Gujarat High Court
Kadia Harilal Purshottam vs Kadia Lilavati Gokaldas on 1 February, 1961
Equivalent citations: AIR 1961 Guj 202, (1961) GLR 536
Author: Desai
Bench: K Desai, V Raju
JUDGMENT Desai, C.J.

1. This appeal raises important questions relating to the construction of some of the provisions of the Hindu Marriage Act, 1955, a piece of legislation, which is not noted for artistic or accurate draftsmanship. The appellant in this case fiied a petition in the Court of the District Judge, Halar, for restitution of conjugal rights against the respondent. On 3lst January, 1957, the said petition was dismissed. From the order of dismissal, an appeal was filed in the High Court. That appeal was dismissed. On 11th April, 1957, the respondent made an application purporting to do so under the provisions contained in Section 25 of the Hindu Marriage Act, 1955, for permanent alimony. That application was heard by the learned District Judge, Halar, who passed an order awarding a sum of Rs. 40/- per month as and by way of permanent alimony to the respondent from the date of the application, The appellant has filed this appeal from that order.

2. Mr. Chhaya, the learned advocate for the respondent, has raised a preliminary objection as regards the maintainability of this appeal. He contends that no appeal lies against the order made as 'aforesaid on the application of the respondent. The provisions relating to appeals are to be found in Section 28 of the Hindu Marriage Act, 1955. That section runs as under:

"All decrees and orders made by the court in any proceeding under this 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."

Mr. Chhaya contends that the order granting Rs. 40/- per month by way of permanent alimony is an order within the meaning of this section. He urges that an appeal can lie from such order only if such appeal is provided under any law for the time being in force. According to his submission, the law referred to in this connection is the Code of Civil Procedure, 1908. He says that the provisions of the Code relating to appeals are to be found in Sections 96 and 101 and Order 43 Rule 1- Section 96 provides for appeals from original decrees. Section 104 and Order 43, Rule 1 provide for appeals from orders, He argues that the provisions of Section 104 and Order 43 Rule 1 are inapplicable to the order in question passed by the District Judge, Halar. Section 104 in terms provides that an appeal shall lie from the orders therein mentioned and that save as otherwise expressly provided in the body of the Code or by any law for the time being in force, from no other orders. An order granting permanent alimony is not one of the orders specified in Section 104. Order 43 Rule 1, provides for an appeal from the orders therein mentioned. An order awarding permanent allmony is not one of the orders mentioned in Order 43. He relied upon the definition of the term "decree" given in the Civil Procedure Code in order to show that the Order in question does not amount to a decree. Section 2, Sub-section (2) provides that unless there is anything repugnant in the subject or context, the term "decree' means the formal express ion of an adjudication which, so far as regards the Court ex-pressing it, conclusively determines the rights of the parties with regard to all or any of

the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but is not to include any adjudication from which an appeal lies as an appeal from an order, or any order of dismissal for default. The expression "order" has been defined in Section 2, subsection (14) to mean the formal expression of any decision of a Civil Court which is not a decree. He argues that the order passed by the District Judge, Halar, awarding permanent alimony does not amount to a decree within the meaning of Section 2, Sub-section (2) of the Civil Procedure Code.' He says that this order was passed on an application that was made after the suit for restitution of conjugal rights was disposed of. He submits that the order made is an order within the meaning of Section 2, Sub-section (14), and as no appeal is provided from such an order under the provisions of the Code of Civil Procedure, no appeal lies therefrom and that the appeal that is filed is incompetent in law. He relies upon a decision of a single Judge of the Bombay High Court reported in Prithyirajsinghji Mansinghji v. Bai Shivprabha Kumari, 62 Bom LR 47: (AIR 1960 Bom 315). In that case it was held that the words "may be appealed from under any law for the time being in force" refer to the appeals provided for under the Code of Civil Procedure. It was there held that Section 28 of the Hindu Marriage Act, 1955, did not provide any appeal against every order made by a Court In proceedings under the Act, 'but against only Such of them as fall within the definition of the term 'decree' as defined in Section 2, Sub-section (2) of the Civil Procedure Code, 1908, or with legard to which an appeal is provided under the Code. In that case, the contention that the words "under any law for the time being in force" were applicable merely to the procedure in cases where an appeal lay, was negatived. He also relied upon a decision of the Andhra High Court reported in B. Saraswalhi v. B. Krishna Murlhy, AIR 1960 Andh Pra 30. In that case, a Division Bench of that Court held that Section 28 by itself did not confer any right of appeal and that the words "may be appealed from under any law for the time being in force" conveyed the idea that an appeal could be filed against decrees and orders if there was provision therefor under any law and that one had to fall back on the Civil Procedure Code in this connection. In that case the Court was dealing with an appeal from an order refusing to grant interim maintenance under Section 24 of the Hindu Marriage Act. The Court held that such an order under Section 24 did not fall within the ambit either of Section 104 or Order 43 and that no appeal lay therefrom.

3. The argument advanced before us by Mr. Chhaya proceeds on the footing that the expression "decrees" and "orders" appearing in Section 28 mean decrees and orders as defined in the Civil Procedure Code, 1908, Section 2(2) of the Code of Civil Procedure, 1908, in express terms lays down that the expression "decree" when used in the said Code means "the formal expression of an adjudication which as far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final".

Order 4 Rule 1 of the Code of Civil Procedure provides that every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf. In Sir Dinshah Mulla's Code of Civil Procedure, 12th Edition, at page 6 under the head "In the Suit" are set Out various proceedings which arc not instituted by presenting a plaint with the result that the orders made therein do not constitute decrees within, the meaning of the Code. No proceeding under the Act has to be instituted by presenting a plaint and the expression 'decree* as defined in Section 2,

Sub-section (2) of the Code will not cover an adjudication in proceedings instituted under the Hindu Marriage Act, 1955. The expressions "decrees" and "orders" appearing in Sec- 28 of the Hindu Marriage Act, 1955, have to be read and understood in the light of the other provisions of the Act itself. Section 28 follows upon Sections 9, 10, 11, 12, 13 and 14 which refer respectively to a decree for restitution of conjugal rights, a decree for judicial separation, a decree of nullity of marriage for contravention of the provisions of Clauses (i), (iv) and (v) of Section 5, a decree of nullity of marriage on the grounds set out in Section 12, and a decree of divorce. Sections 24, 25 and 26 provide for orders. Under Section 24, provision is made for orders for maintenance pendente lite and for expenses of the proceedings. Section 25 deals with orders for permanent maintenance. Section 26 deals with orders in connection with the custody, maintenance and education of minor children. When Section 28 refers to appeals from decrees and orders, it refers to decrees mentioned in the sections referred to hy me above and the orders mentioned in the sections referred to above. The right of appeal is a statutory right. In order that a party may have a right of appeal, that right has to be conferred by legislation. If the words used in Section 28 "may be appealed from under any law for the time being in force" mean that an appeal would only lie in these cases where some other law lays down that such appeal can be preferred, then the result would be that we would have to look to the provisions of the Civil Procedure Code in order to consider whether any appeal is provided under the Code in respect of decrees and orders passed under the Hindu Marriage Act, 1955. No other, law is pointed out which confers any right of appeal. As we have already indicated above, the Civil Procedure Code provides for appeals from decrees as defined in Section 2, Sub-section (2) of the Code of Civil Procedure. The decrees passed under Sections 9, 10, 11, 12, 13 and 14 of the Hindu Marriage Act, 1955, do not come within the definition of "decrees" under the Code of Civil Procedure. The orders passed under Sections 24, 25 and 26 of the Hindu Marriage Act are not orders falling within Section 104 and Order 43 Rule 1 of the Code of Civil Procedure. If this interpretation is accepted, the result would be that there would not be any decree or any order under any of the aforesaid sections which would be appealable. This could not possibly be the intention of the legislature. The section is intended to deal inter alia with the subject of appeals from decrees and orders passed under the Act. If there was no law under which an appeal would lie from any decree or Order passed under the Act, the provision in that connection would be futile and devoid of meaning. By this Act the legislature has conferred special rights and has provided special remedies. The Courts before which such proceedings could be taken and the way in which such proceedings may be initiated have been laid down in the Act. It would be reasonable to assume that when the legislature was considering the question of appeals from decrees and orders passed under the Act it would provide by the Act itself for such appeals. In the absence of any other legislation providing for appeals from both decrees and orders passed under the Act, there would be greater reason for the legislature to provide for it by the Act itself. In our view, on a true construction of Section 28 the right of appeal from all decrees and orders is conferred by Section 28 itself. No doubt, the language of the section is not very happy. The words "may be appealed from under any law for the time being in force" are capable of bearing the meaning which Mr. Chhaya desires us to give. If we give such a meaning to those words, the provisions relating to appeal are liable to be rendered nugatory. That could not possibly be the intention of the legislature. It could not be the intention of the legislature to confer a right of appeal against decrees and orders passed under the Hindu Marriage Act, 1955 by reference to the provisions of the Code of Civil Procedure. There is in fact no provision in the Code or in any other law under which any appeal could be filed from any orders passed under the Hindu

Marriage Act, 1955. It seems to us that the legislature intendent to confer a right of appeal by the provisions of Section 28 itself by using the words "All decrees and orders made by the Court in any proceeding under this Act..... may be appealed from.....", and that the intention of the legislature was not to refer parties to any other enactment for the purpose of ascertaining whether the decrees or orders passed under the Act were appealable or not- Having regard to the language used by the legislature which, we are painfully conscious is not very apt, some meaning has to be given to the words "under any law for the time being in force". Those words, on a true construction of the Act, are intended to provide for the forum before which the appeal is to be preferred. They may well relate to the procedure in connection with the appeals which may be filed under Section 28. We are supported in this conclusion by a decision of the Calcutta High Court reported in the case of Sobhana v. Amar Kanta, AIR 1959 Cal 455. A Division Bench of the Calcutta High Court in that case has held that the Act has made definite provisions in Section 28 for appeals. In that case they had to choose between two rival constructions that could be placed upon the provisions of Section 28. One was that by - that section the legislature had provided that an appeal would lie against all decrees and orders made by the Court in any proceeding under the Act and that the forum and other matters in connection with the hearing of the appeal would be decided in accordance with the laws that may be in force for the time being. The other construction was that this section did not say anything positive itself as regards appealability of the decrees and orders but merely said that if an appeal lay against decrees and orders made in any proceeding under the Act under some Jaw that may be in force at the time, then an appeal would lie and not otherwise. They preterred to adopt the first construction. We are in respectful agreement with that conclusion. If the Code of Civil Procedure in fact provided for appeals against decrees and orders passed under the Act, then there was no necessity for the legislature to once again provide that appeals from decrees and orders would lie under such law. The fact that decrees and orders passed by a Court under the Hindu Marriage Act, 1955, cannot be regarded as decrees and orders passed by the Court in the exercise of its original civil jurisdiction is evident from the very language used in Section 28. It says that all decrees and orders made by the Court in any proceeding under the Act shall be enforced in the like manner as the decrees and orders of the Court made in the exercise of the original civil jurisdiction are enforced. The Calcutta High Court has observed that the words "under any law for the time being in force" in connection with appeals deal with the manner in which appeals have to be filed and deal with the forum before which the appeals may be instituted. A similar view has been taken by the High Court of Madhya Pradesh in a decision reported in Rukhmenibai v. Kishanlal Ramlal, AIR 1959 Madhya Pra 187. Justice Shrivastava in that case observes that Section 28 has been enacted with the intention of giving a right of appeal. He further observes that if the right of appeal was to be inferred from the provisions of any other law, the section so far as it relates to appeal would be meaningless and some of the words in the section would be superfluous. He adds that it cannot be expected that a right of appeal from orders which are passed under the specific provisions of the Act should be provided for in any other law. He took the view that looking to the language or the section, the intention was to give a right of appeal in the case of every order passed under the Act and to leave the forum and procedure of the appeal to be determined by the relevant law for the time being in force.

4. In our view, the order passed by the learned District Judge granting permanent alimony is an order appealable under Section 28, and the preliminary objection taken by Mr. Chhaya must fail.

5. In view of what we have staled above it is not necessary to consider the alternative argument that if the proceeding under the Act could be regarded as a suit, the order in question is liable to be considered as a "decree" within the meaning of Section 2(2) of the Code of Civil Procedure and is appealable as a decree.

6. Mr. Nanavaty who appeals for the appellant contends that the learned District Judge was not entitled to pass any order for permanent alimony under Section 25 after dismissing the appellant's petition for restitution of conjugal rights. He argues that the section is only applicable where a Court has passed a substantive decree granting any of the reliefs provided for in Sections 9, 10, 11, 12, 13 and 14 and that it is inapplicable where the Court has dismissed a petition seeking any one of the aforesaid reliefs. Section 25 runs as under;

"25(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 the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross 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 and the conduct of the parties, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immoveable 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, vary, 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 shall rescind the order".

It is urged by Mr. Nanavaty that the words "any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto" indicate that the Court, before it can exercise the powers granted under Section 25, must pass a decree. He urges that an order of dismissal of an application under Sections 9, 10, 11, 12, 13 and 14 could in no sense be regarded as the passing of a decree. The aforesaid sections provide for decrees of various kinds giving the reliefs therein provided. In our view, the words "at the time of passing any decree or at any time subsequent thereto" mean at the time of passing any decree of the kind referred to under the afore-j said sections and not at the time of dismissing the, petition for any of the reliefs provided in the said' sections or any time subsequent thereto. Mr. Chhaya placed some emphasis upon the words "any. decree" and urged that the expression "any decree" would include an order of dismissal. In our view, the passing of an Order of dismissal of a petition could not be regarded as the passing of a decree within the meaning of this section. The word "any' which precedes the word "decree" has been used having regard to the various kinds of decrees which may be passed under the provisions of the Act. A decree may be a decree for restitution of conjugal rights. It may be a decree for judicial separation.

It may be a decree of nullity of marriage. It may be a decree of divorce. At the time of passing any such decrees or at any time subsequent thereto, orders can be made as provided in the section.

Our attention has been, drawn to a passage appear ing at page 896 in Sir Dinsha Mullah's well-known treatise on the Principles of Hindu Law. It is there stated as under.:

"The words 'at the time of passing any decree or any time subsequent thereto' indicate that an order for permanent alimony or maintenance in favour of the wife or the husband can only be made when a decree is passed granting any substantive relief under the Act and not where the main petition itself is dismissed."

A reference is made in support of this proposition to a decision of the Madras High Court reported in Devasahayam v. Devamony, ILR 46 Mad 133 : (AIR -1823- Mad 211). That was a case which arose under the provisions of section 37 of the Indian Divorce Act; 1869. That section provides as under:

"The High Court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved; or on any decree of judicial separation obtained by the wife, and the District Judge may, if he thinks fit; on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, etc."

The language of section 37 of the Divorce Act, 1869, is materially, different from the language used by legislature in section 25 of the Hindu Marriage Act, .1955, and the decision of the Madras High Court cannot afford any. guidance in construing the language used by the legislature in section 25 of the Hindu Marriage Act, 1955. In our view, toe language used by the legislature in section 25 is such that the", power thereby conferred could only be exercised "at the time of passing of any of the decrees referred to in the earlier provisions of the Act or any time subsequent thereto. We are supported in this conclusion by an unreported decision of Chief Justice Section T. Desai and Justice Bakshi given on 28th November 1960 in First Appeal No. 178 of 1960 (Cuj). In that case it has been laid down that Section 25 relates only to an ancillary relief which is incidental to the substantive relief that may be granted by the Court, though the incidental relief may be given to other/party. In this view of the matter, the " learned District Judge of Helar was not entitled to pass any order for permanent alimony in favour of the respondent in view of the fact that the petition made by the appellant for restitution of conjugal rights had been dismissed.

7. There is one more ground which has been urged by Mr. Nanavaty, challenging the validity of the decision given by the learned District Judge.' He says that the right to make an order under Section 25 is, having regard to the language used in that section, confined only, to those cases where a decree has been passed by the Court dissolving a marriage. He says that, section 25 lays down that the Court may order, that the respondent to an ...application for permanent., alimony or maintenance should, while, the, applicant to the application remains un-married pay to the applicant for her or his maintenance and support such monthly or periodical sum for a term not exceeding the life of the applicant. He says that the words "while the applicant remains unmarried"

indicate the period during which the amount of alimony or maintenance is required to, be paid and indicate the condition subject to which such alimony and maintenance is required to be paid. He urges that when a Court passes a decree for restitution of conjugal rights, the marriage between the parties remains intact and is not dissolved, and no question of the applicant, under section 25 remaining unmarried could possibly arise. He further urges that where a decree is passed for judicial separation, the marital bond still remains undissolved and the question of the applicant remaining unmarried would not arise, If we were to accept, the contention urged by Mr. Nanavaty the result would be that the powers of the Court conferred under section 25 would be very limited. The Hindu Marriage Act, 1955, is an act intended to amend and codify the law relating to marriage among Hindus. Section 25 is preceded by section 24. It deals with maintenance pendente lite and deals with expenses of proceedings. That section runs as follows:

"24.--Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding and monthly during the proceeding such slim as, 'having regard to' the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable."

This section is applicable to proceedings not merely for obtaining a decree for the dissolution of marriage or a decree of nullity, of marriage, but is equally applicable to proceedings for obtaining a decree for restitution of conjugal rights and a decree for judicial separation. If the court is empowered under section 24 to grant, interim maintenance during the pendency of such proceedings, it would be somewhat difficult to accept the contention that the legislature intended that section 25 should only be confined to cases where a decree for divorce is passed. Section 25 is followed by section 26. It lays down as under :

"26.--In any proceeding under this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree Were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made."

This section embraces within its abmit provisions for maintenance of children during the continuation of the proceedings before the Court and after they have ended. If We are to interpret Section 25 in the manner suggested the result would be that there would be a lacuna in the Act. The marginal note to the section speaks of "permanent alimony and maintenance". In connection with the concept of permanent alimony it is stated in Sir Dinshah Mulla's book on Hindu Law, 12th Edition, at page 894 as under:

"Permanent alimony is the expression used under English law in the context of provisions ordered to be made by the Court for a wife on her petition for judicial separation being granted. Behind the relevant statutory enactment in England is a historic development of law. Before the first Divorce Act in England a wife could only obtain from the Ecclesiastical Court divorce a mensa it there (judicial separation) and the allowance allotted to her was named permanent alimony which was as a general rule one-third of the husband's income. The operation of the rule was extended and the same principle was applied in cases decided under the successive Divorce Acts in England when relief by way of dissolution of marriage by divorce was granted to the wife. At one stage the view was taken that the wife who claimed maintenance after a decree of divorce in her favour would have pecuniary interest in seeking such relief & that would not accord with the policy of law. That view was discountenanced and it was ruled that the principles on which the Ecclesiastical Courts awarded permanent alimony in case of judicial separation should be applicable to cases where relief by way of divorce or nullity of marriage was granted although in cases under the latter category she ceased to be the wife or was declared not to have been the wife of the other party and relinquished ber character as wife and the name of the husband."

In our view, whilst enacting Section 25 the legislature did not intend to restrict the ordinary provisions relating to permanent alimony and maintenance in connection with proceedings for judicial separation, divorce and nullity of marriage, but to extend the same and make the provisions applicable both in favour of the wife as well as the husband. No doubt, the words used by the legislature "while the applicant remains unmarried" suggest the construction sought to be placed by Mr. Nanavnty. We have, however, to consider the paramount intention of the legislature. In Maxwell on Interpretation of Statutes, at page 229 it has been observed as follows :

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual, meaning to particular words, by altering their collocation, or by rejecting them altogether under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus, made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not fee reduced to a nullity by the draftman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used." The Courts have always, been extremely, reluctant to substitute words in a statute or add words to it. A Court would do so where there is a repugnancy to good sense. The Hindu Marriage Act, 1955, cannot be regarded as a work of art. It is not noted for good drafting. It contains several provisions which present difficulties while interpreting the same. The words used in some sections are far from happy and difficulties are experienced in gathering the true meaning of the legislature. There is however one thing clear that the main object and intention of the enactment was to amend and codify the law relating to marriage among Hindus. The intention was not to restrict the powers of the Court in granting permanent alimony and maintenance to an extremely limited class of cases, namely where the Court had passed a decree for divorce or of nullity of marriage. The words used in section are "at the time of passing any decree."

The words "any decree" would not have been used if it was the intention of the legislature to restrict the operation of the section only to cases where a decree for divorce or of nullity of marriage was passed. The power was intended to be exercised at the time of the passing of any of the decrees referred to in the earlier provisions of the Act or at any time subsequent thereto. The legislature however has inserted the words "while the applicant remains unmarried." The legislature could only have intended to make those words applicable in those cases where a party was in a position to contract a marriage. Those words could not, with any propriety, be used in respect of those cases where the marriage bond remains unsevered. The legislature, in enacting Section 25, has even sought to go beyond the ordinary provisions of law relating to alimony end maintenance as applicable to other communities. It has sought to provide permanent alimony and maintenance even for a husband. When the legislature was seeking to extend the provisions relating to permanent alimony and maintenance so as even to make a husband eligible for receiving permanent alimony and maintenance, it would be extremely difficult for us to hold that the legislature intended to take away from a Court dealing with matrimonial matters the power to provide permanent alimony to a wife when passing a decree for judicial separation in her favour. It is our irresistible conviction that the legislature could not have intended to take away such a right. It would be more correct to hold that these words have appeared in section 25 in the form in which they appear due to unskilfulness in drafting, and that it would not be proper for us to confine the Operation of the section to cases where a decree for divorce or of nullity has been passed. To us it appears that the construction sought to be put by Mr. Nanavaty upon the section, though it is within the language and grammar of it, is repugnant to good sense. We would confine the operation of the words "while the applicant remains unmarried" to those cases where the applicant is in a position to contract a lawful marriage. In such cases the order must be made conditional, its operation being dependent upon the applicant remaining unmarried. We derive support for the conclusion to which we have arrived at from the. Commentaries made on this section in The Principles of Hindu Law, by Shri Dinshah Mulla, 12th Edition at page 893. It is there stated that the section vests the court with wide discretion in the matter of making orders for the maintenance and support of one spouse by the other where it passes any decree for restitution of conjugal rights, judicial separation, dissolution of marriage by divorce or annulment of the marriage on the ground that it was void or voidable.

8. In the result, the appeal succeeds and the order passed by the learned District Judge awarding permanent alimony and costs is set aside. As regards costs, in view of the fact that the respondent is the wife of the appellant and that the appellant has failed in his petition for restitution of conjugal rights and would ordinarily have to maintain his wife, we consider it fair that there should be no order as regards costs throughout.