

Gujarat High Court

Neeta Shreyas Joshi vs Shreyas Siddharth Joshi on 23 February, 1999

Equivalent citations: AIR 1999 Guj 251, I (2000) DMC 323, (1999) 2 GLR 1170

Author: M Calla

Bench: M Calla

ORDER M.R. Calla, J.

1. This Civil Revision Application under Section 115 of the Code of Civil Procedure is directed against the order dated 21st January, 1999 passed by the City Civil Court, Court No. 9, Ahmedabad City, below Application Exh. 45 in Hindu Marriage Petition No. 72 of 1996.

2. The petitioner and the respondent who will be hereinafter referred to as the wife and husband, were married on 6th December, 1994, at Ahmedabad. They resided together at Bombay up to 29th March, 1995. In the end of March, 1995, the wife was sent or came back to Ahmedabad to appear in the examination. The wife's case is that the husband did not take her back to Bombay after the exams were over and the case of the husband is that the wife did not return. The husband then filed a petition for divorce under Section 13 of the Hindu Marriage Act against the wife on 'the ground of non-consumation of marriage and the physical as well as mental cruelty, on 7th February, 1996, in the City Civil Court, at Ahmedabad, which was registered as Hindu Marriage Petition No. 72 of 1996. The wife preferred a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act in the Family Court at Bombay on 11th June, 1996 which was registered as MJA-1103 of 1996. In this application for restitution of conjugal rights, the wife also moved an application under Section 24 of the Hindu Marriage Act claiming maintenance pendent lite and the expenses to meet the litigation. This application was moved by the wife on 9th August, 1996 before the Family Court, at Bombay and on 25th July, 1997, the Family Court at Bombay passed an-order granting maintenance of Rs. 4,000/- per month to the wife with effect from 9-8-1996, i.e. from the date on which the application under Section 24 had been moved. On behalf of the husband this order dated 25-3-1997 has been sought to be referred as ex parte order, merely because the husband or his counsel did not remain present despite the notice of the wife's application under Section 24 of the Act. Thus, the proceedings between the two spouses were going on against each other with regard to divorce petition as filed by the husband in the Court at Ahmedabad and with regard to the restitution of conjugal rights as moved by the wife in the Family Court, at Bombay. Whereas the order with regard to the maintenance pendent lite had been passed by the Family Court, at Bombay in favour of the wife, she did not move any separate application for maintenance under Section 24 of the Act in the proceedings for divorce as initiated by her husband at the Ahmedabad Court, but she only moved for expenses of the litigation of the divorce petition and the Court at Ahmedabad passed an order for payment of Rs.5,000/- against the expenses of the litigation. According to the husband, the amount of maintenance at the rate of Rs. 4,000/- per month as was granted by the Family Court at Bombay was paid by him up to July, 1998, whereas according to the wife, it is paid only up to June, 1998 and it is also stated that on 25th December, 1998, a sum of Rs. 1,100/- was paid to the wife in addition to the amount paid earlier up to June/July, 1998. The husband's case is that in all, he has paid a sum of Rs. 92,000/- besides the amount of Rs. 1,100/-, paid on 25th December, 1998. It is also the case of the husband that he is essentially a Chemical Engineer, but on account of some subsequent developments, his income was reduced and, therefore, he moved an application in the Family Court

at Bombay for reduction of the amount of the maintenance on 17th March, 1998 being Misc. Application No. 395 of 1998 and the same is said to be pending. However, the fact remains that even as per the case of the husband himself, the regular maintenance amount has not been paid after 9th June, 1998. It is submitted on behalf of the husband that the proceedings in the divorce petition at Ahmedabad Court has reached the stage of evidence and so far as the proceedings initiated by the wife for restitution of conjugal rights in the Family Court at Bombay is concerned, it is given out on behalf of the husband that he has already filed the reply to the main application for restitution of conjugal rights and thereafter the proceedings are going on, on his application for reduction of the amount of maintenance and no maintenance is being paid after July, 1998.

3. On 9th December, 1998, the wife, i.e. the present petitioner before this Court moved an application before the City Civil Court No. 9, Ahmedabad, in the petition filed by the husband, praying that the proceedings in this petition be stayed because the husband, i.e. petitioner seeking divorce had not paid the amount of maintenance as was ordered by the Family Court at Bombay. On her behalf, the grievance has been voiced that she had not moved an application under Section 24 in the divorce petition filed by her husband because the maintenance pendente lite had already been granted by the Family Court at Bombay and no payment had been made in pursuance of that order against the maintenance after June, 1998 and that in absence of the payment of regular maintenance after June, 1998, it was not possible for her to meet the expenses to maintain herself. It is also her case that she has also applied for execution of the order of maintenance pendente lite in January, 1999 before the Family Court at Bombay and that application for execution is also pending. However, the wife's application dated 9th December, 1998 moved before the Court at Ahmedabad to stay the proceedings in the divorce petition filed by the husband has been rejected by the Civil Court No. 9, Ahmedabad City, on 21st January, 1999. It is against this order dated 21 st January, 1999, that the present Civil Revision Application under Section 115 of the Code of Civil Procedure was filed before this Court, wherein the husband had already entered a caveat dated 10th February, 1999 and on 12th February, 1999 after hearing both the sides, the Rule was issued and the same was to be heard on 31st March, 1999 as the service had been waived on behalf of the respondent husband. On 12th February, 1999, after hearing both the sides and in presence of both the sides, the following order was passed :

"Rule, to be heard on 31-3-99. Mr. A. R. Lakhia waives service of notice.

By way of interim relief it is directed that the trial Court shall decide the application filed by the respondent husband for recalling or modification of the ex parte order granting interim maintenance, before the returnable date. Till then, further proceedings before the said Court shall remain stayed, except the disposal of the application for recalling or setting aside or modification of the ex parte order granting interim maintenance.

Direct service is permitted 12-2-99 Sd/-

(N. N. Mathur, J.)"

It appears from the proceedings recorded in this case that on 18th February, 1999 the matter again came up before the Court on a note for Speaking to Minutes and the following order was passed :

"The matter has come up by note for speaking to minutes.

The order dated 12-2-99 granting interim relief by directing the trial Court to decide the application filed by the respondent has proceeded on wrong assumption that the said Court is within the jurisdiction of this High Court. It is now realised that the Family Court is in Bombay. In view of this position this Court will not be in a position to give any direction. Accordingly, the interim direction given by the order dated 12-2-99 is recalled. However, rule which is fixed for hearing on 31-3-99 is preponed and it is fixed for hearing on 22-2-99.

S.O. to 22-2-99 18-2-99 Sd/-

(N.'N. Mathur, J.)"

Thus, the matter which was to be heard on 31st March, 1999 was directed to be fixed for hearing on 22nd February, 1999, i.e. today. This is how the matter has come up for hearing before this Bench today.

4. I have heard learned Counsel for both the sides and have also gone through the application dated 9th December, 1998 and the impugned order dated 21-1-1999. The learned Counsel for the petitioner wife has submitted that on her application, the proceedings should have been stayed by the Court at Ahmedabad, where the husband's divorce petition is pending because it is not possible for the petitioner to effectively contest the matter in absence of the regular maintenance pendente lite which has not been paid to her since June, 1998 and that it was within the powers and jurisdiction of the Court at Ahmedabad to stay the proceedings pending before itself on the ground that the regular maintenance pendente lite is not being paid as ordered by the Family Court at Bombay and it is a case of the failure of the exercise of the jurisdiction and the inherent powers of the Court under Section 151 of the Code of Civil Procedure and that it was a fit case in which such power could be exercised in favour of the present petitioner and that the view taken by the Court while passing the impugned order dated 21st January, 1999 amounts to failure of exercise of the jurisdiction and hence it is a case of denial of the exercise of jurisdiction and the powers which were properly vested in the City Civil Court while dealing with the wife's application for stay of the proceedings in the husband's petition for divorce pending in the Court at Ahmedabad. Mr. A. R. Gupta appearing for the petitioner wife has placed strong reliance on the following decisions : (1) Smt. Malkan Rani v. Krishan Kumar, reported in AIR 1961 Punjab 42; (2) Smt. Anita Karmokar v. Birendra Chandra Karmokar, reported in AIR 1962 Calcutta 88; and (3) Bhuneshwar Prasad v. Dropta Bai, reported in AIR 1963 Madhya Pradesh 259. As against it, it has been submitted on behalf of the respondent husband by Mr. Lakhia that the impugned order dated 21st January, 1999 is unassailable for the simple reason that the Court at Ahmedabad could not stay the proceedings before itself merely because the petitioner-husband had failed to pay the maintenance pendente lite as had been ordered by the Family Court at Bombay. According to him, these are two separate proceedings pending in two different Courts at two different places in two different States. True it is

that the wife's petition for restitution of conjugal rights is pending in the Family Court at Bombay and an order for maintenance pendente lite had been passed by the Family Court at Bombay, the fact remains that the divorce petition filed by the husband is pending in the Civil Court at Ahmedabad and it cannot stay the proceedings pending before itself on the ground that the order of maintenance pendente lite passed by the Family Court at Bombay has not been complied with. He has further argued that it is open for the wife to seek the execution of the order of maintenance pendente lite under Section 28-A of the Hindu Marriage Act before the Family Court, Bombay. He has also submitted that in appropriate cases the defence of the defaulting party may be struck off in the proceedings and in appropriate cases, even contempt proceedings can be taken, but in no case, the proceedings could be stayed in a separate action pending for a different purpose in a different Court at a different place and in different State and, therefore, there was no justification for invoking the inherent powers under Section 151 of the Code of Civil Procedure for the purpose of staying the proceedings in the divorce petition filed by the husband at the instance of the wife because she was aggrieved against the non-compliance of the order passed by the Family Court at Bombay. It has been submitted on behalf of the respondent husband that while it is open for the wife to avail the remedy of execution or to apply for the striking off the defence in the proceedings filed by her for restitution of conjugal rights or to seek such other remedy as may be available to her in accordance with law, if at all she was aggrieved that the order of maintenance pendente lite passed by that Court, was not being complied with, but she had no lawful justification to approach the Court at Ahmedabad for stay of the proceedings in the divorce petition filed by her husband on the ground as aforesaid, no case for exercise of inherent powers under section 151 of the Code of Civil Procedure can be said to be made out in her favour, because there were exclusive provisions for execution of the order passed in any proceedings under the Hindu Marriage Act and it is the settled law that if there are specific provisions, there is no question of exercise of the inherent powers by the Court. Mr. Lakhia in support of his submissions placed strong reliance on the fol-

lowing decisions : (1) Sarladevi Bharatkumar Rungta v. Bharatkumar Shivprasad Rungta reported in 1988 Cri LJ 558, a decision of the Bombay High Court; (2) Union of India v. Lalji Bhimji, reported in AIR 1969 Gujarat 55; (3) Suryakant Ratilal Oza v. Jashumati, reported in (1981) 22 Guj LR 551; and (4) Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, reported in AIR 1962 SC 527.

5. It is a strange case of spouses in agony. While the wife is desirous of restitution of conjugal rights, the husband wants to break the nuptial tie altogether through the divorce petition. The wife has resorted to the remedy of restitution of conjugal rights at the place of their last matrimonial home, i.e. the place where they last resided together i.e. at Bombay and the husband has resorted to the remedy of divorce at Ahmedabad, i.e. the place where the marriage was solemnised and it appears that it is the factum of the pendency of the proceedings under Section 9 of the Act initiated by the wife at the Family Court at Bombay and the proceedings for divorce under Section 13 initiated at Ahmedabad by the husband which has given rise to the present controversy involving an issue of legal consequence as to whether the Court at Ahmedabad can stay the proceedings pending before itself on the ground that the order passed by the Family Court at Bombay has not been complied with by the husband who is the petitioner before the Court at Ahmedabad, because the wife is aggrieved against the non-compliance of the order passed by the Family Court at Bombay and the non-compliance of this order of maintenance pendente lite was operating to her prejudice for the

purpose of putting an effective defence and real contest in the divorce petition at Ahmedabad.

6. The Division Bench of the Punjab High Court had an occasion to consider the scope of the Sections 24 and 28, while considering the question as to whether or not the proceedings in the suit filed by the husband for restitution of the conjugal rights could be stayed till the husband paid the amount which he had been ordered to pay under Section 24 of the Hindu Marriage Act. This clearly goes to show that this was a case in which the proceedings were sought to be stayed before that very Court which had passed the order with regard to the grant of the maintenance under Section 24. The proceedings for restitution of conjugal rights in this case before the Punjab High Court as were initiated by the husband were sought to be stayed by the wife because the husband had failed to pay the amount ordered by the Court under Section 24. The Punjab High Court observed that it was obvious that realisation of the amount through execution proceedings in accordance with the provisions of the Code of Civil Procedure must plunge the indigent spouse into another lengthy and unpleasant litigation and what is more, the matrimonial Court will find it difficult, if not impossible, to decide the case satisfactorily or expeditiously. It will result in denial of justice to the person in whose favour the order under Section 24 of the Hindu Marriage Act has been made. However, the Punjab High Court further considered that when the question arises if the Courts are helpless and cannot make effective the legislative intention expressed in Section 24 of the Hindu Marriage Act, it was observed that the Courts were not helpless in the matter and can use their inherent jurisdiction to avoid such consequences. There is nothing in the Hindu Marriage Act which can prevent the Courts to exercise the inherent jurisdiction to advance the cause of justice. The Code of Civil Procedure contains no provision under which pendente lite maintenance and litigation expenses can be recovered without delay. The observations made in some other case i.e. *Sunder Mal v. Budh Ram*, reported in ILR (1955) 4 Patiala 481 were quoted wherein it was observed that Courts exist for administering justice. In India, every Court is a Court of equity as well as of law. For the administration of justice it is necessary that it should have powers to undo a wrong and do the right. Thus, while taking note of the provisions with regard to the execution of the orders passed in the proceedings under the Hindu Marriage Act, it was held that when the Court is exercising the inherent power, it has to take into consideration all the circumstances of the case and then come to the conclusion whether the justice requires the proceedings to be adjourned or to be stayed till the payment is made. While doing so, the options of adjournments and the stay of the proceedings and the objections have been considered. The ultimate conclusion is that the Punjab High Court found the trial Court to be in error in holding that it had no power to take any steps in the matrimonial proceedings to make the husband comply with the order made under Section 24 of the Hindu Marriage Act. In *Smt. Anita Karmokar* (AIR 1962 Calcutta 88) (supra), the Calcutta High Court considered the failure of husband to pay maintenance amount pendente lite and expenses of the proceedings of wife. The wife moved the Court for the stay of the proceedings and the Court held that, the husband, against whom an order under Section 24 has been made, but who refuses to pay under the order and aspires yet to go on with his suit must not be encouraged. It was held that the English principle, followed in matrimonial causes, of staying the suit in such circumstances is the best way of dealing with such a situation and the said principle should be applied in proceedings under the Hindu Marriage Act, 1955 as a rule of justice, equity and good conscience. It was contended before the Calcutta High Court on behalf of the husband that the wife could enforce the order made under Section 24 of the Act only by way of execution of the order and that the husband

opposite party could not be compelled to pay by ordering stay of the proceeding for restitution of his conjugal rights with the petitioner. The Calcutta High Court observed that the path of execution is not an easy going high way and provides no short-cuts to the destination. While referring to the case of General Manager of Raj Durbhanga v. Ramput Singh, reported in (1870-72) 14 Moo Ind App 605 (612), the observations made by the Privy Council were quoted to the effect that, "Difficulties of a litigant in India begin when he has obtained a decree". The Calcutta High Court, therefore, took the view that to hold that the levying of execution is the only remedy for enforcement of an order made under section 24 may result in making such order wholly nugatory and ineffective. The Calcutta High Court has also agreed with the view taken by the Punjab High Court in the case of Smt. Malkan Rani (AIR 1961 Punjab 42) (supra) and while agreeing with the view taken by the Punjab High Court, it has been observed that inconvenience may ensue if execution be held to be the only method of enforcement of an order made under Section 24 of the Act and that there was nothing in the scheme of Hindu Marriage Act which is opposed to the staying of a matrimonial action, for non-compliance with an order made under Section 24 of the Act, in exercise of the inherent powers of the Court. In Bhuneshwar Prasad (AIR 1963 Madh Pra 259) (supra), the Madhya Pradesh High Court was also concerned with the question of stay of the proceedings in a matrimonial case for non-compliance with the order passed under Section 24 of the Hindu Marriage Act. The Madhya Pradesh High Court considered that if payment of maintenance pendente lite and expenses of the proceedings is to be deferred until after the termination of the proceeding, the very basis of an order under Section 24 directing the payment would disappear. Maintenance pendente lite and expenses of the proceeding are ordered to be paid under Section 24 on the ground that the spouse in whose favour the order has been made is without the necessary means to maintain herself or himself during the proceedings and bear the expenses of defending them. If the payment of this amount is not made before the termination of the proceedings and if the party in whose favour the order has been made can afford to wait until after the proceedings are terminated, then it may well be said that the order under Section 24 was not necessary for the protection during the proceedings, of the party concerned. It is true that Section 24 does not expressly provide for the situation arising because of non-compliance with an order made under it. For the reasons as aforesaid, the Madhya Pradesh High Court has concluded that there is nothing to prevent a Court from exercising its inherent power and staying the proceedings for the purpose of carrying out the object of the order made under Section 24. It was also held that Section 28 on which reliance was placed by the petitioner does not stand in the way of enforcement of an order under Section 24 by staying the proceedings until the order is carried out. The provision only says that all decrees and orders made by the Court in any proceedings under the Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under any law for the time being in force. The proceedings are stayed by the Court in the exercise of its inherent powers for non-compliance with an order under Section 24. The stay itself is clearly not the execution of the order. The proceedings are stayed for the purpose of enabling the party in whose favour the order has been made to execute it in the manner provided in Section 28 and recover the amount of maintenance pendente lite and expenses of the proceedings so that he or she may be in a position to defend the proceedings. The Madhya Pradesh High Court has also taken support from the decisions in the cases of Smt. Malkan Rani (AIR 1961 Punjab 42) (supra) and Smt. Anita Karmokar (AIR 1962 Calcutta 88) (supra) decided by the Punjab and Calcutta High Courts, respectively, as discussed above.

7. The decision of the Bombay High Court in the case of Sarladevi (1988 Cri LJ 558) (supra) which has been relied upon on behalf of the respondent husband shows that the Bombay High Court had taken a view that existence of remedy of execution for recovery of maintenance is no bar against the contempt proceedings if the order directing the husband -to pay maintenance pendente lite is disobeyed. In the opinion of this Court, such question is not involved in the present case before this Court and as a matter of fact, no argument has been advanced even on behalf of the petitioner wife and in fact, no contempt proceedings have been initiated and as such, in the opinion of this Court, the principle which has been laid down by the Bombay High Court has no bearing on the present controversy. In the case of Union of India v. Lalji Bhimji (AIR 1969 Gujarat 55) (supra), a single Bench of this Court considered the relative scope of Sections 144 and 151 of the Code of Civil Procedure and it has been held that the powers under Section 151. cannot be exercised when there is definite provision under Section 144 of the Code of Civil Procedure. In the facts of the case, it was found that a stay had been granted against the execution on the condition that the judgment-debtor deposits the decretal amount. However, by mistake, the decretal amount was paid to a wrong person instead of depositing into the Court. The restitution was sought and in this context, the question arose as to whether the inherent powers under Section 151 could be exercised so as to call upon the respondent to return or deposit the amount in Court or that it could only be directed to take the amount if the application was held to be valid in law. It was also held that if the amount was deposited in Court, then Court would have been justified in exercising this powers and direct the respondent to deposit the amount in Court, but when the amount had been paid, though, no doubt, out of some mistake, to the respondent out of Court and consequently the Court would have no control over such a person when he was paid the amount rightly or wrongly believing him to be a person entitled to get under the decree passed against the judgment-debtor. It was also held that Section 144 of the Code of Civil Procedure will not apply and it would not be so very proper to apply the provisions contained in Section 151 when there is a definite provision for restitution of any such amount under Section 144 of the Code of Civil Procedure. The non-exercise of the powers under Section 151 of the Code of Civil Procedure by the District Judge was, therefore, held to be right. In any case, it lays down that when there is a specific provision for a specific purpose, the inherent powers under Section 151 cannot be exercised and so far as this principle of law is concerned, there cannot be any quarrel with this proposition of law. In Suryakant Ratilal (1981 (22) GUI LR 551) (supra), a Division Bench of this Court was concerned with the question relating to the property jointly owned by husband and wife. The Court held that it had no jurisdiction to pass an order regarding 'stridhan' or a separate property of the wife. While referring to Section 27 of the Hindu Marriage Act, it was found that Section 27 expressly confers jurisdiction upon the Civil Court to make such a provision in the decree as it thinks fit in relation to any property which belongs jointly to both the husband and the wife. It does not enable the Court to make any provision in the decree in respect of property which may exclusively belong either to the husband or the wife. This express provision rules out by necessary implication the jurisdiction of the Court in matrimonial proceedings to make any provision in such a decree in respect of property which may exclusively belong either to the husband or to the wife and in this very context it was further observed that any property which is gifted to a girl at the time of her marriage by her parent or parents or by others is her "Stridhan" property and that she has an exclusive title to that property. It was also observed to be clear in the facts of that case before the Division Bench that wife claimed from the husband in the matrimonial proceedings, movable property which exclusively belonged to her and it was observed

that the Parliament in its wisdom did not bring within the sweep of Section 27 a property exclusively belonging either to the husband or the wife and, therefore, Section 27 was not intended to confer jurisdiction upon the Court in respect of the property belonging exclusively either to the husband or to the wife and, therefore, in respect of the substantive claims which a party may have against another and which can be the subject-matter of a separate suit, inherent power of the Court cannot be invoked in matrimonial proceedings to do what otherwise can be done in a substantive suit. This decision again proceeds on the same principle that when there is specific provision or a specific substantive remedy and the jurisdiction of the Court is impliedly barred by the special enactment, there is no question of exercising the inherent powers under Section 151 of the Code of Civil Procedure. In *Manohar Lal* (AIR 1962 SC 527) (supra), the Supreme Court considered the question of issue of temporary injunction and in the context of the exercise of the inherent powers by the Court, what has been held by the Supreme Court is that the circumstances not covered by Order 39 can be taken care of through exercise of inherent powers under Section 151 of the Code of Civil Procedure.

23rd February, 1999 The Supreme Court was actually concerned in this case with an order restraining the party to proceed with the suit or other proceedings. A suit was filed by 'A' against 'B' at place 'X'. 'B' relying on contract between them had filed a counter suit against 'A' at place 'Y'. The Court which was situated at place 'Y' issued an order restraining 'A' (defendant before it) from proceeding with the suit at place 'X'. The Supreme Court held on the facts of this case that the order was not justified and set it aside. However, in the case at hand, 'H' has filed the suit against 'W' at Ahmedabad and 'W' has filed the suit against 'H' at Family Court, Bombay. However, 'W' is not seeking the stay of the suit filed by it at Bombay against 'H' nor 'H' is seeking any stay of the suit filed against it by 'W' at Bombay, but 'W' is seeking the stay of the proceedings of the suit filed against it by 'H' in the Court at Ahmedabad from the Court at Ahmedabad itself. Therefore, it is not the case in which any stay is sought from one Court for restraining the proceedings pending in some other Court. It is a case in which the wife who is a defendant in the divorce petition filed by her husband before the Ahmedabad Court is seeking the stay of the proceedings pending in the Court at Ahmedabad against her from the Court at Ahmedabad itself. It is not the case that, she has made a prayer before the Family Court at Bombay to stay the proceedings pending in the Civil Court at Ahmedabad. True it is that, while seeking the stay of the proceedings before the Court at Ahmedabad, her grievance is that the husband who had filed the divorce petition, at Ahmedabad, had failed to pay her the amount of regular monthly maintenance since June 1998 as had been ordered by the Family Court at Bombay. Nevertheless, she is seeking the stay of the proceedings pending in the Court at Ahmedabad from the Court at Ahmedabad itself. Thus, the fact situation obtaining in the present case is entirely different than the one which was considered by the Supreme Court in the case of *Manohar Lal* (AIR 1962 SC 527) (supra). The learned Counsel Mr. Lakhia lastly cited the case of *Nainsingh v. Koonwarjee* reported in AIR 1970 SC 997 wherein also, the Supreme Court has observed that under the inherent powers of Courts recognised by Section 151 of the Code of Civil Procedure, the Court has no power to do that which is prohibited by the Code. Inherent jurisdiction of the Court must be exercised subject to the rule that if the Code does contain specific-provisions which would meet the necessities of the case, such provision should be followed and inherent jurisdiction should not be invoked. In other words the Court cannot make use of the special provisions of Section 151 of the Code where a party had his remedy provided elsewhere in the



Code and he neglected to avail himself of the same and further that the power under Section 151 of the Code cannot be exercised as an appellate power.

8. On consideration of the cases as aforesaid, the following position with regard to the judicial opinion is found to be discernible :

(i) Section 24 of the Hindu Marriage Act clothes the Court with power to grant maintenance pendente lite to either of the spouses in any proceeding under the Hindu Marriage Act.

(ii) Section 28-A provides for the enforcement for the decree and orders made by the Court in any proceeding under the Hindu Marriage Act in the like manner as the decrees and orders of the Court made in exercise of its original civil jurisdiction for the time being are enforced.

(iii) The object and purposes of Section 24 of the Hindu Marriage Act is to enable the Court to see that indigent spouse is put in a financial condition in which the party concerned may produce proper matrimonial evidence in the case.

(iv) The intention of the Legislature in enacting this provision is to see that a party is not handicapped in or prevented from bringing all the relevant facts before the Court for decision of the case before of his or her poverty.

(v) The Courts are intended and are expected to conduct their proceedings equitably between the parties and can take all steps consistent with law to achieve this object. ;

(vi) So long as a particular procedure of action is expressly prohibited, the Court can act according to justice, equity and good conscience.

(vii) The Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible until it is shown to be prohibited by the law and the prohibitions cannot be presumed.

(viii) In appropriate cases for reasons of non-compliance of the order under Section 24 of the Hindu Marriage Act, the proceedings can be stayed by the concerned Court in exercise of its inherent powers and there is nothing to prevent the Court from exercising such inherent powers for the purpose of stay of the proceedings.

(ix) The proceedings are stayed so as to enable the party in whose favour the order has been made so that he or she may be in a position to defend in the proceedings.

(x) The exercise of inherent power is to advance the cause of justice for the benefit of the handicapped spouses. However, such benefit may not be the motive for the exercise of this inherent jurisdiction.

(xi) When (here is an express provision, there is no question of exercise of the powers under Section 151 of the Code of Civil Procedure and therefore, the exercise of inherent powers of the Court has much to do with the duty cast upon the Court to render justice between the parties in cases where the parties are left with no effective remedy through any express provision.

9. In the context of the aforesaid principles which are discernible from the various judicial pronouncements as aforesaid, the same are to be applied in the facts of each and every case. There is no direct case according to both the sides on the question as to whether the Court before which any proceedings under the Hindu Marriage Act is pending, can or cannot stay the proceedings pending before itself for non-compliance of an order of maintenance pendente lite passed by some other Court at a different place in a different State. But new problems always call for new solutions and, therefore, as and when such situations arise, when no direct authorities are available for the guidance, the matter has to be examined on first principles with the orientation of the principles which have been decided by the various Courts with regard to the proceedings under the Act between the parties. Here is a case in which ;

(i) The petitioner wife is, on the one hand, pursuing the remedy for restitution of conjugal rights in the Family Court at Bombay and on the other hand, she is facing the proceedings in the divorce petition pending in the Court at Ahmedabad as filed by the respondent husband.

(ii) The petitioner wife in whose favour an order had been passed for maintenance pendente lite by the Family Court at Bombay is not being complied with since June/July 1998 as aforesaid.

(iii) She is faced with a predicament to go ahead with both the proceedings at two different places without being paid anything since June/ July 1998 against the maintenance and therefore, either she has to wait till her application for execution of the order of maintenance as passed by the Family Court at Bombay is decided in which the respondent husband has also applied for the reduction of the amount of maintenance already granted by the Family Court at Bombay or to apply for the stay of the proceedings in the divorce petition which are pending in the Court at Ahmedabad.

(iv) On behalf of the husband, the stay of the proceedings of the divorce petition filed by him is sought to be contested and a stand has been taken that if the order of maintenance pendente lite as passed by the Family Court at Bombay has not been complied with, she may apply for the stay of the proceedings pending in the Family Court at Bombay, but she cannot seek stay of the proceedings which are pending in the Court at Ahmedabad in the divorce petition.

10. The learned Counsel appearing for the respondent husband has also submitted that in the Family Court at Bombay, she can apply for striking off the defence of the husband in the cause for restitution of conjugal rights and she can even initiate contempt proceedings, but in no case, she can seek the stay of the proceedings which are pending in the Court at Ahmedabad on the ground of the non-compliance of the order of maintenance pendente lite as granted by the Family Court at Bombay. In such a situation, if the options as have been suggested and argued on behalf of the husband are accepted, the very purpose of the action for the restitution of conjugal rights may stand frustrated and may also become infructuous in case the divorce petition is heard and decided

against her and on the other hand, if she seeks the stay of the proceedings in the action for restitution of conjugal rights pending before the Family Court at Bombay, she will be inflicting an injury against herself by way of the stay of her own suit while the proceedings pending in the divorce petition would advance, which are already at an advanced stage of evidence. It is certainly a situation which calls for a new solution and for the purpose of rendering justice to the parties, the matter has to be examined with a new but a legally permissible approach. It has to be agreed at all hands that the spouse in the present case, the wife has to face the proceedings as aforesaid while there is no denying of the fact that since June/July 1998 she has to fight out the cases at two fronts without any maintenance. The options of getting the proceedings initiated by herself to be stayed or to make a prayer for striking off the defence of the husband in the suit for restitution of conjugal rights or for initialing the contempt proceedings for non-compliance of the order with regard to the maintenance pendente lite may, therefore, not be conducive to the ends of the justice and it cannot be said that these options may be a cure for the problem which she is facing. Justice is one which has the strength to put an end to the injustice. Justice is a virtue which must transcend all other virtues and, therefore, in the opinion of this Court, the options which have been suggested on behalf of the husband in the instant case to oppose the stay of the pending proceedings in the Court at Ahmedabad are neither practical nor feasible to advance the purpose and object of justice, rather the whole purpose of providing maintenance pendente lite as contemplated by the Hindu Marriage Act to spouse who is handicapped, shall stand defeated and thwarted. In such cases, where the order of maintenance pendente lite has been passed by the Family Court at Bombay and in the proceedings initiated by her husband in the Court at Ahmedabad. where she is facing the divorce petition filed by her husband, the purpose of the order of maintenance pendente lite is to enable her to face the proceedings. Merely because she did not move any application for maintenance pendente lite in the proceedings at Ahmedabad Court because she had already obtained an order of maintenance pendente lite from the Family Court at Bombay, she cannot be left without any remedy, on the contrary, it is a ground which should go in her favour that in all fairness, she did not even move her claim for maintenance pendente lite in the Court at Ahmedabad thinking that it will not be proper for her to move for maintenance pendente lite in both the Courts simultaneously. Therefore, the question is whether she is receiving the benefit of the order of the maintenance pendente lite passed by the Court or not? The fact that such an order in her favour is passed by the Court 'A' or Court 'B' in any of the two proceedings is of little importance. The significance is of the receipt of the actual amount into the hands of the spouse for whose benefit the provisions of Section 24 have been enacted by the Legislature with an orientation to bring the contesting spouses at par in a lis between them in matrimonial cases and Section 24 speaks of any proceedings under this Act whether they are for the restitution of conjugal rights or the proceedings for the divorce petition. If we examine the scheme of the Act and make a reference to Section 23-A of the Act which provides a relief for the respondent in divorce and other proceedings it provides in clear terms that in any proceedings for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any other relief under this Act on that ground and if the petitioner's cruelty, adultery or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground. Notwithstanding this provision with regard to the counter-claim for the relief to the respondent, the right to defend effectively in a proceeding is a recognised right and for the purpose

of effective exercise of this right in any proceeding. Section 24 postulates the grant of maintenance pendente lite. The wife is pursuing or facing the proceedings in two Courts in two proceedings under the Hindu Marriage Act without the full benefit of the order of maintenance pendente lite passed by the Court in her favour under Section 24, is the plight and predicament of the present petitioner in this case. Now, the question arises whether the Court at Ahmedabad had the power to stay the proceedings pending before itself on the grounds as aforesaid and in the facts and circumstances of this case? There is no doubt that the Court at Ahmedabad where the proceedings in the divorce petition initiated by the husband are pending, cannot stay the proceedings which are pending in the Family Court at Bombay nor the stay of the proceedings by the Family Court at Bombay in the wife's petition for restitution of conjugal rights is an answer to the problems faced by the petitioner wife. Nevertheless, the question arises as to whether the Court at Ahmedabad can stay the proceedings pending before itself or not. Therefore, one thing is clear that the petitioner, in this case, is not seeking the stay of the proceedings before some other Court and she is seeking the stay of the proceedings before the Court itself before which the proceedings are pending. Of course, the ground on which the stay is sought is that the order of maintenance pendente lite passed by the Family Court at Bombay is not being complied with. In the opinion of this Court, which Court had passed the order of maintenance pendente lite is not important. What is important and germane consideration is that the maintenance pendente lite is not being paid to her and, therefore, the mere fact that it is the order passed by the Family Court at Bombay which is not being complied with, cannot come in the way for seeking the stay of the proceedings which are pending before the Court at Ahmedabad, by the Court at Ahmedabad itself. There would have been no difficulty, had both the causes been pending in the same Court, but there is a case in which the two separate proceedings under the same Act are pending at two different places and therefore, the mere place or the mere fact that the order which is not complied with has been passed by some other Court cannot be a relevant ground for the purpose of depriving the handicapped spouse from obtaining an order of stay with regard to the proceedings from the Court before which the other side is stealing a march over her by non-compliance of the order which has been passed by the other Court. The learned Counsel for the respondent husband failed to point out any express provision in the Hindu Marriage Act under which she could ask for the stay of the proceedings before the Ahmedabad Court on the grounds of non-compliance of the order of maintenance pendente lite as passed by the Family Court at Bombay. The law is very clear that in absence of any express provision in the Act, the Court may exercise the inherent powers under Section 151 of the Code of Civil Procedure. In absence of such an express provision for the purpose of stay of the proceedings notwithstanding the provisions contained under Section 28-A for enforcement of the decrees and orders, such stay could be asked for before the Court at Ahmedabad. The reason is very clear that so far as the proceedings which are pending before the Court at Ahmedabad are concerned, she has no remedy for enforcement of the order of maintenance pendente lite. Hence, the remedy of execution of the order of maintenance pendente lite is not available to her before the Court at Ahmedabad. The remedy of applying for striking off the defence simply does not arise so far as the Court at Ahmedabad is concerned and there is no question of initiation of action for contempt before the Court at Ahmedabad, and therefore, unless and until she is able to maintain herself through the maintenance as granted by the Court, it may not be possible for her to put an effective contest while her hearth remained cold. No party on such technical or hyper technical grounds can be allowed to steal a march over the other party in the matter of its defence before a Court and, therefore, it is of no

consequence to say that the order which is not complied with is not an order passed by the Court at Ahmedabad and it is an order passed by the Family Court at Bombay. The City Civil Court while dealing with this controversy has itself noted in the body of the order itself that in administering justice under the Code of Civil Procedure, the Courts may come across cases and circumstances which are not covered by any express provision of the Code, wherein also justice has to be done. The prescribed rules of procedure again may be abused or so used merely to emphasise to the form rather than the substance and thus obstruct or make ineffective the administration of justice. In the abovementioned type of cases and circumstances, Courts have undoubted power to do justice and to redress wrong, under Section 151 of the Code. I am, simply bemoaned at the view taken by the learned Judge of the City Civil Court, Ahmedabad in rejecting this application even after noticing such wholesome observations which he himself has quoted and considered. The trial Court has also made a reference to a case reported in 1984 Hindu LR 1. This citation was not available with either of the parties at the time of addressing the arguments. An endeavour was made to obtain this citation from the High Court Library as also from the City Civil Court Library, but the same could not be available. From the bald reference to 1984 Hindu LR 1, it is not known as to what is the name of the parties and the decision is of which High Court? However, the learned City Civil Judge has quoted certain observations from this reported decision to the following effect:

"In case the defaulting party happen to be the petitioner or the appellant the Court may pass an order staying further proceedings till the order passed under Section 24 is complied and if the default is persistent it may dismiss the petition or appeal. In cases where the defaulting party is the respondent the Court may refuse to hear it till the order passed under Section 24 of the Act is duly complied and may strike off the defence of the defaulting party. But in my opinion the appellate Court would not be justified in allowing the appeal on the ground that the respondent has failed to comply with the order passed under Section 24 of the Act."

In the present case, the petitioner wife had never sought rejection of the husband's petition for divorce on the ground of his failure to pay the maintenance pendente lite. All that she had asked for is the stay of proceedings till the order of the maintenance pendente lite is complied with. I simply fail to understand how these observations could form the basis for rejection of the application seeking stay of the proceedings. In principle, I find that it was a fit case in which the trial Court ought to have exercised the inherent powers under Section 151 of the Code of Civil Procedure as there was no express provision under the Hindu Marriage Act for the purpose of staying the proceedings and in the facts and circumstances of this case, the petitioner wife was not left with any other remedy so as to exercise her right of defence against the suit and, therefore, till she is able to lend strength to herself after the compliance of the order of maintenance pendente lite passed by the Court at Bombay, the proceedings in the divorce petition pending in the Court at Ahmedabad should have been stayed. It is, therefore, very clear that the City Civil Court has failed to exercise the jurisdiction which was properly vested in it and it was a fit case in which such power should have been exercised in favour of the petitioner wife who had approached the Court for the purpose of stay of the proceedings : : pending before it without asking for the stay of the proceedings pending in some other Court and I have no hesitation in holding that the mere fact that the order of maintenance pendente lite has been passed by the Family Court at Bombay could not create any legal impediment against the stay of the proceedings in the divorce petition pending before the

Court at Ahmedabad.

11. The upshot of the aforesaid discussion is that the order dated 21st January, 1999 passed by the City Civil Court No. 9, Ahmedabad. in Hindu Marriage Petition No. 72 of 1996 below Application Exh. 45 cannot be sustained in the eye of law. The same is hereby quashed and set aside. The proceedings which are pending in the divorce petition filed by the respondent husband before the aforesaid Court at Ahmedabad being Hindu Marriage Petition No. 72 of 1996 are hereby stayed till the order dated 25th July, 1997 passed by the Family Court at Bombay in M.J.A. No. 1103 of 1996 is complied with. The learned Counsel for the respondent husband even at this stage, has raised an objection that the petitioner wife's case was only for payment of Rupees 26,000/- against the maintenance. That may be so. That appears to be a mere calculation part of it. On that date, according to her, an amount of Rs. 26,000/- must have been due. The matter of substance is the want of compliance of the order passed by the Family Court at Bombay. This Court is not going into the vortex of calculations. In case, the arrears up to date are paid, the Court at Ahmedabad may proceed with the proceedings in the divorce petition in accordance with law and it is expected that the order shall be complied with regularly by the respondent husband in letter and spirit so as to avoid any further stay of the proceedings.

12. This Revision Application is accordingly allowed. The Rule is made absolute in the terms as aforesaid. No order as to costs.