

Calcutta High Court

Phillips vs Phillips on 26 April, 1910

Equivalent citations: 7 Ind Cas 792

Author: Pugh

Bench: Pugh

JUDGMENT Pugh, J.

1. In this case an application is made to me to re-consider, either byway of review or as afresh application with the same object as the former, an order that I made declining to order an attachment before judgment in a divorce proceeding. The application was made at 4-30 p.m. at the rising of the Court, and I then dealt with the matter in a somewhat cursory way, and I refused the application on the simple ground that I never knew of an attachment before judgment in a divorce case. Learned counsel who now appears does not suggest that such an order has ever been made before in divorce proceedings. He argues that the point is one of first impression, and he contends that on principle he is entitled to the order. The argument is founded on Section 45 of the Divorce Act, which provides that proceedings under this Act shall be regulated by the Code of Civil Procedure, and he wishes to eliminate from my consideration Section 7, which provides that in all suits and proceedings under this Act the High Courts and District Courts shall give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules of the Divorce Court in England. It is practically admitted that if Section 7 were to apply and bring in English rules and English practice, there would be no warrant for such an application ; but Mr. Hill contends that Section 45 exclusively regulates procedure: Section 7 only relates to relief. He contends that this application is one of procedure only and not, of relief, and that to attach a respondent's property before you have got any decree for damages, when it is uncertain whether you will get any damages, is a matter of procedure and not of relief. I would differ with regard to that. I think it is purely a matter of relief to ask to be allowed to seize a man's property without having a decree on the off-chance that you may get a decree hereafter, and it seems to me to have nothing whatever to do with procedure. The way in which a decree is executed, after you have obtained it, is a matter of procedure; but to give one man a right to come to Court before he gets a decree is to confer a right upon him, and that is not procedure. It seems to me that it cannot be successfully contended that by Section 45 of the Divorce Act the Civil Procedure Code is to be applied wholesale to the Court when exercising divorce jurisdiction. If this were to be the case, it might also be contended that you could have a Receiver appointed to take charge of the wife, or an injunction against the co-respondent from visiting the wife pending a divorce case. Of course, a petitioner could not have a Receiver of the wife, because she is herself a party to the suit, but offhand, I do not see why, if the Code applied, he should not apply for an injunction. There is much in the Code of Civil Procedure which deals with substantive law and not procedure, and I think these portions, of the Civil Procedure Code, Order XXXVIII, Rules 5 and 6, have no application in divorce proceedings. It is contended that I must infer an intention to defeat and delay the execution of a decree in this suit, from the fact that it was not until the respondent had met the co-respondent in London, when he could have heard of these proceedings, that the orders came out from England to dispose of certain shares. It is suggested that it follows from this that he must be disposing of these shares with intent to defeat or delay the execution of any decree that may be passed against him. No doubt it may have that effect, but it may be equally consistent with a resolve to make a home with

the respondent in England, or elsewhere out of India, and not to return to his country. I am not satisfied as to which of these intents may be in the co-respondent's mind, and, therefore, I do not find the facts proved, which are essential to support an order. There would be one advantage from this application if it were successful, and that is, the Court would have it in its power to compel the co-respondent to make a settlement of any damages which might be awarded on the lady. That is practically the only result that could happen, and the co-respondent and the respondent appear to have taken matters into their own hands by practically going off together. I do not really think that this application is dictated by any particular desire on the part of the petitioner in that way. I think it is dictated by the usual and very natural annoyance and irritation which a man feels when another man runs away with his wife. I notice from the petition, the petitioner is described as a colliery proprietor, and one cannot eliminate from one's mind the knowledge that he is, as a matter of fact, a very rich man. The question of costs cannot be of any possible moment to him one way or the other. If he is anxious to provide for his wife's future, or make a provision for her, he can well afford to do so. I, therefore, decline to alter my former order, or to make a fresh order. I would add, that in the observations I have made with regard to the respondent and co-respondent, it must not be taken that I come to any finding as to the actions of the respondent or co-respondent; they may, of course, have a complete answer. I am only dealing with the case as it is put before me in argument by the petitioner.