

Court No. - 39

Case :- FIRST APPEAL No. - 706 of 2024

Appellant :- Vinay Kumar

Respondent :- Suman

Counsel for Appellant :- Pankaj Baranwal

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Sri Pankaj Baranwal, learned counsel for the appellant and perused the record.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the order dated 29.04.2024 passed by Sri Rakesh Dhar Dubey, learned Principal Judge, Family Court, Chandauli in Divorce Petition No. 80 of 2021 (Vinay Kumar Vs. Suman), whereby the learned trial court has disposed of the divorce case proceeding with the following order :

"29.4.21 Called out. Petitioner and respondent both are absent. Amount of Rs. 60000/- deposited today by brother of petitioner namely Ajay Kumar. Ajay Kumar admits that petitioner is in service and presently posted in Mumbai. Address at present in petition is also of Palghar Maharashtra. Even the address of OP is of Mumbai. From perusal of order sheet it is apparent that both the parties rarely appear in court in person which hampers trial and speedy disposal which is against the principle of natural justice.

At the time of filing of petition both the parties were living in Mumbai or Nearby Mumbai. Present petition is hereby disposed giving the liberty to petitioner to file fresh petition in Mumbai or Nearby Mumbai so that parties can appear in court easily without causing any hardship to either of the parties and dispute can be settled earliest. In the above term present petition is disposed off keeping in mind speedy disposal. Records be consigned."

3. Section 19 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') reads as below :

"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 --

(i) the marriage was solemnized, or

(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive."

4. The Family Courts Act does not make any contrary provision with respect to the same. Then, paragraph no. 29 of the plaint reads as below :

"29. यह कि याची का मूल निवास स्थान शीर्षक उपरोक्त वर्णित अन्तर्गत जनपद चन्दौली है तथा इसी निवास स्थान से याची की प्रत्यर्थिनी के साथ शादी हुई है तथा प्रत्यर्थिनी शादी के बाद विदा होकर याची के साथ इसी निवास स्थान पर आई थी तथा प्रत्यर्थिनी अंतिम बार मार्च 2017 को जिला चन्दौली में पति पत्नी के रूप में रहे हैं, अस्तु न्यायालय को श्रवण का अधिकार है।"

5. In the cause title of the petition, the appellant had disclosed both permanent as also the current address of the parties. Thus, the appellant had disclosed his permanent address at Chandauli and that of the respondent at Jaunpur. As to the current address, the appellant had disclosed the address of both parties at Mumbai.

6. At the same time, reading of paragraph no. 29 of the plaint leaves no doubt that according to the appellant, the parties had married at his permanent address disclosed at

Chandauli and that they last resided at that address.

7. In paragraph no. 29 of the written statement, it has been stated as below :

"29- यह कि वाद पत्र की दफा-29 के कथन से कत्तई इंकार है। सत्यता यह है कि वादी मुम्बई रेलवे विभाग में नौकरी करता है और प्रतिवादी वादी के विभाग द्वारा प्रदत्त क्वार्टर मुम्बई शान्ताकूज में अपनी बच्ची को लेकर आज भी रह रही है। जब वादी एवं प्रतिवादिनी दोनों का निवास स्थान मुम्बई है अस्तु माननीय न्यायालय को वाद के श्रवण का अधिकार हासिल नहीं है।"

8. Further, in paragraph no. 49 of the written statement, it has been stated as below :

"49- यह कि वादी द्वारा दाखिल वाद पत्र का पैरा-29 का सारा कथन बनावटी, झूठ व असत्य है। जैसा कि वाद पत्र के उनवान में वादी का हाल पता प्लाट नंबर-307-जी-6 स्टार सिटी नयागॉव (पूर्व) जिला-पालधर महाराष्ट्र (मुम्बई) और उसी जगह चालक के पद पर तैनात हैं जो एक जिम्मेदार पद है तथा प्रतिवादिनी का हाल पता 159/4 साउथ साईड रेलवे कालोनी आर०के० हास्पिटल के पीछे शान्ताकूजल मुम्बई है जिससे स्पष्ट रूप से प्रमाणित है कि वादी एवं प्रतिवादिनी दोनो मुम्बई में निवास करते हैं, अस्तु क्षेत्राधिकार के प्रश्न पर दावा पोषणीय नहीं है इस बिनाय पर भी दावा काबिल होने निरस्त के है सिर्फ प्रतिवादिनी को आर्थिक, सामाजिक व पारिवारिक क्षति पहुंचाने की गरज से वाद पत्र जिला चन्दौली में दाखिल किया गया है ऐसी स्थिति में माननीय न्यायालय को वाद के श्रवण के श्रवण का क्षेत्राधिकार नहीं है।"

9. The appellant is also described to have filed his replication application. However, issues have yet not been framed and evidence has also not been led.

10. The order sheet of the case reveals, initially, the matter remained pending for reason of spread of pandemic COVID-19 and also for reason of parties not presenting themselves regularly. However, on 07.10.2021 itself the respondent had filed an application under Section 24 of the Act. The Court directed to avail mediation. Thereafter, the matter remained pending. On 17.12.2021, Rs. 3,000/- cost was also imposed for seeking adjournment. Thereafter, the matter was again adjourned for reason of spread of pandemic COVID-19

and also for reason of lawyers abstaining from work. The matter remained pending for filing of written statement and objections to the application filed under Section 24 of the Act.

11. On some dates parties appeared whereas on some dates adjournments were sought and on some other dates strike was observed by the lawyers.

12. Yet, on 26.05.2023, the learned trial court passed an order on the application filed under Section 24 of the Act, awarding interim maintenance Rs. 30,000/- per month to the respondent. The order sheet also reveals compliance made with respect to payment of interim maintenance. While the matter was itself pending, the impugned order has been passed.

13. On query made, learned counsel for the appellant states, there was no objection with respect to territorial jurisdiction pressed by the respondent. In any case, since the stand disclosed in paragraph no. 29 of the plaint may not have been at variance with the stand taken by the respondent in reply thereto, neither any issue was framed as to territorial jurisdiction of the learned trial court nor any hearing was held on objection raised in the written statement. In fact, the respondent claimed and the learned trial court passed specific orders providing for mediation as also (later) for maintenance to the respondent. Still, the impugned order has been passed by the learned trial court, at its own instance without either party seeking such an order, pressing any objection as to jurisdiction.

14. Submission is, the learned trial court has adopted laconic and casual approach. Perhaps in its zeal to

dispose of the proceedings, it has created reasoning that does not spring from the stand and conduct of the parties. In any case, keeping in mind the principle enshrined in Section 19 of the Act, the divorce case proceeding filed at Chandauli did not lack inherent jurisdiction.

15. In fact, statutory law clearly permitted the parties to file the divorce case and other proceedings at Chandauli. Also, it has been submitted, once pleadings had been exchanged and the parties had been heard on the proceedings providing for interim maintenance, the approach adopted by the learned trial court is contrary to the spirit of the Act and negates justice dispensation.

16. Normally, we would have felt inclined to first issue notice, hear the other party and thereafter to pass a final order on this appeal. However, we find, a just exception has to be made in the present facts to that established procedure. Procedure remains a hand maid of justice. Where the learned trial court is seen to have completely erred in procedure as may result in complete denial of justice to the parties/litigating citizens, the appeal court may remain obligated to set the mistake right in real time and ensure that justice delivery is not impeded with mistakes/errors and inadvertence of the learned trial court. Here, no prejudice may be caused to the respondent if this appeal is allowed as she had not pressed for dismissal of the divorce case proceedings (for reason cited by the learned trial court).

17. It is fundamental to administration of justice that no Court has *lis* of its own. In the present facts, keeping in mind the clear mandate of Section 19 of the Act, the proceedings for divorce may have been instituted at Chandauli also, where the marriage between the parties

was solemnized or at Mumbai where the respondent were residing at the time of institution of the proceeding besides at Chandauli for reason of the parties having last resided together, at that place.

18. That being the statutory principle, the learned trial court may have declined to exercise its jurisdiction only in the event of the respondent having raised and pressed the objection as to lack of jurisdiction (raised in paragraph no. 29 of the written statement) or where the proceeding may have been transferred to any other district (within the State), by this Court or to any other district (of the country) by the Supreme Court. Clearly, no transfer proceeding has either been instituted by the respondent. Thus, neither the divorce case proceeding could have been heard at Chandauli as jurisdiction with the Chandauli Family Court arose by virtue of Section 19(i) of the Act.

19. Neither party pleaded before the learned trial court that it would be more convenient to it to institute and/or pursue the divorce case proceeding at Mumbai. In a most casual manner, the learned trial court has observed that the parties may institute the proceeding at Mumbai or "nearby Mumbai". The learned trial court has not even taken care to examine the matter with seriousness to ascertain where the parties actually reside.

20. Further, it was not for the learned trial court to imagine difficulties and hardships to the parties for reason of being forced to travel from Mumbai to Chandauli. Neither such hardship was set up or pressed before the learned trial court nor any hardship may have been considered by the learned trial court on its own.

21. What the learned trial court has completely lost sight

of is that the proceeding has remained pending for three years whereafter it has been dismissed not on the request/plea pressed by any party but on the own imagined grounds of the learned trial court. Once the divorce case proceeding has been filed and written statement had also been filed, it is wholly unacceptable that the learned trial court has chosen to practically dismiss the proceeding without returning any finding on merits. Plainly, the learned trial court is seen to have only got rid of the case. The learned trial court has also not acted mindful of the fact that it had earlier passed an order for interim maintenance @ Rs. 30,000/- per month to the respondent, which order has also been washed away by virtue of the order impugned in these proceedings.

22. As to the further observation that the parties have often remained absent, we have perused the order sheet of the case and find that it is not the case where one or other party may be blamed of such conduct as may entitle dismissal of the case itself. It is true that all judicial proceedings especially matrimonial case may be dealt with in a time bound frame and undue adjournment may not be granted as a rule or a regular practice. At the same time, as an appeal court, we may not loose sight of the reality that exists and in the environment in which Family Courts function. Long pendency of cases, shortage of judicial officers, less than efficient Bar and also at times hardship and approach of the parties alongwith other factors cumulatively contribute to delays. In any case, in the present facts, over a period of three years not only pleadings have been exchanged but also mediation has been conducted and order have been passed for award of

interim maintenance. The stage was set for framing of issues and evidence to be led. Instead of putting the parties to terms to ensure their prompt and continued participation in the proceedings so that the divorce case proceedings could have been concluded in a time bound manner, the learned trial court has put the blame on the parties and refused to decide the dispute. It has thus thrown out the proceedings, completely. The approach of the learned trial court is far from what may find our acceptance, ever.

23. Accordingly, the order dated 29.04.2024 passed by Sri Rakesh Dhar Dubey, learned Principal Judge, Family Court, Chandauli is set aside. The matter is remitted to the said authority to pass a fresh order. The appellant undertakes to cooperate in the proceedings as may ensure prompt conclusion of the same.

24. With the aforesaid observation, present appeal stands **disposed of.**

Order Date :- 1.8.2024
Abhilash

(Donadi Ramesh, J.) (S. D. Singh, J.)