

1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 6th OF SEPTEMBER, 2022

MISC. PETITION No. 3017 of 2022

BETWEEN:-

SMT. SANGEETA GROVER W/O SHRI RANJAN
GROVER, AGED ABOUT 36 YEARS,
OCCUPATION: HOUSE WIFE C/O SUSHMA
KOHLI 57/1 NEAR PREM NAGAR POST OFFICE
P.S. GARHA, DISTRICT JABALPUR (MADHYA
PRADESH)

....PETITIONER

(BY SHRI VIVEK AGRAWAL, ADVOCATE)

AND

RANJAN GROVER S/O SHRI MADANLAL
GROVER, AGED ABOUT 37 YEARS,
OCCUPATION: BUSINESS CIVIL LINE KATNI,
DISTRICT KATNI (MADHYA PRADESH)

....RESPONDENT

(BY SHRI SHREYASH PANDIT, ADVOCATE)

.....
*This petition coming on for hearing this day, the court passed the
following:*

ORDER

Arising out of the main proceedings instituted by respondent/husband under section 13 of the Hindu Marriage Act, this miscellaneous petition has been filed by petitioner/wife challenging the order dated 25/06/2022 (Annexure P/6), whereby application filed by the petitioner under Section 151 CPC dated 22/06/2022 has been dismissed.

2. Learned counsel appearing for the respondent/husband has taken preliminary objection with regard to maintainability of the present petition on the ground that this petition has not been filed against any order of Family Court and there is no

relief claimed in the petition for setting aside of any order. He further pointed out the order dated 23/05/2022 passed by this Court in W.P. No.10458/2022, whereby the petitioner's petition was dismissed, whereby the order passed by the Family Court reserving liberty with the petitioner to file execution proceeding to execute the order of maintenance, was upheld.

3. Learned counsel for the petitioner submits that vide order dated 17/01/2019, learned Family Court decided the application of the petitioner under Section 24 of the Hindu Marriage Act and fixed the maintenance pendent-lite @ Rs.20,000/- p.m. from the date of passing of the order.

4. He submits that learned Family Court has heard final arguments in the original case whereas the respondent has not complied with the order dated 17/01/2019 and has not deposited the entire amount of maintenance. Accordingly, he submits that an amount of Rs.6,35,000/- is due and unless this amount is not paid/deposited by the respondent/husband, the proceedings of the main case in question should be stayed.

5. Learned counsel for the respondent submits that the petitioner has already initiated execution proceedings, which fact has been suppressed by the petitioner from this Court. He further disputes any arrears of maintenance in pursuance of order dated 17/01/2019 and he submits that three days ago, an amount of Rs.70,000/- has been paid by the respondent/husband. Lastly, he submits that in the light of order passed by this Court on 23/05/2022 in W.P. 10458/2022, no further order is required to be passed and he prays for dismissal of the miscellaneous petition.

6. Heard learned counsel for the parties and perused the record.

7. Undisputedly, the order dated 17/01/2019 has been passed in the pending proceedings under Section 13 of the Hindu Marriage Act instituted by the respondent/husband and as per submissions made on behalf of the parties, the order dated 17/01/2019 is still in force and has not been modified by any

Superior Court or even by Family Court.

8. It is also clear that while passing the order dated 23/05/2022, the recent decision of Supreme Court in the case of ***Rajnish Vs. Neha & Another (2021) 2 SCC 324*** as well as other binding decisions were not brought to the notice of this Court, in which it has been held as under:

Striking off the Defence

118. Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition. In *Kaushalya vs. Mukesh Jain*, the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

119. The Punjab & Haryana High Court in *Bani vs. Parkash Singh*, AIR 1996 P&H 175 was considering a case where the husband failed to comply with the maintenance order, despite several notices, for a period of over two years. The Court taking note of the power to strike off the defence of the respondent, held that:

"Law is not that powerless as not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to wife, his defence be struck out. "

120. The Punjab & Haryana High Court in *Mohinder Verma vs. Sapna*, discussed the issue of striking off the defence in the following words:

"8. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this Section are summary in nature and confers a substantial right on the applicant during the pendency of the proceedings. Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available under Section 28A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation

expenses passed by the said Court. In other words, the striking off the defence of the spouse not honouring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realizing the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy under Section 28A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off."

(emphasis supplied)

121. The Delhi High Court in *Satish Kumar vs. Meena*, held that the Family Court had inherent powers to strike off the defence of the respondent, to ensure that no abuse of process of the court takes place.

122. The Delhi High Court in ***Smt. Santosh Sehgal vs. Shri Murari Lal Sehgal***, AIR 2007 Delhi 210 framed the following issue for consideration:

"Whether the appeal against the decree of divorce filed by the appellant-wife can be allowed straightway without hearing the respondent-husband in the event of his failing to pay interim maintenance and litigation expenses granted to the wife during the pendency of the appeal."

The reference was answered as follows:

"5. The reference to the portion of the judgment in Bani's case extracted herein-above would show that the Punjab and Haryana High Court and Orissa High Court have taken an unanimous view that in case the husband commits default in payment of interim maintenance to his wife and children then he is not entitled to any matrimonial relief in proceedings by or against him. The view taken by Punjab and Haryana High Court in Bani's case has been followed by a Single Judge of this Court in *Satish Kumar v. Meena*. We tend to agree with this view as it is in consonance with the first principle of law. We are of the view that

when a husband is negligent and does not pay maintenance to his wife as awarded by the Court, then how such a person is entitled to the relief claimed by him in the matrimonial proceedings. We have no hesitation in holding that in case the husband fails to pay maintenance and litigation expenses to his wife granted by the Court during the pendency of the appeal, then the appeal filed by the wife against the decree of divorce granted by the trial court in favor of the husband has to be allowed. Hence the question referred to us for decision is answered in the affirmative."

The Court concluded that if there was non-payment of interim maintenance, the defence of the respondent is liable to be struck off, and the appeal filed by the appellant-wife can be allowed, without hearing the respondent.

123. The Punjab and Haryana High Court in Gurvinder Singh vs. Murti was considering a case where the trial court struck off the defence of the husband for non-payment of ad-interim maintenance. The High Court set aside the order of the trial court, and held that instead of following the correct procedure for recovery of interim maintenance as provided u/S. 125 (3) or Section 421 of the Cr.P.C, the trial court erred in striking off the defence of the husband. The error of the court did not assist in recovery of interim maintenance, but rather prolonged the litigation between the parties.

124. The issue whether defence can be struck off in proceedings under Section 125 Cr.P.C. came up before the Madhya Pradesh High Court in Venkateshwar Dwivedi vs. Ruchi Dwivedi. The Court held that neither Section 125(3) of the Cr.P.C, nor Section 10 of the Family Courts Act either expressly or by necessary implication empower the Magistrate or Family Court to strike off the defence. A statutory remedy for recovery of maintenance was available, and the power to strike off defence does not exist in a proceeding u/S. 125 Cr.P.C. Such power cannot be presumed to exist as an inherent or implied power. The Court placed reliance on the judgment of the Kerala High Court in Davis vs. Thomas and held that the Magistrate does not possess the power to strike off the defence for failure to pay interim maintenance.

Discussion and Directions on Enforcement of Orders of Maintenance

125. The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order XXI.

126. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children. Contempt proceedings for wilful disobedience may be initiated before the appropriate Court.

As such, in the considered view of this Court, the order dated 23/05/2022 (supra) does not come in the way of this Court.

9. As per the decision in the case of Rajnesh (supra), the petitioner/wife has remedy of executing the order of maintenance which she has already availed by filing execution application but in the considered opinion of this Court, filing of execution application by the petitioner/wife does not dispense with the requirement of depositing/paying the maintenance pendent-lite by the respondent/husband to the petitioner/wife during the main proceedings pending before the Family Court under Section 13 of the Hindu Marriage Act.

10. The Supreme Court in the case of *Hirachand Srinivas Managaonkar Vs. Sunanda (2001)4 SCC 125* has held as under:

17. Now we come to the crucial question which specifically arises for determination in the case; whether refusal to pay alimony by the appellant is a 'wrong' within the meaning of S. 23(1)(a) of the Act so as to disentitle the appellant to the relief of divorce. The answer to the question, as noted earlier, depends on the facts and circumstances of the case and no general principle or strait-jacket formula can be laid down from the purpose. We have already held that even after the decree for judicial separation was passed by the Court on the petition presented by the wife it was expected that both the spouses will make sincere efforts for a conciliation and cohabitation with each other; which means that the husband should behave as a dutiful husband and the wife should behave as a devoted wife. In the present case the respondent has not only failed to make any such attempt but has also refused to pay the small amount of Rs. 100 as maintenance for the wife and has been marking time for expiry of the statutory period of one year after the decree of judicial separation so that he may easily get a decree of divorce. In the circumstances it can reasonably be said that he not only commits the matrimonial wrong in refusing to maintain his wife and further estrange the relation creating acrimony rendering any rapprochement impossible but also tries to take advantage of the said 'wrong' for getting the relief of divorce. Such conduct in committing a default cannot in the facts and circumstances of the case be brushed aside as not a matter of sufficient importance to disentitle him to get a decree of divorce under S. 13(1-A).

11. The Chhattisgarh High Court in the case of **Smt. Shashikala Pandey Vs. Ramesh Prasad Pandey AIR 2009 Chhattisgarh 1**, has held as under :

“9. In view of the submission made by the learned counsel for the appellant, it is clear that the respondent has deliberately flouted the order passed by this Court on 21-7-2006. In a similar situation, in **Bani W/o Parkash Singh v. Parkash Singh (AIR 1996 P & H 1757)** (supra), the High Court of Punjab and Haryana has held as under:

“7. No doubt wife can file a petition under O. 21, R.37, C.P.C. for the recovery of this amount and the husband can be hauled up under the Contempt of Courts also for disobedience of the aforesaid Court's order; but S.24 of the Act empowers the matrimonial Court to make an order for maintenance pendente lite and for expenses of proceedings to a needy and indigent spouse. If this amount is not made available to the applicant, then the object and purpose of this provision stand defeated. Wife cannot be forced to take time consuming execution proceedings for realizing this amount. The conduct of the respondent-husband amounts to contumacy. Law is not that powerless as to not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to the wife, his defence can be struck out. No doubt, in this appeal he is respondent. His defence is contained in his petition filed under S. 13 of the Act. In a plethora of decisions of this Court **Smt. Swarno Devi v. Piara Ram, 1975 Hindu LR 15; Gurdev Kaur v. Dalip Singh, 1980 Hindu LR 240; Smt. Surinder Kaur v. Baldev Singh, 1980 Hindu LR 514; Sheela Devi v. Madan Lai, 1981 Hindu LR 126 and Sumarti Devi v. Jai Parkash, 1985 (1) Hindu LR 84**. It is held that when the husband fails to pay maintenance and litigation expenses to the wife, his defence is to be struck out. The consequence is that the appeal is to be allowed and his petition under S. 13 of the Act is to be dismissed.”

In the case of **Bani, W/o Parkash Singh v. Parkash Singh** (supra), the High Court has not only ordered the defence of the husband in the petition under S. 13 of the Act to be struck off but had also allowed the appeal while setting aside the decree for divorce. In **Vanmala v. Maroti Sambhaji Hatkar (AIR 1999 Bom 388)** (supra) also the High Court of Bombay has taken the view that upon non-compliance of the order passed under S. 24 of the Act the defence of the defaulting party could be struck off.

10. I am of the considered opinion that this is a fit case in which not only the defence of the respondent- Ramesh Prasad Pandey in the petition under S. 13(l)(iii) of the Act deserves to be struck off but the appeal also deserves to be allowed while setting aside the impugned judgment and decree dated 2-5-1989. Accordingly, the appeal is allowed. The impugned judgment and decree dated 2-5-1989 passed by the District Judge,

Ambikapur granting a decree of divorce is set aside.

12. Considering the decision of Supreme Court in the case of *Hirachand Srinivas Managaonkar* (supra), the Madras High Court in the case of *Hema Vs. Parthasarathy 2003(I) DMC 562*, has held as under:

13. The decision of the Supreme Court reported in Hirachand Srinivas Managaonkar v. Sunanda, 2001(2) CTC 185 certainly will not stand in the way, since in that case it was not the contention of the aggrieved party that by invoking Section 151 of Civil Procedure Code on the default made by one of the party, the original petition can not be dismissed or the defence struck off, as the case may be. It has to be borne in mind the Court has not ruled that only if the husband has done a 'wrong' as contemplated under Section 23(1)(a), then alone the original petition can be dismissed or the defence can be struck off, as the case may be. In that case, the Court has only considered as to when it can be said that the husband has committed 'wrong' as contemplated under Section 23(1)(a) of the Hindu Marriage Act.

14. Hence the legal position is that if the husband fails to make payment of interim maintenance or litigation expense, as ordered by the Court, then the wife can file an application praying the Court to dismiss the petition or strike off the defence, as the case may be. In such case, the Court will consider the same and dispose it off on merits. In case if the Court comes to the conclusion that the application has to be allowed, then it should not straight away pass an order but give another opportunity giving reasonable time, minimum of three weeks, so that the husband, if he desires to make the payment, can do so. Only on his failure to make the payment, the original petition can be dismissed or defence can be struck off.

13. In the case of *Vinod Kumar Vs. Smt. Meera Modi 1995(II) MPWN 4* (pg.6) Co-ordinate Bench of this Court has also taken the same view and held that when the husband who is a defendant in a suit for dissolution of marriage, fails to comply the order of interim maintenance, the right to defend of such a husband may be closed, on the same analogy, the suit for dissolution of marriage by a husband can be dismissed for non-compliance of the order of interim-alimony.

14. As a sequel of the above discussion, it is held that before passing any final order/judgment on the application under Section 13 of the Hindu Marriage Act, it shall be the duty of the Family Court to see as to whether the

respondent/husband has complied the order dated 17/01/2019 in its entirety or not and if the husband/respondent has not complied the order dated 17/01/2019 then it may pass appropriate order as has been discussed herein above.

15. With the aforesaid observations, this petition is **disposed off**.

(DWARKA DHISH BANSAL)
JUDGE

RS

