

Gauhati High Court

Anupam Das vs Smt. Mampi Das on 4 October, 2007

Equivalent citations: AIR 2008 Gau 3, 2007 (4) GLT 543

Author: T Vaiphei

Bench: T Vaiphei

ORDER T. Vaiphei, J.

1. This revision petition under Article 227 of the Constitution of India is directed against a common interlocutory order dated 8-12-2006 purportedly passed under Section 25 of the Hindu Marriage Act, 1955 and under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956, by the learned District Judge, Shillong in Misc. (Main) Petition. Nos. 13(H) and 14(H) of 2006 directing the revision-petitioner to pay Rs. 1,000/- per month to the respondent and another sum of Rs. 500/- per month to her minor child for their respective maintenance.

2. The relevant facts giving rise to this revision petition are not in dispute. The petitioner was married to the respondent on 26-8-2002 in accordance with the provisions of the Special Marriage Act, 1954, and the same was duly registered with the Office of the Registrar of Marriage, East Khasi Hills District, Meghalaya. The marriage between the petitioner and the respondent was again solemnized on 3-10-2002 at Kamakhya Temple at Guwahati according to Hindu rites. From this marriage, a male child, namely, Master Hritik Das, who is now aged about 4 years, was born to them on 1-9-2003. The minor boy is in the custody of the respondent. Subsequently, marital disputes apparently arose between the spouses. Alleging that she has been subjected to mental and physical cruelty, the respondent filed a petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 before the learned District Judge, Shillong for dissolving her marriage with the petitioner by a decree of divorce. The divorce petition was registered as Divorce Case No. 4(H) of 2006. The respondent side by side filed two miscellaneous applications for herself and on behalf of her minor-son purportedly under Section 25 of the Hindu Marriage Act, 1955 for permanent alimony and under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 for maintenance, which were registered as Misc. (Maint) Petition No. 13(H) 2006 and Misc. (Maint) Petition No. 15(H) of 2006. It was on the basis of the aforesaid applications that the impugned order of maintenance was passed.

3. Assailing the impugned order, Ms. A Paul, the learned Counsel for the petitioner, contends that the learned District Judge grossly erred in law, and acted without jurisdiction in granting maintenance allowance to the respondent under Section 25 of the Hindu Marriage Act when this provision is solely concerned with permanent alimony and not interim maintenance allowance. She further submits that the learned District Judge has completely overlooked the glaring legal position that permanent alimony could be granted only after/at the time of passing of a decree for annulment of marriage. It is also the contention of the learned Counsel for the petitioner that when the marriage between the petitioner and the respondent had been solemnized and duly registered with the Registrar of Marriage under the provisions of the Special Marriage Act, 1954, the learned District Judge has no inherent jurisdiction to entertain and proceed with the divorce petition filed by the respondent under Section 13(1)(i-a) of the Hindu Marriage Act; such proceedings and the impugned order passed in connection therewith are, therefore, null and void. In support of her

contention, she refers me to the decision of the Calcutta High Court in *Prabir Chandra Chatterjee v. Kaveri Guha Chatterjee*. On the other hand, Mr. L.R. Das, the learned Counsel for the respondent, submits that the divorce petition may have been wrongly labelled as one under Section 13(1)(i-a) of the Hindu Marriage Act, but when the petition apparently discloses a cause of action for divorce on the grounds of acts of cruelty under Section 27(1)(d) of the Special Marriage Act, which is the case here, the learned District Judge, Shillong, certainly has the jurisdiction to entertain the divorce petition and grant appropriate relief; it is a settled position of law that errors in nomenclature cannot be a ground for ousting the jurisdiction of the District Court to try the divorce petition inasmuch as it is one constituted as a District Court for the purpose of the Hindu Marriage Act and the Special Marriage Act. Strong reliance is placed by him on the decision of the Apex Court in *Challamane Huchha Gowda v. M.R. Tura* to buttress his contention. Drawing my attention to *Prabir Chandra Chatterjee* case (supra), the case cited by the learned Counsel for the petitioner, he forcefully submits that this case, instead of helping the case of the petitioner, applies to the instant case on all fours. In that view of the matter, according to the learned Counsel for the respondent, the impugned proceeding and order do not suffer from any infirmity warranting the interference of this Court.

4. There is no dispute at the bar that the learned District Court, Shillong has the jurisdiction to entertain a divorce petition both under the provisions of the Hindu Marriage Act and the Special Marriage Act. Incidentally, it may also be noticed that the act of "cruelty" is one of the grounds for dissolving a marriage by a decree of divorce which is common to both Hindu Marriage Act and Special Marriage Act, Section 13(1)(i-a) of the Hindu Marriage Act provides that any marriage solemnized, whether before or after the commencement of Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty. Similarly, Section 27(1)(d) of the Special Marriage Act says that subject to the provisions of the Act and to the rules made thereunder, a petition for divorce may be presented to the district Court either by the husband or the wife on the ground that the respondent has since the solemnization of the marriage treated the petitioner with cruelty. A careful reading of the pleadings of the petitioner will show that it is not his pleaded case at this stage that the divorce petition of the respondent does not disclose any cause of action. It may be recalled that the divorce petition was filed by the respondent under Section 13(1)(i-a) of the Hindu Marriage Act, while the miscellaneous applications for maintenance were filed under Section 25 of the same Act and Section 20(3) of the Hindu Adoptions and Maintenance Act respectively. Corresponding provisions for interim maintenance in the form of alimony pendente lite in respect of the wife is engrafted by the legislature in Section 36 of the Special Marriage Act. Similarly, a corresponding provision for interim maintenance of a child is found in Section 38 of the Special Marriage Act.

5. In *Prabir Chandra Chatterjee* case (supra), a matrimonial proceeding was initiated by the wife by a petition of divorce of her marriage with her husband on various grounds like cruelty, adultery, etc. The petition for divorce was labelled as one both under Section 13 of the Hindu Marriage Act and Section 27 of the Special Marriage Act and the reason for the same appeared to be that the marriage between the parties were first solemnized according to Hindu rites under the Hindu Marriage Act and was thereafter registered as well under the provisions of the Special Marriage Act. Their

Lordships of the Calcutta High Court held that if the marriage of the wife with the husband, though celebrated and solemnized according to Hindu rites, was thereafter duly registered under Chapter III of the Special Marriage Act, the ongoing matrimonial proceeding should be governed by Section 27 of the Special Marriage Act and not by Section 13 of the Hindu Marriage Act. And in that case, labelling the petition under Section 27 of the Special Marriage Act as one "under Section 13, Hindu Marriage Act" also was useless surplusage, which, at any rate, could not affect the maintainability or merit of the petition for divorce, nor the jurisdiction of the Court to grant divorce, if any case, therefore, was eventually made out at the trial.

6. In the instant case, the facts tell the story in reverse in that the solemnization of the marriage between the petitioner and the respondent under the Special Marriage Act preceded their marriage solemnization according to Hindu rites. Nevertheless, the principles of law involved in the instant case will be one and the same. In this connection, the subsequent observations of the Calcutta High Court in *Prabir Chandra Case* (supra), which are found at paragraph 4, are instructive, and the same is reproduced hereunder in extenso hereunder:

But, we however, have not at all been able to understand the submission made by Mr. Chatterjee that because of such amalgamation of the sections of the Hindu Marriage Act as well as the Special Marriage Act in the heading of the petition, the petition "does not disclose a cause of action" within the meaning of Order 7. Rule 11 of the Civil PC to warrant its rejection thereunder. The petition apparently discloses a cause of action for divorce on the grounds of acts of cruelty, adultery etc. and if those allegations are proved on evidence at the trial, it would be for the Court to grant appropriate relief under the provisions of the Hindu Marriage Act or the Special Marriage Act, by which the marriage in question would appear to the Court to be governed.

7. As already noticed, it is not the case of the learned Counsel for the petitioner, at least for the purpose of this proceeding, that the petition for divorce filed by the respondent does not, prima facie, disclose any cause of action for divorce on the ground of cruelty under Section 27(1)(d) of the Special Marriage Act. The moot point then is whether wrong labelling of a petition can be a ground for non-suiting the respondent. I have already noted earlier that "cruelty" as a ground for dissolution of marriage by a decree of divorce is available both under Section 13(1)(i-a) of the Hindu Marriage Act and under Section 27(1)(d) of the Special Marriage Act and that the District Court at Shillong also has the jurisdiction to entertain a divorce petition under both the Acts. What happens in the instant case at worst is that errors in pleadings have undoubtedly crept in on both the petition for divorce and the miscellaneous application for interim maintenance. Can the respondent, who is admittedly a lay person, be penalized for the defects in the pleadings made by her counsel? In *N Mani v. Sangeetha Theatre and Ors.* (2004) 12 SCC 278, the Apex Court observes:

9. It is well settled that if an authority has a power under the law, merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power as long as the power does exist and can be traced to a source available.

Similar observations to that effect are also made by the Apex Court in *Challamane Huccha Gowda* (supra), a case cited by the learned Counsel for the respondent, and in *MT Khan and Ors. v. Got. of AP and Ors.* . On a conspectus of the aforecited cases, I am of the opinion that no serious infirmity can be pointed out by the learned Counsel for the petitioner for quashing the impugned divorce proceeding as well as the impugned maintenance orders of the learned District Judge, Shillong. However, for removal of any lingering doubt, the learned District Judge shall hereafter proceed with the divorce proceeding as if it were always a proceeding under the provisions of the Special Marriage Act, 1954 and not under the Hindu Marriage Act, 1955. Since I am entertaining this application as one under Article 227 of the Constitution of India, the objection of the learned Counsel for the respondent on the maintainability of this revision petition on the grounds that it is hit by the proviso to Section 115(1) of the Code of Civil Procedure and or is, otherwise, barred by limitation do not survive for consideration.

8. The net result of the foregoing discussion is that this revision petition has no merit, and is hereby dismissed. The learned District Judge, Shillong shall now proceed with the divorce petition in accordance with the provisions the Special Marriage Act, 1954 as if the divorce petition filed by the respondent were always entertained as one under the said Act and not under the Hindu Marriage Act. 1955. No cost.