Manmohan Attavar vs Neelam Manmohan Attavar on 14 July, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3345, 2017 (8) SCC 550, AIR 2017 SC (CRIMINAL) 1189, 2017 (4) AJR 660, (2017) 3 RECCIVR 916, (2017) 2 WLC(SC)CVL 368, (2017) 4 CRILR(RAJ) 970, 2017 (3) SCC (CRI) 656, (2017) 4 CIVLJ 292, (2017) 4 KCCR 3361, (2017) 5 ANDHLD 120, (2017) 4 RAJ LW 3022, (2017) 4 CIVILCOURTC 396, 2017 CRILR(SC MAH GUJ) 650, (2017) 4 PUN LR 687, (2017) 3 CRILR(RAJ) 650, 2017 CRILR(SC&MP) 970, (2017) 4 CRIMES 70, (2017) 3 RECCRIR 686, (2017) 3 JCR 165 (SC), (2017) 2 DMC 806, (2017) 7 SCALE 710, 2017 CRILR(SC&MP) 650, (2017) 3 UC 1801, (2017) 179 ALLINDCAS 267 (SC), (2018) 1 MPLJ 252, 2017 CALCRILR 4 289, (2017) 2 MARRILJ 197, (2018) 1 ALLCRILR 235, (2018) 1 MAD LW 158, (2018) 1 MAH LJ 839, (2017) 68 OCR 93, (2017) 101 ALLCRIC 943, 2017 CRILR(SC MAH GUJ) 970, 2017 CRI. L. J. 4315, 2017 (4) AJR 660 AIR 2017 SC (CRIMINAL) 1189

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul, Rohinton Fali Nariman

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2500 OF 2017

Manmohan Attavar ...Appellants

Versus

Neelam Manmohan Attavar …Respondents

WITH

CIVIL APPEAL NO.2502 OF 2017

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The appellant is 84 years old and the respondent is 62 years old. The respondent seeks to establish her status as the wife/companion of the appellant who has been left high and dry by the appellant while on the other hand the appellant categorically denies any such status.

2. The admitted facts are that the respondent was married to one Shri Harish Chander Chhabra. That marriage did not work Date: 2017.07.14 16:59:52 IST Reason:

> out and ultimately a consent decree for divorce was obtained on 10.10.1996. Even in the interregnum period, the respondent claims to have developed a relationship with the appellant starting from their introduction in 1987. It is her case that there was continuous interaction between the two and the appellant even proposed to her in December 1993. The appellant earned a National Award on 16.10.1996. The respondent also claims to have been requested to travel with the appellant to Bangalore on 30.10.1996. The appellant's wife was alive when the respondent claims that the appellant took her to No.38/1, Jayanagar, Bengaluru and that the appellant's wife was apparently also aware of the relationship between the two parties. The respondent claims that she resigned from the job with ICAR at the behest of the appellant. On 10.1.1998, the respondent claims that the appellant applied "kumkum" to her forehead and soon thereafter he was conferred with the Padma Shri Award and the respondent accompanied the appellant for the felicitation ceremony on 21.3.1998.

3. It is the respondent's claim that from 2002-2008 the respondent was made to stay in different residences hired by the appellant. But apparently the relationship soured. The endeavors for reconciliation, however, did not succeed. The wife of the appellant was incidentally alive at that time and she passed away on 22.2.2010. The endeavor, prior to this, by the respondent seeking remedy for what she claims to be her neglect, through the Women and Child Welfare Department of State of Karnataka, also did not succeed.

4. The respondent claims to have made various efforts by approaching authorities and high dignitaries apart from police authorities but to no avail.

5. The respondent initiated proceedings under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the D.V. Act') on 16.9.2013 being Criminal Misc. Petition No.179 of 2013. This case is stated to have been re-numbered as Crl. Misc. Application No.139 of 2015. The endeavor of the appellant seeking quashing of these proceedings before the High Court vide Criminal Writ Petition No.6126/2013 under Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as the Cr.P.C.) did not succeed and petition was dismissed on 2.1.2015. The trial went on and at the request of the respondent made under Section 410 of the Cr.P.C., the application was transferred from the Court of the Metropolitan Magistrate–VI to the Court of Metropolitan Magistrate-II at Bangalore. This application was finally dismissed by the learned Metropolitan Magistrate on 30.7.2015.

6. The respondent, aggrieved by the said order, filed Criminal Appeal No.1070/2015 under Section 29 of the D.V. Act on 18.8.2015 which was assigned to the learned Addl. Sessions Judge presiding over Court 67. The interim relief prayed for in this petition was, however, rejected by the learned Addl. Sessions Judge on 5.11.2015.

7. The respondent again sought a transfer from that court and the appeal was transferred to the Court of the learned Additional Sessions Judge presiding over Court No.53 vide order dated 16.2.2016. A second application was filed by the respondent for stay of the impugned order for interim maintenance. The respondent was once again aggrieved by the conduct of the proceedings during the hearing of the interim application and submitted a complaint to the High Court of Karnataka. In terms of an administrative order of the Registrar General of the High Court, the application was called upon to be decided on or before 30.4.2016. The application was rejected on 21.4.2016 as being not maintainable. The applications filed for additional evidence by the respondent also met an adverse fate.

8. It is in the aforesaid scenario that the respondent filed Writ petition No.49153 of 2016 under Articles 226 and 227 of the Constitution of India before the High Court of Karnataka praying for the transfer of Criminal Appeal No.1070 of 2015 to the High Court itself on the ground that the order for rejection of the applications for additional evidence did not inspire faith.

9. Learned Single Judge of the High Court by an ex-parte order dated 19.9.2016, while issuing notice in the petition, stayed all further proceedings and permitted the respondent to occupy the premises No.38/1, 30th Cross, 3rd Main, 7th Block Jayanagar, Bengaluru, 560082 belonging to the appellant. This interim order is subject matter of challenge before us in SLP (C) No. 32783/2016 now numbered as Civil Appeal No.2500 of 2017.

10. On service being effected on the appellant, the writ petition was opposed along with the prayer for vacation of the ex-parte order. It is the case of the appellant that instead of deciding the Interlocutory Application, the appellant was compelled to pay a lump sum amount of Rs.30,000/- as a onetime payment. This order is stated to have been challenged in SLP No.33150 of 2016. In fact the declining of interim relief by the appellate court was not even specifically challenged before the High Court and yet the High Court granted an ex parte order.

11. Learned Single Judge vide the subsequent order dated 24.10.2016 sought to withdraw the appeal proceedings from the learned Addl. Sessions Judge to the High Court itself and this order has been assailed in SLP No.32534/2016 now numbered as Civil Appeal No.2502 of 2017.

12. We have heard the contentions of the learned senior counsel for the appellant and have also heard the respondent appearing in person, quite elaborately. Written submissions were filed both by the appellant and by the respondent. We have noticed that a large part of the submissions of the respondent relate to the merits of the claim as to why the learned Metropolitan Magistrate fell into error while dismissing the application filed by the respondent on 30.7.2015 under Section 12 of the D.V. Act.

13. We may note at this stage itself that it would neither be advisable nor proper to dwell into the controversy on merits because the appeal filed by the respondent is yet to be decided. Any observations by us at this stage could affect either of the parties in the appeal proceedings. The controversy before us is in a very narrow compass. We thus set forth the controversy -

> (i) Whether an interim order could have been passed on 19.9.2016 permitting the respondent to occupy the premises of the appellant;

(ii) Whether the learned Single Judge was right in withdrawing the proceedings pending before the learned Addl. Sessions Judge to the High Court vide the impugned order dated 24.10.2016.

14. Insofar as the first question is concerned, reliance has been placed by the respondent on the provisions of the D.V. Act and the desirability to construe the provisions liberally in favour of women seeking relief, as it is in the nature of a social legislation meant for protection of women's rights. In order to appreciate the controversy, we reproduce the relevant provisions as under:-

> "17. Right to reside in a shared household.-
>
> (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
> (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

.....

19. Residence orders.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order - (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

> Provided that no order under clause (b) shall be passed against any person who is a woman.
>
> ....."

15. A reading of the aforesaid provisions show that it creates an entitlement in favour of the woman of the right of residence under the "shared household" irrespective of her having any legal interests in the same. The direction, inter alia, can include an order restraining dispossession or a direction to remove himself on being satisfied that domestic violence had taken place.

16. The factual matrix of the present case is such that one would have to look to the definition clauses relevant for the determination of the controversy contained in Section 2 as under:

> "2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
>
> .....
>
> 2(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. ....."

17. The facts of the present case are that the respondent has never stayed with the appellant in the premises in which she has been directed to be inducted. This is an admitted position even in answer to a court query by the respondent during the course of hearing. The "domestic relationship" as defined under Section 2

(f) of the D.V. Act refers to two persons who have lived together in a "shared household". A "shared household" has been defined under Section 2(s) of the D.V. Act. In order for the respondent to succeed, it was necessary that the two parties had

> lived in a domestic relationship in the household. However, the parties have never lived together in the property in question. It is not as if the respondent has been subsequently excluded from the enjoyment of the property or thrown out by the appellant in an alleged relationship which goes back 20 years. They fell apart even as per the respondent more than 7 years ago. We may also note that till 22.2.2010 even the wife of the appellant was alive.

We may note for the purpose of record that as per the appellant, he is a Christian and thus there could be no question of visiting any temple and marrying the respondent by applying "kumkum", and that too when the wife of the appellant was alive.

18. We are thus unequivocally of the view that the nature of the ex-parte order passed on 19.9.2016 permitting the respondent to occupy the premises of the appellant cannot be sustained and has to be set aside and consequently Civil Appeal No.2500 of 2017 is liable to be allowed.

19. Now turning to the second controversy, a perusal of the impugned order shows that the learned Single Judge found the remedy sought for by the respondent to be "misconceived". However, the learned Judge found it appropriate to treat the petition as one under Section 407 of the Cr.P.C. The learned Single Judge has expressed the view that the appellate court ought to have called upon the respondent to argue the appeal rather than spend time on interim reliefs, which was not maintainable in the face of the earlier order resulting in a predictable order.

20. We fail to appreciate the aforesaid observations when the respondent herself sought once again to press for interim relief and applications to adduce additional evidence. Learned ASJ can hardly be faulted on this account. The learned Single Judge has also given latitude to the respondent on account of her appearing in person whereby she may not have documented the bits and pieces of her past with the intention of initiating the proceedings which she was pursuing. In the conspectus of the same, the appeal has been withdrawn to the High Court itself.

21. The grievance of the appellant against this order is that the valuable rights of the appellant of an additional forum to ventilate his grievance would be lost as against any decision in appeal. A remedy of revision under Section 327 of the Cr.P.C. would be available or a writ petition under Article 227 of the Constitution of India. In this behalf reliance has been placed on what is claimed to be a settled legal position, more particularly, the Constitutional Bench Judgment of 7 Judges of this Court in A.R.Antulay vs. Ram Naik 1.

22. It is also the contention of the appellant that such transfer cannot take place at the whims and fancy of the respondent. The respondent, whenever she fails to obtain a favourable order, chooses to file proceedings for transfer whether it be before the (1988) 2 SCC 602 MM or before the appellate court. It is submitted that this approach ought not to be encouraged.

23. On examination of the issue, we tend to agree with the submission of the learned senior counsel for the appellant that there was no reason for the proceedings to be withdrawn from the appellate court to the High Court itself. There is not only absence of the reason for the same but it would also

result in the deprivation of valuable rights of the appellant against the order of an appellate authority and thus an additional forum for scrutiny was being negated.

24. We are unable to agree with the reasoning of the learned Single Judge nor can we fault the appellate authority on any account which could have necessitated such withdrawal of the proceedings to the High Court.

25. We may also note the concession made by the learned senior counsel for the appellant in court that in the scenario the matter can be entrusted to any ASJ in Bangalore as there are a large number of the same holding court.

26. We thus set aside even the order dated 24.10.2016 and allow Civil Appeal No.2502/2017. We request the learned Chief Justice of the High Court on the administrative side to nominate any of the ASJs in Bangalore to hear the appeal of the respondent and the appellate authority shall endeavor to conclude the proceedings as expeditiously as possible.

27. The appeals are accordingly allowed leaving the parties to bear their own costs with the hope that there would be an early end to this contentious dispute between the two parties.

.....J. (Rohinton Fali Nariman) .....J. (Sanjay Kishan Kaul) New Delhi;

July 14, 2017.