

RESERVED

A.F.R.

Case :- FIRST APPEAL No. - 1006 of 2000

Petitioner :- Sri Vikas Pandey

Respondent :- Smt. Vandita Gautam

Petitioner Counsel :- Rajesh Tandon, Komal Mehrotra, Manoj Kumar Sharma, Some Narayan Mishra

Respondent Counsel :- P.K. Jain, P.K. Jain

Hon'ble Dinesh Gupta, J

1. This appeal has been preferred by the appellant against the judgment and decree dated 30.11.2000 passed by Sri V.K. Jaiswal, III Additional District Judge, Muzaffar Nagar in Original Suit No.351 of 1997 Smt. Vandita Gautam vs. Sri Vikas Pandey.

2. The brief facts giving rise to this appeal are that the plaintiff-respondent filed Original Suit No.351 of 1997 against the defendant-appellant u/s. 18 of the Hindu Adoption and Maintenance Act (in brief Act) with the allegations that -

- The plaintiff-respondent was married on 21.6.1991 with the defendant-appellant at his residential house at Dehradun. Her family members spent an amount of Rs. 4, 50,000/- in the marriage and sufficient articles, gift and dowry was given at the time of the marriage, but the family members of the defendant-appellant were not happy with the amount spent in the marriage and further demanded a car in dowry. However, the plaintiff-respondent explained to the defendant-appellant and his family members regarding financial status of her family that they were not in a position to provide a car.

- When the demand of the defendant-appellant and his family members were not met, they threw the plaintiff-appellant out of their house and sent the plaintiff-respondent to her parental house at Meerut and at present she is living with her mother at Meerut. All the articles, clothes, ornaments etc. given by the family members of the plaintiff-appellant were kept by the defendant-appellant and his family members.
- In November, 1996 the plaintiff-respondent came to know that the defendant-appellant obtained an ex-parte decree from the court of Civil Judge, Dehradun and an application to restore the proceedings has already been moved by the plaintiff-respondent which is pending.
- The defendant-appellant has not taken care of the plaintiff-respondent since 27.6.1991 and has not given her any amount of maintenance and the plaintiff-respondent is living with her widowed mother. Though the plaintiff-respondent is a literate lady having no means to maintain herself, she is not doing any service and factually she is a burden on her parents.
- The defendant-appellant is a senior Geologist in Oil and Natural Gas Commission and at present he is posted in District- Shiv Sagar (Assam) and is getting Rs.15000/- per month as salary and he can easily pay a sum of Rs.5000/-to his wife to maintain herself.
- The plaintiff-respondent is also entitled to get the maintenance of Rs.5000/- per month which the defendant-appellant is liable to pay.
- The plaintiff-appellant has also come to know that the defendant-appellant has performed second marriage with some lady named Kalpana. However, the plaintiff-respondent reserved her right to file a civil suit in this regard.

3. The defendant-appellant filed written statement and denied all the allegations made in the plaint and submitted that-
- The marriage between the defendant-appellant and plaintiff-respondent was solemnized on 21.6.1991 at Meerut according to Hindu rites and rituals. It was also admitted that after the marriage the plaintiff-respondent lived with him for certain period at Dehradun. However, it was denied that Rs.4.5 lacs was spent in the marriage. It was also denied that the plaintiff-respondent was thrown out of the house by the defendant-appellant without any clothes and ornaments. In fact whatever ornaments were given in the marriage the same was taken away by the plaintiff-appellant.
 - It was also denied that the defendant-appellant or his family member ever demanded any dowry or ill-treated the plaintiff-respondent. The real facts are that soon after the marriage the behaviour of the plaintiff-respondent with the defendant-appellant and his family members was not proper and she left the house of her own free will and is living with her mother at Meerut.
 - The defendant-appellant filed a suit for divorce and the plaintiff-respondent after receipt of notice appeared before the court but later on deliberately absented herself and the court was compelled to pass a decree of divorce between the parties. The plaintiff-respondent did not file any appeal against the decree of divorce dated 26.11.1993.
 - The allegation in the plaint that the plaintiff is living with her mother, she is not doing any job and is not having any means is wrong. In fact, the plaintiff-respondent is a highly educated lady

with M.A. in English and B.Ed.and is at present also doing Ph.D. and she is a teacher earning at least Rs.5000/- per month from tuition and the job of a teacher.

- It is not denied that the defendant-appellant is a Geologist in Oil and Natural Gas Commission. However, he gets only Rs.10000/- as monthly pay and after the decree of divorce he has already married one Alpana and at present is living in Assam with his wife and one daughter. The demand of Rs.5000/- per month as maintenance is wholly excessive. In fact the behaviour of the plaintiff-respondent with the defendant-appellant soon after the marriage was very cruel and unnatural and because of this the defendant-appellant was compelled to file a suit for divorce which was decreed and the plaintiff-respondent preferred no appeal against the same and the suit is liable to be dismissed.

4. On the pleading of the parties, the trial court framed the following issues:-

- Whether the plaintiff has no sufficient means to maintain herself?
- Whether the defendant neglected his wife in her proper maintenance?
- To what relief the plaintiff entitled? and
- Whether the plaintiff is entitled to any amount of maintenance?

5. In support of his allegation the plaintiff-respondent examined herself as P.W.1 while the defendant-appellant examined himself as D.W.1 and also filed some documentary evidence including some letters written by the mother of the plaintiff-respondent.

6. After hearing the parties and considering the evidence on record, the trial court decreed the suit of the plaintiff and granted maintenance of Rs.3000/- per month to her.

7. Feeling aggrieved, the defendant-appellant has filed this appeal.

8. At the time of hearing, learned counsel for the parties were present. However, Sri P.K.Jain, learned counsel for the plaintiff-respondent submitted that he tried his level best to contact the plaintiff-respondent but he did not receive any response from her. In this view of the matter, the court has been left with no option but to decide the appeal ex-parte.

9. Learned counsel for the defendant-appellant submitted that -

- The trial court has decreed the suit without taking into consideration the provisions mentioned in clause (a) to (g) of Section 18(2) of the Act.
- The plaintiff-respondent was not entitled to any maintenance u/s. 18 of the Act after decree of divorce.
- The defendant-appellant was not guilty of desertion, cruelty and living with another wife which is mandatory for grant of maintenance u/s. 18 of the Act.
- The divorce was granted only on the ground that the plaintiff-respondent was not able to maintain cordial relation with the family members of the defendant-appellant.
- In order to grant a decree u/s. 18 of the Act, it was mandatory for the plaintiff to prove the ingredients contained in clauses (a) to (g) of sub section(2) of Section 18 of the Act.

- The capacity to earn by the plaintiff-respondent has been fully ignored by the trial court while granting maintenance to her.
- The defendant-appellant has proved by documentary evidence that the plaintiff-respondent being a literate lady and doing job of a teacher and earning more than Rs.5000/- per month was not entitled to the maintenance.

9. Even at the appellate stage by means of supplementary affidavit the defendant-appellant has filed documents to show that the plaintiff-respondent is continuously doing job as lecturer since the year 2000 in Radha Govind Engineering College, Grah Road, Meerut in the Department of Humanities and thereafter she is employed in Moti Lal Nehru College, University of Delhi, South Campus, Delhi in English department and at no point of time she had got less than Rs.10,000/- per month as salary which is more than sufficient to maintain herself. She is highly educated being M.A. in English with B.Ed. and also having Doctorate degree. Learned counsel referred to the statement of the plaintiff-respondent in which she admitted that at the time of giving that statement she was doing Ph.D.

10. Learned counsel for the defendant-appellant further submitted that the trial court has wrongly considered the legal position that even a divorced lady is also entitled to maintenance u/s. 18 of the Act and has wrongly relied on the judgment in the case of Vitthal Mangal Das Patil vs. Mayaben Patel (1996) DMC 432. The said authority was not at all applicable in the present case. In that case the court held that u/s. 25 of the Hindu Marriage Act the word 'wife' includes a divorced wife and putting the same analogy to Section 18 of the Act the court presumed that

it also included 'divorcee wife'.

11. Learned counsel for the appellant further argued that the trial court has also taken a wrong view of the fact that the plaintiff-respondent has already applied for setting aside the ex-parte decree of divorce while in fact after the decree of divorce although an application being Misc. Case No.201/1996 was moved by the plaintiff-respondent to restore the original suit but the same was rejected vide order dated 9.9.1985 which clearly shows that the divorce decree is still maintained and has not been set aside and the plaintiff-respondent is admittedly a divorcee and is not entitled to any maintenance u/s. 18 of the Act.

12. Learned counsel for the appellant relied upon **Chand Dhawan (Smt) Vs. Jawahar Lal Dhawan (1993) 3 Supreme Court Cases 406** and submitted that the apex court clearly held that a divorcee cannot get maintenance u/s. 18 of the Hindu Marriage Act. In a recent case **Mrs. Manisha Sandeep Gade Vs. Sandeep Vinayak Gade, AIR Bombay 2005 page 180** the Bombay High Court also took the same view and clearly held that after grant of divorce, the wife is not entitled to maintenance.

13. Lastly learned counsel argued that since the decree of divorce has not been set aside as yet, the plaintiff-respondent is not entitled to any maintenance u/s. 18 of the Act and the trial court has wrongly decreed the suit.

14. So far as legal position is concerned, admittedly a divorce decree was passed between the parties and an application to set aside that decree

was also rejected. There is no documentary evidence produced by the plaintiff-respondent to show that the said divorce decree has been set aside or any proceeding is pending to set aside that divorce decree. Hence, for all purposes the plaintiff-respondent is a divorcee and according to Section 18 of the Act the word 'wife' does not include a 'divorcee wife' and as such she is not entitled to any maintenance. The case laws fully supports the contention of learned counsel for the defendant-appellant.

15. In Mrs. Manisha Sandeep Gode (supra) it was clearly held that the trial court was equally right in rejecting the petition for maintenance u/s. 18 of the Act. This was because once the divorce was granted the petition u/s. 18 of that Act could not be maintained.

16. So far as the case law relied on by the trial court Vitthal Mangal Das is concerned, I am of the view that the trial court has taken a wrong approach in interpreting the said authority and wrongly came to the conclusion that the word 'wife' mentioned in Section 25 of the Hindu Marriage Act is similar to the word 'wife' mentioned in Section 18 of the Act.

17. So far as the merit of the appeal is concerned, the appellant has proved by documentary evidence that the plaintiff-respondent being a highly educated lady and engaged as lecturer in different colleges at different time, was receiving salary much more than the appellant.

18. The Bombay High Court has also held that the wife is not entitled to maintenance when it was clearly established that the income of the

wife was better than the husband. It is also important to mention here that Section 18 of the Act or Section 25 of the Hindu Marriage Act deals with the situation where the wife is unable to maintain herself. The word 'unable' means that a person is not able to do what he is supposed to do. In the present matter, it is not a case that the wife is an illiterate lady or is not in a position to do any job, on the contrary the wife is highly educated particularly more than the husband and is clearly in a position to earn more. This also disentitles her to get any maintenance. Therefore, in view of the legal and factual aspects of the matter, plaintiff-respondent is not entitled to any maintenance and the decree of maintenance awarded by the trial court is liable to be set aside and the appeal deserves to be allowed.

19. In the result, the appeal succeeds and is allowed. The judgment and decree dated 30.11.2000 passed by III Additional District Judge, Muzaffar Nagar in Original Suit No.351 of 1997 Smt. Vandita Gautam vs. Sri Vikas Pandey is hereby set aside.

20. There shall be no order as to costs.

PK

08.10.2012