

Bench: S K Kaul

Asha Devi vs Pominder Kumar Chhabra on 7/9/2006

## JUDGMENT

Sanjay Kishan Kaul, J.

1. Admit.

2. At request of learned Counsel for the appellant and attorney / father of the respondent, the matter is taken up for final disposal.

3. The respondent filed a petition for divorce against the petitioner / wife. The petitioner filed an application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter to be referred to as, 'the said Act') claiming interim maintenance. The interim maintenance was fixed by the trial court vide order dated 02.01.1997 @ Rs. 1,500/- per month from the date of the application apart from litigation expenses. Since the respondent did not pay interim maintenance, the trial court deemed it appropriate to adjourn the proceedings filed by the respondent sine die on 11.08.1997.

4. The respondent subsequently filed an application seeking to withdraw the divorce petition, but the same was opposed by the petitioner on the ground that without clearance of interim maintenance due, the petition ought not to be permitted to be withdrawn. The petition was finally permitted to be withdrawn on 04.03.1999.

5. A dispute arose in respect of the arrears of maintenance amounting to Rs. 28,050/-, which were alleged by the petitioner not to have been paid for the period 12.08.1997 to 04.03.1999. This is a period when the proceedings were adjourned sine die. The petitioner took out execution proceedings and though initially attachment orders were passed, the successor court in terms of the order dated 25.10.2002 rejected the execution petition of the petitioner.

6. The basic reasoning of the impugned order, which is now sought to be challenged by the petitioner under these proceedings under Article 227 of the Constitution of India, is that the respondent cannot be punished twice since the proceedings were adjourned sine die for that period of time and, thus, the petition filed by the respondent did not proceed. Thus, the trial court has taken a view that for this period of time, the respondent is not liable to pay maintenance.

7. Learned Counsel for the petitioner has referred to judgments of various High Courts to advance the proposition that the expression 'during the proceedings' used in Section 24 of the said Act would imply that even where proceedings had been adjourned sine die, the same would be still pending. Section 24 reads as under:

24. Maintenance pendente lite and expenses of proceedings. ?- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

8. In Smt. Jai Rani v. Om Prakash Saini , a learned Single Judge of this Court has taken a view that Section 24 of the said Act is a provision made for maintenance pendente lite and expenses of proceedings and, thus, an order made has a temporary life, which is co-terminus with the proceedings. Thus, if there are no proceedings before a Judge, Section 24 cannot be invoked. Once an order is made under Section 24 of the said Act, the

opposite party is bound to obey it and in case of failure of obeying such an order, the trial court can enforce obedience to its orders by staying the proceedings if the party in default is the petitioner. In the alternative, where the respondent is in default, the court could strike out the defense. The learned Judge was of the view that the husband was liable to pay maintenance allowance for the period up to stay of proceedings but not beyond that. However, in case the husband revives the proceedings, he would be liable to pay all arrears of maintenance, which will be due through the period of stay and revival. It was observed that the proceedings remained in a stage of animated suspension.

9. The Calcutta High Court in Bishoke Kumar Dutta Choudhury v. Amita Dutta Choudhury 1 (1983) D.M.C. 202 was of the view that where a proceeding has been stayed because of laches on the part of the petitioner, it does not mean that the suit is non est or that it has ceased to be a pending suit. The expression 'during the proceedings' as used in the Section has been held to mean 'during the pendency of the proceedings'. Thus, it was held that in spite of stay, the suit is undoubtedly pending as a contra view would give an unfair advantage to a party of not paying maintenance and to keep the suit stayed for an indefinite period of time.

10. The last judgment referred to is of the learned Single Judge of the Madras High Court in P.S. Devarajan v. R. Geetha 2000 MLR 510. In this judgment, it has been held that when a court stays the proceedings and directs that no order will be passed thereon, it is not terminating the proceedings.

11. On a conspectus of the aforesaid judgments, it is apparent that the methodology of staying proceedings where a petitioner has failed to pay the interim maintenance fixed by the court under Section 24 of the said Act is a tool utilised by the court to enforce its direction. The object is that a petitioner, who does not comply with the directions of the court, should not be able to pursue the substantive legal remedy filed by him.

12. There is also no doubt that once the proceedings stand terminated, Section 24 of the said Act has no role to play. In Jai Rani's case (supra), a learned Single Judge of this Court has taken a view that the liability of the petitioner to pay maintenance would be only for a period up to the stay of the proceedings, but in case he revives the proceedings, he would be liable to pay all arrears of maintenance. The question is whether the application filed by the respondent would amount to revival of the proceedings.

13. The respondent, possibly not to incur further liability of interim maintenance or for any other reason, decided to terminate the proceedings. Such termination of proceedings only took place in pursuance to the order dated 04.03.1999. The proceedings could not have been terminated without the order dated 11.08.1997 adjourning the proceedings sine die being recalled. Thus, the proceedings stood revived for the purpose of its final termination when the respondent moved the application. The Calcutta and Madras High Courts have, in fact, gone further and have come to the conclusion that the obligation of the petitioner does not cease to pay maintenance even if the proceedings are stayed since the stay of proceedings is only a methodology to enforce compliance of the order insofar as the payment of maintenance is concerned.

14. I am, thus, of the considered view that the liability of the respondent to pay maintenance would not cease till such time as the proceedings are finally terminated on 04.03.1999. The respondent, thus, was liable to pay maintenance for the period of 12.08.1997 to 04.03.1999.

15. The trial court has committed a patent error in trying to make out a case of a double punishment for the respondent in case such payment was directed to be made losing sight of the very principle why such proceedings were adjourned sine die. The proceedings were adjourned sine die only to enforce compliance of the orders passed for interim maintenance. The trial court has, thus, wrongly exercised the jurisdiction vested in it by law whereby the execution proceedings filed by the petitioner were sought to be terminated.

16. In view of the aforesaid, the impugned order is set aside and the trial court is directed to proceed with the execution proceedings in accordance with law for recovery of the arrears of maintenance for the period of 12.08.1997 to 04.03.1999.

17. The parties to appear before the trial court on 15.12.2006 and in case the respondent pays the amount by that date, no further proceedings would be required to be taken, failing which, the trial court shall proceed with the execution proceedings.

18. The petition is allowed in the aforesaid terms leaving the parties to bear their own costs.