

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.264 of 2016
(Mr. Sanjay Basudeo Bose v. Mrs. Jayashree w/o Sanjay Bose)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri P.D. Meghe, Advocate for Petitioner.
Shri A. Shelat, Advocate for Respondent.

Coram : R.K. Deshpande, J.
Date : 19th October, 2016

This petition challenges the order dated 17-12-2015 passed by the learned Principal Judge, Family Court, Nagpur, below Exhibit 16 in Petition No.A-1386 of 2014, and the another order passed below Exhibit 19 on the very same day. By an order passed below Exhibit 16, the Court has directed the petitioner to pay Rs.50,000/- to the respondent towards the litigation expenses within a period of one month from the date of the order, and in default, the respondent is at liberty to recover the amount along with interest at the rate of 9% per annum. In terms of the order passed below Exhibit 19, the petitioner is directed to pay an amount of Rs.1,50,000/- to the respondent within a period of three months from the date of the order, so that she can purchase the items claimed, and in default she is entitled to recover the amount along with interest at the rate of 9% per annum.

Shri Meghe, the learned counsel appearing for the petitioner, has urged that there is no provision under the Hindu Marriage Act, 1955 under which such orders can be passed. He submits that though the provision under Section 24 of the said Act permits the grant of maintenance *pendente lite* and the expenses of proceedings, the respondent-wife is employed in the service of Income-Tax Department of the Central Government and hence there was no justification for the Court to pass such an order of awarding litigation expenses of Rs.50,000/-. He further submits that Section 27 of the said Act permits passing of the order regarding disposal of the property only while passing a decree and such power cannot be exercised during the pendency of the proceedings before the Family Court. He submits that before the Family Court, the evidence is going on and the matter is likely to be finished within a short time and hence there was no propriety to pass such orders at this stage.

Shri Shelat, the learned counsel appearing for the respondent, has invited my attention to the decision of the Division Bench of Madhya Pradesh High Court in the case of *Manish Nema v. Sandhya Nema*, reported in *AIR 2009 Madhya Pradesh 108*, and the decision of this Court in the case of *Sangeeta Balkrishna Kadam v. Balkrishna Ramchandra Kadam*, reported in *AIR 1994 Bombay 1*, to urge that in the

absence of there being any provision under the Hindu Marriage Act for passing an order on the application like one below Exhibit 19, the Court can invoke the jurisdiction under Section 151 read with Order VII, Rule 7 of the Code of Civil Procedure, which is made applicable to the proceedings under the Hindu Marriage Act by virtue of Section 21 of the said Act.

The Family Court has taken into consideration all these aspects on the merits of the matter, including the income of the petitioner as well as the respondent. The power to award the expenses of the proceedings is conferred under Section 24 of the Hindu Marriage Act. Hence, there is no jurisdictional error in passing an order, which takes into consideration the relevant aspects. So far as the order below Exhibit 19 is concerned, as per the decisions relied upon by Shri Shelat, the learned counsel for the respondent, cited supra, the power under Section 151 read with Order VII, Rule 7 of the Code of Civil Procedure can be invoked. The Family Court has recorded the reasons after taking into consideration all the relevant aspects and in the absence of jurisdictional error, no interference is called for.

The petition is dismissed.

It is made clear that if the amount is deposited within a period of fifteen days from today, the interest at the rate of 9%

per annum shall not be leviabale. However, if such amount is not deposited within the stipulated period, the entire interest shall become due and payable.

Judge.

Lanjewar