

Patna High Court

Binda Prasad Singh vs Smt. Mundrika Devi And Anr. on 27 April, 1967

Equivalent citations: AIR 1968 Pat 196

Author: N Untwalia

Bench: N Untwalia

ORDER N.L. Untwalia, J.

1. On the 21st of June, 1952 opposite party No. 1 who is the wife of the petitioner obtained a decree for maintenance against the latter in the court of the Subordinate Judge at Motihari in title suit No. 98 of 1951 The suit was decreed for arrears of maintenance and future maintenance at the rate of Rs. 100 per month and for a sum of Rs. 5,000/- for a separate residence for the opposite party. There were no words in the said decree directing that in future the decree could be amended or modified on a proper application being made by any party to it either in regard to the amount of maintenance or in respect of the amount granted to the decree holder for a separate residence.

2. Opposite party No. 1 filed an application in the court of the subordinate Judge at Motihari on the 1st of February, 1968 labelling it as one under Sections 47 and 151 of the Code of Civil Procedure and Section 25 of the Hindu Adoptions and Maintenance Act, 1956 (Central Act, 78 of 1958) hereinafter called the Act for amending the decree aforesaid by enhancing with effect from January, 1963 the amount of monthly maintenance from Rs. 100/- to Rs. 500/- and for making another grant of Rs. 3,000/- for the repair of her separate residential house.

3. The petitioner took an objection in the court below that the application was not maintainable as the decree could not be amended by a mere application; the remedy of the opposite party who was the applicant in the court below was to file a separate suit for altering the amount of maintenance or for grant of another sum for the alleged repair of the house The learned Subordinate Judge, by his order dated 26-5-66, has refused to decide this question as a preliminary issue while tentatively expressing the opinion that in view of the provision contained in Section 25 of the Act the decree for maintenance can be amended on a mere application by a party to the decree The petitioner has come up in revision.

4. Before coming into force of the Act, by several decisions the law was well settled, as noticed in Mulla's Hindu Law including the latest (13th) edition at page 555, that the amount of maintenance whether it was fixed by a decree or an agreement was liable to be increased or diminished whenever there was such change of circumstances as would justify a change in the rate. The decisions in support of this view were only to refer to some of them--Ruka Bai v. Ganda Bai (1875-77) ILR 1 All 594, Ranmalsangji Bhagwatsangji v. Bai Kundankuvar (1902) ILR 26 Bom 707 Trimbak Wamanrao v. Mt. Bhagu Bai AIR 1939 Nag 249, and Mt. Savitribai v. Radhakisan AIR 1948 Nag 44. The law in regard to the remedy and the procedure which had to be followed for alteration of the amount of maintenance fixed either by a decree or an agreement was also well settled. In regard to the amount of maintenance fixed by agreement it could be altered either by agreement between the parties or by a suit. The amount fixed by a decree could be altered only by a separate suit except in cases where the decree sought to be altered contained a clause enabling the parties to apply for modification of its terms in which case an application could be made to alter the rate in the court which had passed

the decree or was executing it. In this connection, reference may be made to the observations of the Privy Council in *Mt. Ekradeshwari Bahuasini v. Homeshwar Singh*, AIR 1929 PC 128 at p. 129 (column 2). The High Court, while passing the decree for maintenance, had made such a provision for future alteration of the amount. The Board approved of this procedure as one "sound in principle and advantageous in procedure."

5. Undoubtedly, Section 25 of the Act has codified the substantive law as it existed before its enactment by expressly providing.

"The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement, of this Act, may be altered subsequently if there is a material change in the circumstances, justifying such alteration. "

But there are no words either in the 25th section or in any other section of the Act to indicate that the law in regard to the procedural aspect as settled by various judicial decisions before enactment of the Act was in any way intended to be, or was altered. The section merely provides that the amount of maintenance may be altered; it does not say that decree in all cases can be amended by a mere application. In my opinion, therefore, if the amount of maintenance is fixed by an agreement, it can be altered either by an agreement or by a decree of an appropriate court in a suit instituted by a party to the agreement. If the amount of maintenance is fixed by a decree, it can be altered by amendment of the decree in case there were express terms in it providing for future modification or amendment of the decree. But if there are no such words, any party to the decree, who wants its modification or amendment as respects the amount of maintenance, has got to file another suit and obtain another decree superseding the earlier one, which, to all intents and purposes, will be an alteration of the previous decree.

6 . Mr. K.P. Varma, learned Advocate for the petitioner, has placed reliance upon a Bench decision of the Calcutta High Court in *Menokabala Dasi v. Panchanan Seal*, AIR 1966 Cal 228 in support of his contention that the decree in question assessed in the year 1952 could not be altered by an application for its amendment. Sinha, J. as he then was with whom A.C. Sen, J. has agreed, has, after discussing the law as it was before the enactment of the Act, aptly drawn a distinction, if I may say so, with respect, between the words of Section 25 of the Act and those of Section 25 of the Hindu Marriage Act, 1955 (Central Act XXV of 1955). The decision of the Calcutta High Court in *Menokabala's case*, AIR 1966 Cal 228 is that under Section 25 of the Act.

". . . alteration in the amount of maintenance fixed by a decree cannot be ordered by an application, unless there is provision in the decree itself granting liberty to the decree-holder to have such variation made by way of an application. Where there is no such provision, the only way in which the amount of maintenance fixed by a decree can be varied is by way of a suit".

In the case before me, as I have said above, the original decree did not contain any such provision and consequently the variation in the amount of maintenances as in the case of Calcutta High Court and so in this cannot be ordered by way of an application.

7. In the result, I allow the application in revision, set aside the order of the learned Subordinate Judge and hold that the application filed by the opposite party on the 1st of February, 1966 is not maintainable; it is accordingly directed to be dismissed as such. There will be no order as to cost.