



RAJASTHAN HIGH COURT
**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 1001/2024

[REDACTED]

----Appellant

Versus

[REDACTED]

----Respondent

For Appellant(s) : Mr. Palash Wadhvani
For Respondent(s) : Mr. Ram Chandra Bishnoi

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Judgment

Reportable

11/09/2024

Per Dr. Pushpendra Singh Bhati, J:

1. This Civil Miscellaneous Appeal under Section 19 of Family Courts Act, 1984 has been preferred claiming the following relief:

"It is therefore prayed that the appeal may kindly be allowed and set aside the judgment dated 07.02.2024 passed by learned Family Court, Udaipur in Case No. 121/2023 titled as [REDACTED] vs [REDACTED]. The application filed under Section 25 and 27 of HMA may be decide afresh at their own merits.



Any other relief which is deemed to be just and proper in the circumstances of this case may kindly be passed in favour of the appellant."

2. Brief facts of the case as placed before this Court by learned counsel for the appellant-wife are that the marriage between the parties i.e., appellant-wife & respondent-husband was solemnized on 12.06.2017, as per Hindu customs and traditions, in Udaipur District. Few days after the marriage, the respondent started subjecting the appellant to mental harassment, in connection with demand of certain gold ornaments belonging to the appellant. The appellant has also come to know that the respondent had been in an illicit relationship with certain other woman, prior to the marriage between the parties.

2.1. On 25.01.2018, the respondent ousted the appellant from her matrimonial home, without any reasonable cause, whereafter the appellant started living with her parents. As per the appellant, the respondent is living in District Gandhinagar (Gujarat). Subsequently, the appellant came to know about the ex parte divorce decree having been passed on 08.03.2021, in favour of the respondent, by the learned 2nd Additional Senior Civil Judge, Gandhinagar (Gujarat) (in short, 'Gujarat Court').

2.2. Thereafter, the appellant filed an application [registered as Case No.121/2023 (C.I.S. No. 352/2023)] under Sections 13(1) (ia)(ib), 25 and 27 of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'Act of 1955'*) for the grant of divorce and permanent alimony and for possession of her *stridhan* before the learned Family Court No.2, Udaipur. The said application was



dismissed by the learned Family Court vide the impugned order dated 07.02.2024, while stating that the same was barred by the principle of *res judicata* as per Section 11 C.P.C., because the divorce decree has already been passed by the Gujarat Court, as mentioned above. Hence, the present appeal has been preferred by the appellant, claiming the afore-quoted reliefs.

3. Learned counsel for the appellant submits that after the marriage in question, the respondent started pressurizing the appellant for quitting her job, and also made an attempt to get forceful possession of the *stridhan* belonging to the appellant. Learned counsel further submits that prior to the marriage in question, the respondent had been in an illicit relationship with another woman and wanted to marry her after taking divorce from the appellant.

3.1. Learned counsel also submits that despite several attempts from the side of the appellant, the marriage in question did not work and both the appellant and respondent have been living separately for last more than 5 years.

3.2. Learned counsel further submits that in connection with the matter in question, the appellant also lodged an FIR under Sections 498A and 406 IPC, against the respondent, and subsequently a charge-sheet was presented therein and the trial began thereafter, before the concerned Court.

3.3. Learned counsel also submits that the aforementioned *ex parte* divorce decree dated 08.03.2021 was passed by the Gujarat Court in favour of the respondent, without affording adequate opportunity of hearing to the appellant and on the basis of wrong



and deceitful facts presented before the said Court by the respondent.

3.4. Learned counsel also submits that the *ex parte* divorce decree so passed against the appellant cannot take away her right to seek permanent alimony and possession of *stridhan*, as provided under Sections 25 & 27 of the Act of 1955, and therefore, the impugned order passed by the learned Family Court is not sustainable in the eye of law. This is more so when the said right is available to the appellant, irrespective of the decree of divorce in question, and also the principle of *res judicata* is not applicable in the present case, particularly, in view of the provision contained in Section 27 of the Act of 1955, as the said provision of law applies to incidental proceeding(s).

3.5. In support of such submissions, learned counsel placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of ***Chand Dhawan vs. Jawaharlal Dhawan (Civil Appeal Nos. 2653-54 of 1991, decided on 11.06.1993)***.

4. On the other hand, learned counsel for the respondent-husband, while opposing the aforesaid submissions made on behalf of the appellant-wife, submits that the divorce decree granted vide the order dated 08.03.2021 was not obtained on deceitful grounds, as a registered notice of the divorce application was sent to the appellant, which was duly received by the latter on 26.11.2018. Despite it being in the knowledge of the appellant, that the said divorce petition has been filed, the latter never appeared before the Gujarat Court. Thus, the ground so taken by the appellant herein cannot be the basis for presenting a new



divorce claim, more particularly, when the aforesaid *ex parte* decree is also deemed to be a decree passed on merits.

4.1. Learned counsel further submits that the divorce decree granted in favour of the respondent is neither obtained by deceiving the appellant, nor the same was suffering from any legal infirmity, more particularly, the said decree has been passed strictly in accordance with the provisions of law on the subject. Therefore, the impugned order passed by the learned Family Court is justified in law.

5. Heard learned counsel for the parties as well as perused the record of the case, along with the judgment cited at the Bar.

6. This Court observes that the marriage in question was solemnized between the parties on 12.06.2017 and within a few days of marriage, the respondent started subjecting the appellant to mental harassment, in connection with demand of certain gold ornaments belonging to the appellant. As per the appellant, the respondent, prior to the marriage, was in a relationship with some other woman and wanted to marry her; however due to the family's pressure he married the appellant and therefore, he wanted to take divorce from the latter, in order to marry the former. After ousting the appellant from her matrimonial home, the respondent who is living in District Gandhinagar (Gujarat) sought and was granted the *ex parte* divorce decree on 08.03.2021 by the Gujarat Court.

6.1. The challenge, as laid in the present appeal, is against the order passed by the learned Family Court on 07.02.2024, whereby the application preferred by the appellant for the grant of divorce



and permanent alimony and for possession of her *stridhan* has been dismissed.

7. This Court observes that in the present case the appellant has sought two major reliefs while challenging the impugned judgment, viz. Permanent Alimony and Stridhana. The same will be dealt with by this Court respectively in the following segments.

With Regard to Permanent Alimony

8. This Court firstly deals with the claim of the appellant for permanent alimony as provided under Section 25 of the Act of 1955. For ready reference, Section 25 of the Act of 1955 is reproduced as hereunder:-

"25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree **or at any time subsequent thereto**, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent..."

8.1. This Court observes that Section 25 of the Act is a social welfare provision, aimed at securing the rights of women. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the



goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

8.2. This Court further observes that Section 25 bestows the 'Court having jurisdiction' under the Act of 1955 with the power to grant permanent alimony and maintenance to the applicant. However, the respondent in the present case has submitted that the impugned judgment rejecting the petition of the divorce and the reliefs of permanent alimony and stridhan has been rightly passed, as the claim of the appellant is barred by virtue of Doctrine of Res Judicata enshrined under Section 11 of the Code of Civil Procedure, 1908. Therefore, in this regard it becomes pertinent to interpret the scope and ambit of Section 25 vis-a-vis the power of a Court under the Act of 1955 to order payment of permanent alimony or maintenance as the case may be, once the petition concerning divorce has been disposed of by another court exercising jurisdiction under the Act of 1955.

8.3. This Court also observes that Section 25 being a welfare provision aimed at ensuring financial independence of women in India, needs to be interpreted in light of the purpose that it seeks to achieve. In this regard, this Court is conscious of the judgment rendered by the Hon'ble Apex Court in the case of **Badshah v.**



Urmila Badshah Godse, (2014) 1 SCC 188, relevant paras of which are reproduced as follows:

"Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "**social justice adjudication**", which is also known as "**social context adjudication**" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society.

Prof. Madhava Menon describes it eloquently:

"It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality





that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

17. Cardozo acknowledges in his classic [Benjamin N. Cardozo: The Nature of Judicial Process.]

"... no system of jus scriptum has been able to escape the need of it."

and he elaborates:

"It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. ... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge's troubles in ascribing meaning to a statute. ..."

Says Gray in his lectures [John Chipman Gray: The Nature and Sources of the Law.]:

"The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."





18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision –libre recherche scientifique i.e. "free scientific research".

22. In taking the aforesaid view, we are also encouraged by the following observations of this Court in **Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] : (SCC p. 74, para 9)**

"9.... The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, **it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts.**"

8.4. This Court observes that purpose of legislature while enacting Section 25 of the Act of 1955, was to provide an additional safeguard to the women and to make them financially independent. A bare perusal of the text of Section 25 shows that it is not a static provision; rather this social-welfare provision is continuous in nature and is aimed at safeguarding the rights of the women at any stage of the matrimonial proceedings, which is manifest from the words:

"Any Court exercising jurisdiction under this Act may, at the time of passing any decree **or at any time subsequent thereto on the application made to it for the purpose...**"

8.5. This Court further observes that the two-phrases 'at the time of passing any decree' and 'at any subsequent time thereto' are connected by a **disjunctive (or)** and not a conjunctive (and); and therefore both are to be read independently along with the remaining wordings of the Section and; a disjunctive reading of Section 25, empowers **any court having jurisdiction** under the





Act of 1955 to grant the relief of permanent alimony to the wife, in turn is in line with the legislative intent.

8.6. This Court also observes that on the aforementioned point of jurisdiction, Section 19 of the Act of 1955, becomes relevant which is reproduced as follows:

"Section 19 – Court to which petition shall be presented

– Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:—

(iii) in case the wife is the petitioner, **where she is residing** on the date of presentation of the petition;"

8.6.1. This Court observes that in Rajasthan, as in many parts of India, women often face significant social and financial barriers that restrict their autonomy, particularly when it comes to travel. Rooted in deeply engrained cultural norms and patriarchal structures, the expectation that women should remain within the confines of their homes or local communities is pervasive. In many rural and semi-urban areas, women depend on male relatives—fathers, brothers, husbands—for permission and logistical support to venture beyond their immediate surroundings. Financial independence remains a distant reality for a large segment of women, with limited access to well-paying jobs, personal savings, or control over resources. Even if some women manage to earn a living, societal expectations often deem it inappropriate or unsafe for them to travel alone, further buttressing a cycle of dependence. The lack of accessible transportation options, coupled with concerns over safety, often makes travel to other cities or regions a distant aspiration rather than a practical possibility. This



creates a stark contrast to the mobility enjoyed by men, and accentuates the broader issue of gender inequality that affects not only women's personal freedom but also their broader social and economic participation.

8.6.2. This Court observes that the legislative intent underscoring the aforementioned provisions is to enable a wife to claim reliefs at the place of her residence and to not make her run from pillar to post in the search of fundamental reliefs which are bestowed to her under the Act.

9. Thus, in light of the aforementioned, this Court considers it appropriate to interpret Section 25 of the Act of 1955 by employing the Rule of Golden Interpretation. The "golden rule" of interpretation is a fundamental principle in legal theory that seeks to balance the literal meaning of words with the intent behind them, ensuring that the application of law serves justice without yielding absurd or unjust results. This rule suggests that while the text of a statute or legal provision must primarily be understood according to its plain and ordinary meaning, if such an interpretation leads to an outcome that is illogical, unreasonable, or contrary to the legislature's intent, the court may depart from the literal meaning and adopt a more sensible construction. By focusing on the spirit rather than the mere letter of the law, the golden rule ensures that the legal system remains flexible, dynamic, and aligned with the principles of justice, preventing technicalities from undermining the true objectives of legislation. In essence, it is a safeguard against the rigid application of laws



that might otherwise conflict with the broader aims of fairness and societal good.

9.1. In the context of welfare provisions, the golden rule of interpretation ensures that laws designed to uplift vulnerable populations are applied in a way that reflects their true intent.

While a strict, literal reading may sometimes lead to unjust outcomes or exclude those that the law seeks to protect, the golden rule encourages a purposive interpretation. This allows courts to adapt the law to its broader social objectives—promoting justice, equity, and the well-being of marginalized groups. By prioritizing the spirit of the law over its letter, this approach ensures welfare provisions serve their true purpose, providing benefits to those in need and advancing social justice.

9.2. The court here also invokes the legal maxim **ut res magis valeat quam pereat** i.e., where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way.

As has been held in the ***Badshah (supra)***:

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this





interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife...

10. This Court further observes that in the instant case as well, the appellant is residing in Udaipur and it will not be in interest of justice to make the appellant run from one court to another which is located in the district far away from the State where she is residing, especially when the alimony is required for her basic sustenance and she is unable to travel due to various socio-economic constraints. A disjunctive reading of Section 25 of the Act of 1955 along with Section 19 read in light of the purpose of the provision, would thereby enable the Court in Udaipur to grant permanent alimony to the appellant in the case.

11. This Court further observes that on the issue of Res Judicata, a perusal of Section 21 of the Act of 1955 becomes pertinent, which is reproduced as follows:

Section 21 – Application of Act 5 of 1908 – 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 Code of Civil Procedure, 1908.

11.1. This Court observes that procedure is the handmaid of justice and not its mistress. Merely due to technical difficulties, a woman should not be made to run from pillar to post. In the Indian society, especially Rajasthan wherein certain women are still confined within the four-walls of their houses and are not financially and socially independent. When procedural law is interpreted with excessive rigidity, it risks overshadowing the fundamental purpose of justice—ensuring fairness and equity in the resolution of disputes. Strict adherence to procedural rules,





without considering the underlying principles of justice, can lead to outcomes where technicalities outweigh substantive rights, leaving parties without meaningful recourse. In such cases, the process becomes an end in itself, rather than a means to achieve just and equitable decisions. The narrow focus on procedural compliance, rather than the merits of the case, can exclude those who may be disadvantaged by complex legal technicalities or who struggle to navigate the intricacies of legal procedure. This undermines the very essence of the judicial system, which is to administer justice, not simply to uphold procedural formalities. When courts prioritize rigid procedural interpretation over fairness, they risk perpetuating outcomes that are disconnected from the equitable principles that the law is meant to uphold.

11.2. Therefore, the argument vis-a-vis the invocation and applicability of the Doctrine of Res Judicata is not applicable on the reliefs of permanent alimony and stridhan as the reliefs under Section 25 can be claimed by way of an application at any subsequent stage as well and any court having jurisdiction under the Act can grant the same, thereby entitling the appellant in the present case to seek permanent alimony.

With Regard to Stridhan

12. This Court observes that concerning the issue of Stridhan, Section 14, Hindu Succession Act, 1956 r/w Section 27 of the Act of 1955 are of prime importance, which are reproduced as follows:

"Section 14, Hindu Succession Act, 1956 – Property of a female Hindu to be her absolute property





(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation — In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance ... also any such property held by her as **stridhana** immediately before the commencement of this Act.

Section 27, Hindu Marriage Act, 1955 – Disposal of Property — In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper concerning any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife."

12.1. This Court observes that a bare perusal of the aforementioned provisions highlights that the stridhan is sole property of a woman and she is entitled to it absolutely, without any interference in the same by anyone else.

12.2. At this juncture, this Court is also conscious of the judgment rendered by the Hon'ble Apex Court in the case of **Maya Gopinath v. Anoop S.B. and Anr., [arising out of SLP (Civil) No. 13398/2022, decided on 24 April, 2024]** relevant portion of which is reproduced as follows:

"This Court in **Rashmi Kumar v. Mahesh Kumar Bhada** [a decision by a bench of three Hon'ble Judges of this Court on a reference made by a bench of two Hon'ble Judges, who considered it necessary that a fresh look at the view expressed in a previous decision of three Hon'ble Judges in **Pratibha Rani v. Suraj Kumar** be had], after scrutiny of several treatises and precedents had the occasion to observe in paragraph 10 that the **properties gifted to a woman before marriage, at the time**





of marriage or at the time of bidding of farewell or thereafter are her stridhan properties. It is her absolute property with all rights to dispose at her own pleasure. The husband has no control over her stridhan property. He may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhan property does not become a joint property of the wife and the husband and the **husband has no title or independent dominion over the property as owner thereof.**

12.3. This Court observes that, in light of the aforementioned legislative provisions and judicial precedents it is well-established that stridhan in any circumstances is solely and absolutely a property of a woman and there is no scope of any rider in the ownership of the same under law. Therefore, in the instant case, as far as the issue of entitlement to Stridhan is concerned, all the movable and immovable properties belonging to the appellant or given to her before or at the time of or at any subsequent time of the marriage are her stridhan properties, of which she is an absolute owner by virtue Section 14 of the Hindu Succession Act, 1956 read with Section 27 of the Act of 1955 and the same shall be returned to her by the Respondent.

13. This Court further observes that in connection with the aforesaid criminal proceeding (FIR) as lodged by the appellant, the matter is pending trial before the concerned Court.

14. This Court also observes that with regard to the second claim of the appellant for grant of the divorce decree under Section 13 of the Act of 1955, is that an *ex parte* divorce decree has already been granted by the Gujarat Court on 08.03.2021 and marriage



between the appellant and respondent is already dissolved. Once the divorce decree is granted by one Court, then the same relief cannot be claimed by the other party before any other Court against the same party, as the same as concluded above, is clearly barred by the principle of the *res judicata* under Section 11 CPC.

14.1. This Court also observes that the aforesaid *ex parte* divorce decree can only be challenged by either of the parties before the Appellate Court concerned, and not otherwise. Therefore, the impugned order passed by the learned Family Court qua rejection of the divorce decree on the principle of *res judicata* as provided under Section 11 of CPC is justified in law.

15. Thus, in light of the overall factual matrix as well as the above quoted precedent law, the present appeal is **partly allowed** and impugned order dated 07.02.2024 is quashed and set-aside only to the extent of dismissal of the application qua permanent alimony under Section 25 and for *stridhan* under Section 27 of the Act of 1955.

15.1. The matter is thus remanded back to the learned Family Court, Udaipur, and while restoring the application in question for the limited purpose of permanent alimony and possession of *stridhan*, the learned Family Court is directed to decide the application in question afresh qua the claim of the appellant while taking into due consideration the observations made in the present order, as regards entitlement of the appellant for grant of permanent alimony and possession of her *stridhan* to which, in the given circumstances, the appellant is entitled under the law.



10.2. All pending application is disposed of. The record of the learned Family Court be sent back forthwith.

(MUNNURI LAXMAN),J

(DR. PUSHPENDRA SINGH BHATI),J

90-SKant/-

