section 13-B of the Hindu Marriage Act is the same as is the effect of decree under Section 13 of the Hindu Marriage Act, but it may affect the right of the parties in claiming the maintenance. The copy of the judgment and decree of the trial Court dated 4-2-2004 has been placed on record in the trial Court in the present proceedings initiated by the respondent under Section 25 of the Hindu Marriage Act and the judgment dated 4-2-2004 is document admitted by both the parties.

9. As stated above, since the non petitioner was allowed to move application under Section 25 of the Hindu Marriage Act, therefore, she submitted the present application for seeking maintenance from the petitioner, upon which Case No. 48-A/05 was registered and notices were issued under Section 25 of the Hindu Marriage Act to the respondent and in this petition under Section 25 of the Hindu Marriage Act, the trial Court framed the issues on 21-9-2004. At the request of both the parties, issue Nos. 2 to 8 were decided by the trial Court as preliminary issues vide order dated 8-7-2005. In substance, the issues were on the basis of the pleas raised by the petitioner-non applicant husband seeking rejection of the respondent's petition for grant of maintenance under Section 25 of the Hindu Marriage Act on the ground; whether in view of the reply of the petitioner non applicant and plea taken in para A(a). the applicant No.2 is not entitled to claim maintenance under Section 25 of the Hindu Marriage Act, whether in view of the ground raised in para A(b)(c), respondent No. 1 the wife of the petitioner, is not entitled to claim any maintenance, whether in view of the order passed under Section 24 of the Hindu Marriage Act which was passed in divorce proceedings between the parties, the pleas raised by the non petitioner are barred by principle of res judicata, whether the petition filed by the non-petitioner applicant wife deserves to be rejected on the ground of non disclosure of cause of action, whether the petition of the non petitioner wife deserves to be dismissed on the ground of delay and whether in view of the pleas taken in paras 9 and 10 of the reply, non-petitioner No. 1 is not entitled to claim any maintenance and the petition deserves

to be dismissed.

10. The trial Court vide order dated 8-7-2005 rejected the objection of the petitioner and decided to proceed to decide the non petitioner's application for grant of maintenance on merits, instead of rejecting it on the basis of preliminary objections raised, referred in the issues mentioned above.

11. Hence the petitioner has preferred this revision petition to challenge the order dated 8-7-2005.

12. During pendency of this revision petition, the petitioner submitted application under Section 151, C. P. C. on 9-1-2006, stating therein that Section 6 of the Hindu Succession Act, 1956 has been amended with effect from 9-9-2005 and by said amendment, a daughter also has become coparcener and, therefore, became entitled to share in the ancestral property equal to son and Section 25 of the Hindu Marriage Act provides that before granting maintenance under Section 25, the Court should look into "other property of the applicant" and "conduct of parties as well as other circumstance of the case," Therefore, this change in law in Hindu Succession Act may be noticed because the non petitioner's ancestral property includes agricultural land, details of which has been mentioned in the application. The petitioner also submitted that the non petitioner has been selected and appointed as teacher in the Pay Scale of Rs. 4500-7000/- by the order of the District Education Officer and the Additional Chief Executive Officer (Preliminary Education), *Zila Parishad, Bikaner* dated 10-11-2005. In total, the non petitioner has been appointed on emolument of Rs. 8753/- per month. In view of the above, the non petitioner applicant wife of the petitioner got sufficient means to maintain herself and, therefore, in view of the subsequent events, the non petitioner is not entitled to any maintenance and her application for grant of maintenance be dismissed. The petitioner placed on record the copy of the order passed by the District Education Officer dated 10-11-2005. This Court by order dated 15-3- 2007 issued notices to respondent No. 1 so that she may meet with the additional grounds raised by the petitioner in his application filed in the Court dated 9-1-2006. However, the non petitioner did not file any reply to the petitioner's application in spite of the notice and opportunity to file reply.

13. The non petitioner submitted an application for grant of maintenance during pendency of the divorce petition under Section 24 of the Hindu Marriage Act before the Court of District Judge, Bikaner and on that application, the Court held that the respondent failed to prove that she has no source of income and the non petitioner

failed to prove any income of the petitioner. The non petitioner's application for grant of interim maintenance was dismissed by the judicial order passed on non petitioner's application by the trial Court on 16-1-2003. Said order was challenged by preferring revision petition before this Court and said Revision Petition No. 508/2003 was dismissed by the High Court by order dated 14-10-2003.

14. The non petitioner was not getting any maintenance at any point of time during proceedings for divorce and when all findings about the conduct of the non petitioner has been recorded against the non petitioner by the competent Court of law after trial in divorce decree, the non petitioner submitted this application to claim maintenance. It is submitted that even order passed under Section 24 of the Hindu Marriage Act is *res judicata* and, therefore, non petitioner is not entitled to raise and agitate issue about her inability in maintaining herself.

15. The non petitioner, by this petition under Section 25 of the Hindu Marriage Act, claimed maintenance of Rs. 8000/- for herself and Rs. 5000/- for her son, but without pleading any material fact on the basis of which the Court can adjudicate about the claim of the non petitioner. The only pleas of non petitioner in the application is that respondent No. 1 though is enrolled as Advocate but she had not a single case with her nor she has any other income. She is dependent upon her retired father who also is not in position to maintain her. She stated that the petitioner is also Advocate and has income of Rs. 25,000/- per month and the non petitioner has obtained divorce against the petitioner. She even did not disclose what are her needs.

16. The learned counsel for the petitioner submitted that Section 25 of the Hindu Marriage Act though provides that any of the parties to marriage can seek maintenance from other party and it may be interpreted but in some cases only that if the party against whom decree of divorce has been passed, can also claim maintenance but this cannot be interpreted to mean that the party against whom all findings about his/her conduct has been recorded in the judgment and decree for divorce and which has attained the finality, can also reopen all those decided issues so as to claim maintenance. If that interpretation will be given to the language used in Section 25 of the Hindu Marriage Act then there will be no meaning of the words "having regard to the income and other property of the applicant" which is the language used in Section 25 of the Hindu Marriage Act and further it will be against the principle of *res judicata*. It is also submitted that the findings recorded by a Court in earlier round of litigation cannot be reagitated and, therefore, respondent No. 1 cannot lead any evidence to contradict the findings recorded in the judgment which

was delivered in divorce case between the parties, then the conduct of non petitioner disentiing her from claiming maintenance is established by judicial verdict.

17. The learned counsel for the petitioner tried to rely upon a few judgments in support of his contention that under what circumstances the maintenance can be awarded but in the facts of the case, I do not find any necessity of referring all those cases as substantially there is no quarrel about legal position as laid down in the judgments that the circumstances in which the maintenance can be claimed and can be denied but that all depends upon the facts of each case and further because of the reason that the present case is not a case as like other cases which normally comes before the Court and this fact was noticed by the Court of District Judge, Bikaner in earlier round of litigation between the parties, which I shall be referring in brief in subsequent para again.

18. The learned counsel for the respondents vehemently submitted that respondent No. 1 cannot be denied maintenance only on the ground that some findings have been recorded against her in divorce proceedings. If it could have been denied only on this ground then the legislation would have framed the Section 25 of the Hindu Marriage Act in such a manner that the person against whom the decree for divorce on the ground mentioned under Section 13 of the Hindu Marriage Act would not be entitled to claim maintenance. Contrary to it, the Section 25 of the Hindu Marriage Act has been framed in such a manner that a person who lost in the divorce case, can also get the maintenance because maintenance of spouse is not charity but it is social obligation and it is a welfare legislation which may depend upon the social obligation rather than legal right. The social or moral obligation has been recognized by Section 25 of the Hindu Marriage Act and it is not even new right given to weaker section of the society.

19. I considered the submissions of the learned counsel for the parties and perused the record also including the unfortunate events of lodging of FIR by non-petitioner No. 1 against the petitioner and his 11 family members as well as the order passed by this Court in S. B. Criminal Misc. Petition No. 487/01 whereby FIR lodged by the non-petitioner dated 1-6-2001 was quashed and the order of the Hon'ble Supreme Court passed in Criminal Appeal No. 132/2005 dated 18-1-2005 by which the police was allowed to investigate into the allegations leveled by the non petitioner. Those facts are not of much relevance in view of some peculiar facts of the case in hand. The petitioner's contention is that his father decided to go for an ideal marriage for petitioner as his father was reformist. This fact has been proved by the petitioner in

earlier round of litigation in divorce case No. 83/ 2001 wherein it has been held that not only there were 6-7 Baraties but no dowry was taken by the petitioner and his family members. The Court held in said judgment that the non petitioner was given car facility to pursue her studies of LL. B. Part I and II and no cruelty was committed upon non petitioner and the non petitioner could not prove that she was turned out from petitioner's house by the petitioner and his family members and in fact non petitioner is guilty of committing cruelty upon the petitioner. The marriage which was without any pomp and show with Barat of 6-7 persons only and solemnized without obtaining dowry and where full facility was given to the non petitioner to pursue her studies while living in the house of the petitioner's father and she became advocate after her marriage resulted into divorce after short period. The non petitioner filed the divorce petition wherein the petitioner submitted counter claim and stated some facts which according to the petitioner, the non petitioner uttered and said to the petitioner which were misunderstood by the Court in the judgment dated 4-2-2004 passed in the divorce proceedings so as to mean that the petitioner leveled some allegations against the non petitioner about her character, whereas in fact the petitioner only stated that whatever the non petitioner told her that he has mentioned in the reply filed by him in divorce proceedings. In divorce proceedings the Court clearly held that the non petitioner lodged false FIR against the petitioner and his family members and she failed to prove any allegation of cruelty against the petitioner, however, in divorce proceedings the civil Court recorded finding against the petitioner also about committing cruelty by him but the reason given by the trial Court is that the petitioner narrated some facts about the character of the non petitioner but as observed above, that was not the allegation of the petitioner upon non petitioner No. 1 but only the statement of fact what non petitioner stated to the petitioner and another ground for holding the petitioner guilty of committing cruelty or creating situation for desertion is that the petitioner did not make any effort to bring the non petitioner back to his house. These peculiar facts made the petition of the non petitioner under Section 25 of the Hindu Marriage Act more peculiar because of the reason that the non petitioner's petition under Section 24 of the Hindu Marriage Act was dismissed in the divorce proceedings by the Court holding that she failed to prove the income of the petitioner and further she failed to prove that she was unable to maintain herself. The non petitioner was not getting maintenance during pendency of the divorce proceedings and thereafter she submitted this petition.

20. Not only above but in spite of specific notice on petitioner's application filed under Section 151, C. P. C. seeking permission to raise additional ground, the non petitioner

did not choose to controvert the fact stated in the petitioner's application that the non petitioner got the appointment in Government service and she is getting more than Rs. 8000/- per month as salary and further peculiar fact is that non petitioner's claim for her maintenance in this maintenance petition under Section 25 of the Hindu Marriage Act is Rs. 8000/- per month only.

21. At this juncture it will be appropriate to observe here that the Hindu Personal Law has been amended time to time and particularly to give more rights to Hindu female and to safeguard the interest of the female. The amendment in any Personal Law are not made easily and frequently by exercising legislative power but the Hindu Personal Law is exception to it and several progressive amendments have been made. By several amendments radical changes have been made in Hindu Personal Law which gave several rights to the Hindu women including conversion of their limited right to property into full ownership right and now share in the ancestral property by amendment in Section 6 of the Hindu Succession (Amendment) Act, 2005 by which Hindu daughter has been placed at par with Hindu son to inherit even coparcenary and ancestral properties. Several laws on one subject, that is, for maintenance are made, irrespective of availability of remedy under the pre-existing Hindu Personal Law resulted into multiple litigations. I need not to give any catalogue of law enacted for protection of rights of women and in relation to the dispute which may arise out of matrimonial relation (and now, even without having matrimonial lawful relation - See The Protection of Women from Domestic Violence Act, 2005).

22. It is true that the object of Section 25 of the Hindu Marriage Act is to provide for permanent maintenance to party to marriage even after dissolution of marriage. The right of Hindu wife for maintenance is an incident of a status to her being wife and her husband is under legal obligation to maintain his wife. "The concept of marriage under the Shastric Hindu Law is a sacrament, a religious ceremony which results in a sacred and a holy union of man and wife by which the wife is completely transplanted in the household of her husband, become a part and parcel of the body of her husband." "On the one hand, it signifies the spiritual union of man and woman, as husband and wife and on the other hand, it conceives of the basic principle of mutuality bringing two parties together with the force of social milieu, developing since the age-old times of civilization. Several obligations, corresponding duties and relative injunctions seem to evolve out so as to hold this tie together and further support and supplement its existence and principles of morality have obviously their interplay in this generic field. That subseries all the social virtues of personal love, mutual respect and best of

the co- operation. The aim and objective of this institution is to achieve, by co-habitation of man and woman, the supreme values of Dharma (i.e. Duty according to law and religion), Arth (economic effort and achievement), kam (love and procreation) and purusharth (i.e. Best and noble action and deeds). These are the material determinants of the concept of marriage. At any rate, the institution of marriage enjoins and obliges both husband and wife to live together under the same roof and by common effort to achieve the good of both. Marriage, thus means mutuality and respects reciprocity(emphasis supplied)." That is the concept of marriage under old Hindu Shastrik Law as noticed in the Book "Mitra on Hindu Law" written by S. K. Mitra in its Second Edition published by Orient Publishing Company (Edition 2008). The obligation to maintain the wife originally was recognized by Shastrik Law long ago and that has been incorporated in the enactments codifying the law in relation to the matrimonial relations making the maintenance a right vesting in the person who as per law, is entitled to claim maintenance from other. The maintenance itself is not share in the property of other but it is benefit to one is entitled by virtue of relationship. The loss of faith and non-discharge of obligation by one party to the marriage and even breaking of relation of marriage itself does not deprive one party from maintenance from other party. One is disentitled to maintenance if he/she commits wrong which disentitles the applicant from claiming maintenance under the law. A Court can take judicial notice of this fact that in spite of giving more and more rights to the female by making amendments in law, giving share in the ancestral property to female and share in paternal house to the female and putting the female at par with the son by amending the Acts, keeping the old concept of Hindu Law, complete transplanting of wife in the household of her husband's house still female is or treated weaker section in the society and reason may be the man mentality or the act of God. Be it as it may be, even after so many rights of women, women's claims for maintenance through the Court of law have not reduced much. In this case, non-petitioner No. 1 did not deny that she has been given appointment in the State Government services having security and she is appointed on emoluments of more than Rs. 8000/-, yet she did not like to come before the Court and state that her cause does not survive, if it was there.

23. In spite of making laws for women's empowerment, by making laws, the law of maintenance for women is not only as it was but some more rights have been given to the women under the Protection of Women from Domestic Violence Act, 2005. In this case, the non-petitioner did not choose to controvert the fact that she has been given appointment in the Government service as of teacher with total salary of more than Rs.

8000/-. Therefore, this fact can be accepted as fact admitted by the non-petitioner and there is no reason to discard the copy of the order placed on record by the petitioner along with the application filed under Section 151, C.P.C. for taking on record the said document also in support of his contention that the cause itself has come to an end on the basis of which the non-petitioner claimed maintenance. In view of the above fact alone, it can be held that non-petitioner's any cause if it was for claiming maintenance, is not surviving after November, 2005. Since she submitted application for maintenance in the trial Court on 25-3-2004, therefore, there remains a short period of about 1= years only. The non- petitioner submitted divorce petition in the year 2001 and she was not found entitled to any maintenance during entire divorce proceedings which culminated with passing of the divorce decree on 4-2-2002, then the finding recorded by the Court in divorce petition under Section 24 of the Hindu Marriage Act even if for sake of argument, may not be binding in the proceedings under Section 25 of the Hindu Marriage Act even then certainly is a relevant fact and, therefore, in view of the totality of the facts of the case, this Court finds it appropriate to allow the revision petition of the petitioner on the basis of the subsequent event of non-petitioner's joining service and her getting more amount than what she claimed in the maintenance petition for her maintenance as well as by taking into account that petitioner's marriage was ideal marriage with simplicity and was without dowry and there was full cooperation to non-petitioner by petitioner and his family members in non- petitioner's pursuing education after marriage and further looking to conduct of non-petitioner No. 1 which constituted other circumstances of case while examining the claim of the non-petitioner for her maintenance. All above need no further evidence in view of undisputed facts and finding recorded in the judgment between the parties.

24. Consequently, the revision petition is allowed and by exercising supervisory powers, this Court deems it proper to reject the non-petitioner's application moved under Section 25 of the Hindu Marriage Act. So far as claim of maintenance of respondent No. 2 is concerned for which Section 25 of the Hindu Marriage Act is not appropriate remedy and for that purpose, the non- petitioner No. 2 may also move application if it is so advised, if any cause exists for claiming maintenance for non-petitioner No. 2 from the petitioner.

Revision allowed.