Smt. Chand Dhawan vs Jawaharlal Dhawan on 11 June, 1993

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Author: M.M. Punchhi

Bench: M.M. Punchhi, Yogeshwar Dayal

PETITIONER:
SMT. CHAND DHAWAN

Vs.

RESPONDENT:
JAWAHARLAL DHAWAN

DATE OF JUDGMENT11/06/1993

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
YOGESHWAR DAYAL (J)

CITATION:
1993 SCR (3) 954 1993 SCC (3) 406
JT 1993 (4) 22 1993 SCALE (3)1

ACT:
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Hindu Marriage Act, 1955-S. 25 and Ss. 9 to 14, 24 & 28-`Any decree' in S. 25-Dismissing of matrimonial petition, held, does not constitute `only decree' for award of permanent maintenance or alimony--Marital status has to be affected or disrupted for maintenance to be awarded--Evidence Act, 1862, s. 41
Hindu Marriage Act, 1955--S.25-Hindu Adoptions and Maintenance Act, 1956--S.18--Held, Court cannot grant relief of maintenance simplicitor obtainable under one Act in proceedings under the other-Code of Criminal Procedure 1973, s. 125.

Interpretation of Statutes-Hindu Marriage Act. 1955-S. 25-Hindu Adoptions and Maintenance Act, 1956-S. 18-Held, where both statutes codified and clear on their subjects, liberality of interpretation cannot permit interchangeability so as to destroy distinction.

HEADNOTE:

The parties were married in 1972 in Punjab. In 1985, a petition for divorce by mutual consent was filed in court at Amritsar The appellant-wife alleged that she was not a consenting party, and the petition was dismissed in 1987 following an agreement on the basis of which she would be put back in the matrimonial home. However, barely three months later, the respondent husband filed a regular petition for divorce at Ghaziabad inter alia alleging adultery against his wife. The appellant-wife refuted the charge. The Court granted her maintenance pendente lite at Rs. 1,000 p.m. The husband not paving this amount, the divorce proceedings stand stayed.

On 22nd March, 1990 the appellant moved the District judge, Amritsar and was granted Rs. 6,000as litigation expenses and Rs. 2,000as maintenance pendente lite from the date of application under S. 24. She also claimed permanent alimony and maintenance under S. 25 of the Hindu Marriage Act, 1955. On appeal, the High Court held that an application under S. 25 was not

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maintainable as the matrimonial court at amritsar had not passed any decree for restitution of conjugal rights, judicial separation, nullity or divorce. Sequelly it quashed the order under S. 24 of the Act.

Dismissing the appeal, this Court

HELD:The right of permanent maintenance in favour of the husband or the wife is dependent (in the Court passing a degree of the kind envisaged under Ss. 9to 14 of the Act. In (other words, without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim (of permanent alimony was not to be valid as ancilliary or incidental to such affectation or disruption.

Kadia Martial Purshotham v. Kadia Lilavati Gokaldas AIR 1961 Guj 202; Shantaram Gopalshet Narkar v. Hirabai, AIR 1962 Bom 27 Minarani Majumdar v. Dasarath Majumdar AIR 1963 Cal 428; Shantaram Dinkar Karnik v. Malti Shantaram Karnik AIR 1964 Bom 83; Akasam Chinna Babu v.Akasam Parbati, AIR 1967 Ori 163; Gurcharan Kaur v. Ram Chand, AIR 1979 P & H 206; Darshan Singh v. Mst. Daso., AIR 1980 Raj 102; Smt. Sushama v. Satish Chander, AIR 1984 Del 1; Vinod Chandra Sharma v. Smt. Rajesh Pathak, AIR 1988 All 150 and Ranganatham v. Shyamala AIR 1990 Mad 1, affirmed.

Smt. Swaran Lata v.Sukhvinder Kumar (1986) 1 Hindu LR 363;

Sadanand Sahadeo Rawool v. Sulochana Sadanand Rawool, AIR 1989 Bom 220; Surendra Singh Chauhan v. Mamta Chauhan, 11 1990 Divorce & Matrimonial Cases 208; Modilal kalaramji Jain v. Lakshmi Modilal Jain AlR 1991 Bom 440; and Shilla Jagannadha Prasad v. Smt. Shilla Lalitha Kumari 1988 Hindu LR 26, overruled.

Durga Das v. Smt. Tara Rani, AIR & H 141, referred to.

2.A Court intervening under the Hindu Marriage Act undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at the juncture when the marital status is affected or disrupted. It also retains the power subsequently to be invoked on application by a party entitled to relief. A nd such order, in all events, remains within the jurisdiction of that court, to be altered or modified as future situations may warrant.

3.While sustaining her marriage and preserving her marital status, a Hindu wife's claim to maintenance is codified is S.18 of the Hindu Adoptions

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and Maintenance Act, 1956 and must necessarily be agitated thereunder.

4.The court is not at liberty to grant relief of maintenance simplicitor obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance.

Carew, & Co. v. Union of India [1975] 2 SCC 791 and Motor Owners' Insurance Co. Ltd. v. Jadavjit Keshavji Modi [1981] 4 SCC 660, referred to.

5.When distinctive claims are covered distinctly under two different statutes, choosing of one forum or the other, are not mere procedural technicalities or irregularities. These are matters which go to the root of the jurisdiction. The matrimonial court, a court of special jurisdiction. is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree which implies that unless it goes onwards, Moves or leads through, to affect or disrupt the marital status between the parties. By rejecting a claim, the matrimonial court does make an appealable decree. in terms of section 28, but neither affects nor disrupts the marriage. It certainly does not pass a decree in terms of section 25 for its decision has not moved or done anything towards, or led through, to disturb the marriage, or to confer or to take away any legal character or status.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2653-54 of 1991.

From the Judgment and Order dated 15.2.91 of the Punjab and Haryana High Court in Civil Revision Nos. 2998 and 2919 of 1990.

D.V. Sehgal and N.K. Aggarwal for the Appellant. G.L, Saghi, P.P. Tripathi and Suchinto Chatterji for the Respondent.

The Judgment of the Court was delivered by PUNCHHI, J. The point which requires determination in these two appeals, arising from a common judgment and order dated February 15, 1991 of a Division Bench of the Punjab and Haryana High Court at Chandigarh, in Civil Revision Nos. 2918 and 2919 of 1990 is, whether the payment of alimony is admissible without the relationship between the spouses being terminated.

The wife-appellant was married to the husband-respondent on September 19,1972 at Amritsar, in the State of Punjab. Three children were born from the wed lock and are at present living with their father. Out of them two are males, their respective years of birth being 1973 and 1980 and the third is a female born in the year 1976. On 28-8- 1985 a petition under section 13-B of Hindu Marriage Act, 1955 (hereafter referred to as the Act') seeking divorce by mutual consent was received by the court of the Additional District Judge, Amritsar purported to have been failed jointly by the two spouses. It was stated therein that the parties had been living separately for over a year due to incompatibility of temperament and their effort to settle their differences amongst themselves, or with the aid of friends and relatives, had been futile. On receipt the petition was kept pending, as was the requirement of section 13-B of the Act. According to the wife she was not a consenting party to the filing of such petition at all. Her version was that the husband had duped her in obtaining her signatures on blank papers on a false pretext and in turn had employed those papers in the said petition for divorce. On coming to know of the pendency of the petition, she immediately filed objections before the court, obstructing the grant of petition. The respective pleas of the parties were put to issue and evidence was led. According to the wife some understanding later was reached between the parties on the basis of which she was to be put back in the matrimonial home and thus the petition was got dismissed on 19-8-1987, on the basis of the joint statement of the parties before the Additional District Judge, Amritsar which was to the following effect:

> "We agree that applications under sections 24 and 25 of Hindu Marriage Act may be dismissed. We also agree that since the parties have not been able to make a joint statement within a period of six months of the original petition, the main petition under section 13B of the Hindu Marriage Act may be dismissed. Otherwise too, the parties to the marriage do not want to proceed with their main application under section 13 of the Hindu Marriage Act and the same be also dismissed and the parties may be left to bear their own costs.
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> On the basis of the above statement, the court passed the following order, the same day:
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> "The applicant and counsel for the parties have made their statements recorded separately the main petition under section 13 and also applications under sections 24

> and 25 of the Hindu- marriage Act are dismissed as withdrawn. The parties are left to bear their own costs. The file be consigned."

It appears that the dismissal of the petition under section 13-B led only to a temporary truce, and not peace as hoped. Rehabilitation in the matrimonial home evaded the wife. The husband, who in the meantime had established his business at Ghazibad in Utter Pradesh, barely three months after the dismissal of the petition under section 13-B. approached the District Court at Ghaziabad in a regular petition for divorce under section 13 of the Act levelling, amongst others, allegations of adultery against the wife. To meet the offensive the wife refuted the charge of adultery and prayed to the Ghaziabad Court grant of maintenance pendente lite, which the Court fixed at Rs. 1000 per month. It appears since the husband had obstacled payment of maintenance pendente lite, divorce proceedings stand stayed under orders of the High Court of Allahabad, until the order of grant of maintenance pendente lite was obeyed. The matter thus stands stagnated there.

The wife then went in an offensive. She moved the court of Additional District Judge, Amritsar on 22-3-1990, under section 15 of the Hindu Marriage Act for the grant of permanent alimony on the plea that she was facing starvation, when her husband was a multi-millionaire, having cars, telephone facilities and other amenities of life. Simultaneously she moved the court under section 24 of the Hindu Marriage Act for maintenance pendente lite and litigation expenses. After a grim contest between the parties the Additional District Judge, Amritsar on September 20, 1990 allowed the petition under section 24 of the Act granting her a sum of Rs. 6000 as litigation expenses and Rs. 2000 per month as maintenance pendente lite, from the date of application. The husband challenged the said order of grant in revision before the High Court of Punjab and Haryana at Chandigarh. The wife too approached the High Court in revision seeking enhancement of sums under both counts. Both the revision petitions being referred to a larger bench were disposed of by the common judgment under appeal sustaining the objection of the husband that an application under section 25 of the Act was, in the facts and circumstances, not maintainable; the Matrimonial Court at Amritsar, in the earlier litigation, having not passed any decree of the variables known as Restitution of Conjugal Rights, Judicial Separation, Nullity of Marriage, or Divorce, so as to quash proceedings under section 25 and sequally quashing the order under section 24 of the Act granting litigation expenses and maintenance pendente lite. Hence these appeals.

Section 25 of the Act, as it now stands, after amendment by Act 68 of 1976 is reproduced 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 purpose by either the wife o r the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such cross 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.

> (2)If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-

section (1), it may at the instance of either party, very, modify or rescind any such order in such manner as the court may deem just.

(3)If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party very, modify or rescind any such order in such manner as the court may deem just]."

It is relevant to reproduce Section 28 as well:

> "28 APPEAL FROM DECREES AND ORDERS- (1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3) be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.
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> (2) Orders made by the court in any proceeding under this Act, under section 25 or Section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.
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> (3) There shall be no appeal under this section on the subject of costs only. (4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order."

Right from its inception, at the unamended stage, the words "at the time of passing any decree or any time subsequent thereto" posed difficulty. The majority of the High Courts in the country took the view that those words indicated that an order for permanent alimony or maintenance in favour of the wife or the husband could only be made when a decree is passed granting any substantive relief and not where the main petition itself is dismissed or withdrawn. It was also gathered that if no request for alimony was made at the time of passing the decree the same relief could be sought subsequently on an application. The relief of permanent alimony was deduced to be ancilliary or incidental to the substantive relief, and it was given to the party to whom such relief was due. The expression "any decree" was viewed to have been used having regard to the various kinds of decrees such as decree for Restitution of Conjugal Rights, Judicial Separation, Nullity of Marriage, and Divorce, which could be passed either on contest or consent. Some of the High Courts also had occasion to distinguish between the expression "passing any decree" referred to in section 25 (1) with "decrees made" referred to in section 28 providing for appeals from decrees and orders made by the Court in any proceeding under the Act, and such decrees being appealable, as decrees of the

Court made in exercise of its original civil jurisdiction. It led to the determination of the question whether the denial of relief under the Act, when making a decree in the sense appealable under section 28, could be it a decree passed within the meaning of Section 25 entitling the respective spouses to claim permanent alimony thereunder. On this question too there has been rife a difference of opinion.

A Division Bench of the Gujarat High Court in Kadia Harilal Purshottam v. Kadia Lilavati Gokaldas AIR [1961] Gujarat 202; ruled that the words "at the time of passing any decree or any time subsequent thereto" occurring in section 25 meant passing of any decrees of the kind referred to in the earlier provisions of the Act and not at the time of dismissing the petition for any relief provided in those sections, or any time subsequent thereto. It was viewed that the expression "any decree" did not include an order of dismissal and that the passing of an order of dismissal of the petition could not be regarded as the passing of decree within the meaning of section 25. On that view a petition for permanent alimony preferred by the wife was dismissed when the petition of the husband for restitution of conjugal rights had been dismissed.

In Shantaram Gopalshet Narkar v. Hirabai, AIR [1962] Bombay 27 Vol. 49, a learned Single Judge of the Bombay High Court took the view that in order to confer jurisdiction upon the court to proceed under section 25(1) there must be a decree as contemplated under the Hindu Marriage Act and one of the decrees can. be under section 10(1) (B). And when the petition was allowed to be withdrawn, there was no decree passed in favour of the husband, and if there was no decree, the court had no jurisdiction to pass any order granting permanent alimony to the wife under section 25(1). In Minarani Majumdar v. Dasarath Majumdar AIR [1963] Calcutta 428 Vol. 50, a Division Bench of the Calcutta High Court ruled that an order dismissing a petition by the husband for divorce under section 13 is not a decree within the meaning of section 25 and as such when no substantive relief is granted under sections 9 to 14, there is no passing of a decree as contemplated by section 25 and hence no jurisdiction to make an order for maintenance under the said section. Harilal's case (supra) of the Gujarat High Court was noticed and relied upon.

A learned Single Judge of the Bombay High Court in Shantaram Dinkar Karnik v. Malti Shantaram Karnik, AIR [1964] Bombay 83 - vol. 51 relying on the earlier decision of that court in Shantaram Gopalshet's case (supra) and kadia Hiralal's case (supra) reaffirmed the view that the expression "passing of any decree" only referred to passing of any decrees provided for in section 9 to 13 of the Act, even though technically speaking dismissal of a suit or a petition may be called a decree but not for the purpose of section 25 confering jurisdiction on the Matrimonial Court to grant permanent alimony.

A Division Bench of the Orissa High Court in Akasam Chinna Babu v. Akasam Parbati & Another AIR [1967] Orissa 163 - Vol. 54 denied the relief of permanent alimony when the petition for divorce of the husband had been dismissed. The views of the Bombay High Court and the, Gujarat High Court above referred to were taken in aid to get to that view. A three-Judge full bench of the Punjab and Haryana High Court in Durga as v. Smt. Tara Rani,AIR (1971) Punjab and Haryana 141 - Vol. 58, in a different context, while determining the question whether a party to a decree or divorce could apply for maintenance under sub-section (1) of section 25 of the Act after which decree has

been granted, ruled that the proceedings for grant of permanent alimony were incidental to the main proceeding and as such an application for alimony could be made even after the grant of the decree for divorce.

A learned Single Judge of that Court, however, in Gurcharan Kaur v. Ram chand AIR 1979 Punjab and Haryana 206 Vol. 66 even while relying, on the full bench decision afore- referred went on to deny permanent alimony to the wife hose claim for decree of Nullity of Marriage stood dismissed and on that basis the petition for alimony was held not maintainable.

In Darshan Singh vs. Mst. Daso AIR 1980 Rajasthan 102 - Vol. 67 a learned single Judge of the Rajasthan High Court made a distinction between the expression "passing any decree" occurring in section 25 and the expression decree made" under section 28. He viewed that the former expression meant granting any relief of the nature stated in sections 9 to 13 while the later meant granting or refusing the relief. In other words, it meant that passing of any decree as to mean granting any relief, and the making of any decree was to mean granting or refusing any relief. A Division Bench of the Delhi High court too in Smt. Sushma v. Shri Satish Chander AIR 1984 Delhi 1 Vol. 71 taking stock of the above-referred to views of the Rajasthan, Orissa. Bombay, Calcutta and Gujarat High Courts affirmedly took the view that the passing of the decree in section 25 meant the passing of a decree of divorce, Nullity, Restitution of Conjugal Rights or Judicial Separation and not the passing of a decree dismissing the petition. It was further held that if the petition fails then no decree is passed, i.e., the decree is denied to the applicant and therefore alimony cannot be granted in a case where a decree is refused because in such a case the marriage subsists. The word "decree" in matrimonial cases was held to have been used in a special sense different from that in which it is used in the Civil Procedure Code.

Following Delhi High Court's decision in Sushma's case (supra), a learned Single Judge of the Allahabad High Court in Vinod Chandra Sharma v. Smt. Rajesh Pathak AIR 1988 Allahahad 150 - Vol. 75 opined that when an application for divorce is dismissed, there is no decree passed and obviously therefore alimony cannot he granted because in such a case the marriage subsists.

A learned Single Judge of the Madras High Court in Ranganatham v. Shyamla AIR 1990 Madras 1- Vol. 77 too following the above decisions held that the existence of any of the decrees referred to in sections 9 to 13 is a condition precedent to the exercise of jurisdiction under section 25 (1) of the Act and the granting of ancilliary relief for permanent alimony and maintenance, when the main petition was dismissed, was not permissible. A divergent view, however, was struck by a learned Single Judge of the Punjab and Haryana High Court in Smt. Swaran Lata v. Sukhvinder Kumar(1986) 1 Hindu Law Reporter 363 taking the view that when the rights of the parties stand determined conclusively with regard to matters in controversy, irrespective as to whether relief is granted or not, it culminates in a decree and on the basis of that decree, the wife would be entitled to claim maintenance or permanent alimony under section 25 of the Act. Not only was on such interpretation of sections 25 and 28 the view taken but liberality of interpretation was injected to justify the view. It was expressed that when the right of the wife to maintenance was assured under section 125 of the Code of Criminal Procedure, 1973 and section 18 of the Hindu Adoptions and Maintenance Act, 1956 and when that right of the wife was not being disputed, the court, in order to

avoid multiplicity of proceedings could give effect to that right, wherever possible, in a proceeding under section 25 of the Act itself. There the objection of the husband to the jurisdiction was termed as technical and the maintainability of claim under section 25 was upheld. A learned Single Judge of the Bombay High Court in Sadanand Sahadeo Rawool v. Sulochana Sadanand Rawool, AIR 1989 Bombay 220- Vol. 76 also took a similar view and based his decision on "necessity of the times" expressing that technicalities should not be allowed to away any court. In the situation, the dismissal of petition for divorce was held to be no bar to grant maintenance under section 25 to the successful spouse.

Then in Surendra Singh Chaudan v. Mamta Chauhan II(1990) Divorce & Matrimonial Cases 208 a learned Single Judge of the Madhya Pradesh High Court taking the view that the dismissal of a petition amounts to passing of a decree for the purposes of Section 25 of the Act held that claim for permanent alimony was maintainable. The learned Judge ruled that there appeared to be no justification for curtailing the ambit of the words to go on to hold that a decree is not a "decree" for the purposes of section 25 of the Act, though a "decree" for the purposes of section 28 of the Act. Here again the intention of the legislature was gathered avoiding multiplicity of proceedings. so that every dispute between the parties, particularly connected with matters like maintenance etc. should be settled in the same proceedings.

A learned Single Judge of the Bombay High Court in Modilal Kalaramji Jain v. Lakshmi Modilal Jain AIR 1991 Bombay 440 - Vol. 78 omitting the word "passing" from the expression, interpreted the expression "any decree" to include an order refusing to grant matrimonial relief and on that basis held adjudication of claim of permanent maintenance to be within the jurisdiction of the matrimonial court. Same is the view of the Andhra Pradesh High Court in Shilla Jagannadha Prasad alias Ram v. Smt. Shilla Lalitha Kumari [1988] 1 Hindu Law Reporter 26 and some other cases which need not be multiplied.

The preamble to the Hindu Marriage Act suggests that it is an Act to amend and codify the law relating to marriage among Hindus. Though it speaks only of the law relating to marriage, yet the Act itself lays down rules relating to the solemnization and requirements of a valid Hindu marriage as well as Restitution of Conjugal Rights, Judicial Separation, Nullity of Marriage, Divorce, legitimacy of children and other allied matters. Where the statute expressly codifies the law, the court as a general rule, is not at liberty to go outside the law so created, just on the basis that before its enactment another law prevailed. Now the other law in the context which prevailed prior to that was the unmodified Hindu law on the subject. Prior to the year 1955 or 1956 maintenance could be claimed by a Hindu wife through court intervention and with the aid of the case law developed. Now with effect from December 21, 1956, the Hindu Adoptions and Maintenance Act is in force and that too in a codified form. Its preamble too suggests that it is an Act to amend and codify the law relating to adoptions and maintenance among Hindus. Section 18 (1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her life-time. Sub- section (2) of section 18 grants her the right to live separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviours enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her

husband. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated on the pendency of a litigation of the kind envisaged under sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being siezen of the matter, invokes its ancilliary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfil this incidental or ancilliary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to chance or alter the order in view of the changed circumstances. Thus the whole exercise is within the gammit of a diseased of a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu 'Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancilliary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus. Section 41 of the Evidence Act inter alia provides that a final judgment, order or decree of a competent court in the exercise of matrimonial jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to such character, is relevant. And that such judgment, order or decree is conclusive proof as to the conferral, accrual,or taking away of such. legal character from a point of time as declared by the court. Such judgments are known as judgments in rem, binding the whole world. But the judgment of that kind must have done something positive, onwards. This provision is indicative of the quality of matrimonial jurisdiction. We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affection or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that court, to be altered or modified as future situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining` that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification under section 18 (1) of the Hindu Adoptions and Maintenance Act. The court is not at liberty to grant relief of maintenance simplicitor obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance.

Relief to the wife may also be due under section 125 of the Code of Criminal Procedure whereunder an order of maintenance can be granted after contest, and an order of interim maintenance can be

made at the outset, without much contest. This provision however has two peculiar features:

(i) the provision applies to all and not only to Hindus; and

(ii) maintenance allowance cannot exceed a sum of Rs. 500 per mensem.

But this is a measure in the alternative to provide destitute wives.

This court has ruled that if the language used in a statute can be construed widely so as to salvage the remedial intendment, the court must adopt it. Of course, if the language of a statute does not admit of the construction sought, wishful thinking is no substitute, and then, not the court but the legislature is to blame for enacting a damp squib statute. These are the observations of V.K. Krishna Iyer, J. in Carew and Company v. Union of India [1975] 2 SCC 791 at pages 803-804. Towards interpreting statutes, the court must endeavour to see its legislative intendment. Where the language is ambiguous or capable of more than one meaning, the court must sympathetically and imaginatively discover the true purpose and object of the Provision by filling gaps, clearing doubts, and mitigating hardships, harshness or unfair consequences. See Motor Owners' Insurance Company, Limited vs. Jadavji Keshavji Modi and others [1981] 4 SCC 660 paras 14. 15 and 16. These principles were pressed into service by learned counsel for the appellant contending that if the claim of the wife for maintenance was otherwise justified on fact and law, the procedures and the for a should not stand in her way and let her cash on her claim over-ruling all objections. It was asserted that the Amritsar court had jurisdiction to grant relief, as asked for, because once upon a time it was seisin of the petition for dissolution of marriage by mutual consent, though such petition was withdrawn. On the afore-analysis and distinction drawn between the fora and perceptives, it is difficult to come to the view that a claim which is ancilliary or incidental in a matrimonial court under the Hindu Marriage Act could be tried as an original claim in that court; a claim which may for the moment be assumed as valid, otherwise agitable in the civil court under the Hindu Adoptions and Maintenance Act, 1956. As said before, these two enactments keeping apart, the remaining two, i.e., Hindu Succession Act, 1956 and Hindu Minority and and Guardianship Act, 1956 are a package of enactments, being part of one socio-legal scheme applicable to Hindus. When distinctive claims are covered distinctly under two different statutes and agitable in the courts conceived of thereunder, it is difficult to sustain the plea that when a claim is otherwise valid, choosing of one forum or the other should be of no consequence. These are not mere procedural technicalities or irregularities, as termed by one line of reasoning by some of the High Courts. These are matters which go to the root of the jurisdiction. The matrimonial court, a court of special jurisdiction, is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree, which implies that unless it goes onwards, moves or leads through, to affect or disrupt the marital status between the parties. By rejecting a claim, the matrimonial court does make an appealable degree in terms of section 28, but neither affects nor disrupts the marriage. It certainly does not pass a decree in terms of section 25 for its decision has not moved or done anything towards, or led through, to disturb the marriage, or to confer or take away any legal character or status. Like a surgeon, the matrimonial court, if operating, assumes the obligation of the post operatives, and when not, leaves the patient to the physician.

On the afore analysis we have been led to the conclusion that the step of the wife to move the court of Additional District Judge, Amritsar for (,rant of maintenance under section 25 of the Hindu Marriage Act was ill-advised. The judgment of the High Court under appeal could be no other than the one that it was in the present state of law and the facts and circumstances. It is still open to the wife to stake her claim to maintenance in other fora. The judgments of the High Courts earlier quoted, and others which have been left out, which are not in line with our view are over- ruled. The earlier and predominant view was the correct one and the later an aberration; something unfortunate from the precedential point of view. The appeals thus inevitably have to and are hereby dismissed, but without any order as to costs.

Before we part with this judgment, we need to mention that while this judgment was reserved, an Interlocutory Application was received by the Registry, which unnumbered Interlocutory Application was duly transmitted to us. It is for directing the appellant to pay arrears of maintenance.While granting leave this Court on 8th July, 1991 had ordered that during the pendency of the appeal, but without prejudice to the respective stands of the spouses, the husband shall pay a sum of Rs. 1000 per mensem by way of maintenance to the wife month to month by bank draft. In the Interlocutory Application there is an allegation that this Court's orders have not been complied with. Let notice on the application separately be issued to the respondent returnable within six weeks to show cause why payment of arrears of maintenance be not secured to the wife forthwith.

U.R. Appeal dismissed.