

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1210 OF 2007

Deepak Prabhakar Churi.] ... Petitioner

Versus

Tanushree Pandit.] ... Respondent

None for Petitioner.

None for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 16, 2015

P. C. :-

1. Neither the parties nor their Advocates are present. However, considering that this petition is of the year 2007, the same is decided on merits.

2. The challenge in this petition is to the Judgment and Order dated 23/09/2005 made by the Family Court, Bandra, in Interim Application No.5/2004 (Exh.4) in Petition No.C-147/2003 awarding interim maintenance to the respondent and minor children.

3. Rule was issued on 16/04/2007. The interim relief was declined by observing thus :-

“2. I have heard the learned Advocate appearing for the parties on interim relief. Shri Thorat appearing for the Petitioner stated that the Petitioner has complied with the order dated 23rd September 2005 by paying interim maintenance payable to the minor son. The said fact is disputed by the learned Advocate for the Respondent by pointing out that even the maintenance payable to the minor son is not paid upto date.

3. My attention has been invited to the observation made by the learned Judge of the Family Court in paragraph 23 of the order dated 23rd September 2005. The said observation reads thus:

"It is an admitted fact that the respondent had relationship with the petitioner and they have lived as husband and wife for more than 11 years and there is a son born out of the said relationship. The respondent has also admitted the joint custody of the son and that he was maintaining the son. Therefore, his contention that the son is not out of his relationship, does not hold good. He has himself willingly lived with the petitioner inspite of knowing the existence of his first marriage and now can not shift the burden on the petitioner stating that the petitioner was aware of the said fact and in spite of that she lived with him."

4. It is an admitted position that the Petitioner is an Architect by profession. Monthly maintenance of Rs.5000/- has been awarded to the Respondent and monthly maintenance of Rs.3000/- is awarded to the minor son. Considering the aforesaid aspects no case is made out for grant of any interim relief. The prayer for interim relief is rejected. Hearing of the writ petition is expedited. It is open for the Respondent to withdraw the sum of Rs.5000/- deposited by the Petitioner in this Court. It will be in addition to the amount allowed to be withdrawn by order dated 5th April 2007."

4. Despite interim relief being declined, the petitioner avoided payment of maintenance. Accordingly, the respondent was constrained to take out execution proceedings. On 12/03/2009, the petitioner obtained an order that no coercive steps should be taken against him, upon the condition precedent that he deposit an amount of Rs.75,000/-. It appears that there was default in the matter of deposit and the petitioner went on to institute Review Petition No.43 of 2009 questioning the interlocutory order dated 12/03/2009. The review petition was dismissed on 16/04/2009. In the order dated 05/05/2009, it is recorded that the petitioner has failed to deposit the amounts indicated in the order dated 12/03/2009 and therefore, the order that no coercive steps should be taken, stands vacated. On 09/10/2009, the Civil Application taken out by the petitioner was dismissed. On 13/11/2009, the same was restored.

5. The main ground urged in the petition is that the marriage between the petitioner and the respondent was not a valid marriage as the same was solemnized when the marriage of the petitioner with another woman was subsisting. In the petition, the petitioner has placed reliance of the decision of the Hon'ble Apex Court in the case of *Savitaben Somabhai Bhatia Versus State of Gujarat and Others*¹ and has attempted to distinguish the decision of the Hon'ble Apex Court in the case of *Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga*². In the petition, it is submitted that the decision in the case of *Rameshchandra Daga* (*supra*) was

1 AIR 2005 SC 1809

2 AIR 2005 SC 422

upon a peculiar facts and therefore, cannot be regarded as having laid down any *ratio decidendi*.

6. In my judgment, there is no case made out to interfere with the impugned order. In case of **Rameshchandra Daga** (*supra*), the Hon'ble Apex Court has held that though second marriage by the respondent during the subsistence of the first marriage may be illegal, the same cannot be said to be immoral so as to deny the wife and the children even the right of maintenance, particularly when it is established that such wife and children are unable to maintain themselves.

7. Even if we are to proceed on the basis that the aforesaid reasoning is not the *ratio decidendi* of **Rameshchandra Daga** (*supra*), it is settled position in law that proceedings for maintenance, do not *ipso facto* decide the civil rights between the parties, particularly in the matters of status. In the case of **Dwarika Prasad Satpathy Vs. Bidyut Praya Dixit and Another**³, it was a case under Section 125 of the Cr.P.C. The Hon'ble Apex Court has held that the validity of the marriage for the purpose of summary proceeding under Section 125, Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under Section 494 of the I.P.C. If the claimant is in a position to establish that she and the respondent have lived together as husband and wife,

³ AIR 1999 SC 3348

the Court can presume that they are legally wedded spouses, and it is for the party who denies the marital status, who has to rebut such presumption. The Hon'ble Apex Court has further held that after a person has not disputed the paternity of the child, it would hardly lie in his mouth to contend in such proceeding that there was no valid marriage between the parties.

8. In the case of *Vimala (K.) Versus Veerswamy (K.)*⁴, the Hon'ble Apex Court, while dealing with the contention of the husband that second marriage with the applicant-wife was void on the ground of her first marriage was subsisting, held that the provision under Section 125 of the Cr.P.C. is meant to achieve a social purpose and therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125, Cr.P.C, for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. The Hon'ble Apex Court has further held that when an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage.

4 (1991) 2 SCC 375

9. In the case of ***Savitaben*** (*supra*), it has been held that the expression 'wife' referred to under Section 125 of the Cr.P.C. means only 'legally married wife'. In the present case, the learned JMFC, on the basis of material on record, had clearly returned a finding that the petitioner no.1 was the legally wedded wife of the respondent no.1. The learned ASJ, by purporting to re-assess the material on record, has substituted a different finding. Such jurisdiction of re-assessment of evidence was not at all vested in the learned ASJ. Therefore, it cannot be said that the approach of the learned JMFC was, in a manner, contrary to the dictum of the Hon'ble Apex Court in the case of ***Savitaben*** (*supra*). That apart, it is required to be noted that yet another bench of the Hon'ble Apex Court, in the case of ***Chanmuniya Versus Virendra Kumar Singh Kushwaha and Another***⁵, upon consideration of several other decisions, including the decisions in the case of ***Dwarika Prasad*** (*supra*) and ***Savitaben*** (*supra*), has expressed an opinion that an expansive interpretation should be given to term 'wife' to include even those cases where a man and woman had been living together as husband and wife for a reasonably long period of time and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of Cr.P.C., so as to fulfill true spirit and essence of beneficial provision of maintenance under Section 125. The Hon'ble Apex Court has itself said that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual.

⁵ (2011) 1 Supreme Court Cases 141

10. At the stage of deciding whether interim maintenance was appropriately granted or not, the principles applicable to summary proceedings under Section 125 of Cr.P.C. can always be imported in a matter of this nature. There is neither any jurisdictional error nor any perversity in the making of the impugned order.

11. Besides, the conduct of the petitioner in the present case, hardly entitles him to any equitable relief under Articles 226 and 227 of the Constitution of India. Though, the interim relief was declined to the petitioner by a speaking order, the petitioner resisted execution and even applied for this Court for interim relief when coercive proceedings were initiated against the petitioner. The petitioner obtained interim relief upon condition that he shall deposit an amount of Rs.75,000/-. Instead of depositing this amount, the petitioner instituted review petition. Even after the dismissal of the review petition, the petitioner failed to deposit the amount of Rs.75,000/-, but, in the meanwhile, managed to stall the execution proceedings. In the order dated 26/02/2007, this Court has recorded the petitioner's statement that he is unable to deposit any amount. In the order dated 16/04/2007, it is recorded that the petitioner is an Architect by profession. There is no dispute that the petitioner has had a minor son from the respondent. The petitioner is however resisting payment of maintenance upon the plea that he was already married, when he entered into wedlock with the respondent. In such a situation, strict proof with regard to the subsistence of the first marriage is necessary. At least at the interim stage, the same was not produced.

12. For all the aforesaid reasons, this petition is dismissed. In the facts and circumstances of the present case, the petitioner shall pay costs of Rs.5,000/- to the respondent. The amount deposited by the petitioner in this Court shall be paid to the respondent. The respondent shall be entitled to withdraw the same.

13. Since neither of the parties are appearing, the Registry is directed to transmit the authenticated copy of this order to the Family Court, Mumbai, taking up Petition No.C-147/2003, within a period of 15 days from today.

14. The Family Court, Mumbai, to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)