

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.7127 of 2018 (O&M)

Date of Decision: December 13, 2018

Deepak

...Petitioner

Versus

Rajni

...Respondent

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.H.P.S.Ghuman, Advocate for
the petitioner.

HARINDER SINGH SIDHU, J.

The petitioner is the husband of the respondent.

He has filed the present revision petition impugning the order dated 2.8.2018 of the Learned Addl. Civil Judge (Sr.Divn.) Samalaka, whereby, his objections to the execution application filed by the respondent have been dismissed.

The respondent filed a civil suit No.504 of 2010 in the Court of Addl. Civil Judge (Senior Division) Panipat against the present petitioner for recovery of Rs.14 lacs along with interest. The father, mother, brother and the brother's wife of the petitioner were the other defendants in the suit. It was pleaded that the marriage of the petitioner with the respondent was solemnized on 1.3.2008. As per custom the expenses of marriage and dowry articles and Istridhan was fixed at Rs.8,00,000/- which were given to the petitioner at the time of marriage. An amount of Rs.3,74,000/- was spent on

Godh ceremony. A further amount of Rs.4,77,100/- was spent on the

marriage. The suit was contested by the petitioner and other defendants. A specific issue regarding the maintainability of the suit was framed which was decided against the defendants. The suit was decreed vide judgment and decree dated 29.11.2012. The petitioner was held liable for refund of the amount of articles of Istridhan and of the articles entrusted to the petitioner amounting to Rs.5,21,100/- with 6% interest per annum. No recovery was directed against the other defendants.

The petitioner appealed against the judgment. He filed an application for exemption from paying court fee being indigent person. The application was dismissed by the Ld. ADJ. Panipat. The petitioner filed C.R. No.5751 of 2015 which was dismissed on 8.9.2016.

The respondent filed execution application in which the petitioner filed objections dated 3.7.2018 which have been dismissed by the impugned order. The petitioner had argued that his appeal is pending before the High Court and that the execution proceedings ought to be deferred till the decision of the appeal. The Ld. Executing Court dismissed the objections holding that mere pendency of any appeal was no ground to stay the execution of a money decree.

Mr. H.P.S. Ghuman, learned counsel for the petitioner has primarily contended that the Civil Court had no jurisdiction to entertain the suit for recovery of Istridhan and other articles filed by the respondent in view of Section 27 of the Hindu Marriage Act, 1955 (herein for short 'the Act'). He argued that an application for recovery of Istridhan had to be made in proceedings instituted under the said Act and not by way of an independent suit before a Civil Court. As the decision of the civil court was

without jurisdiction and hence a nullity it can be challenged in any proceedings.

There appears to be no merit in this contention of the Ld. Counsel.

Section 27 of the Hindu Marriage Act reads thus:-

“Disposal of property- In any proceedings under this Act, the Court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.”

Firstly, Section 27 of the Act is only an enabling provision where by the Court in any proceedings under the Act may make any provision in the decree with regard to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife. It does not specifically oust the jurisdiction of the Civil Court in that regard. Hence, it can be considered as an additional remedy available to the aggrieved.

Secondly, Section 27 has been held to be applicable only to the property contemplated therein i.e., any property presented, at or about the time of marriage, which jointly belongs to both the husband and the wife. Istridhan being the absolute and exclusive ownership of the wife, it has been held that no order under Section 27 of the Act can be passed in regard thereto.

It was held in **Sumer Chand Versus Simla Rani 1995 SCC OnLine P&H 124** as under:

“9. Section 27 of the Act has the essential parameters (i)

provision has to be made in the decree itself in any proceedings under the Act; and (ii) provision can be made only with respect to joint property of both husband and the wife. In Dharambir's and Smt. Surender Kaur's cases (supra), it is clearly held that application under Section 27 of the Act, must be made before the termination of the main proceedings for a matrimonial relief. Hence, there is a specific mention in the Section that the provision has to be made in the decree itself in any proceedings under the Act. But in this case, respondent has filed a separate application under Section 27 of the Act. This application was filed on 14.9.1994 and on that very date divorce petition filed by her was disposed of and decree was passed accordingly. Thus, it is obvious that this petition under Section 27 of the Act was not filed in any proceeding under this Act. Hence, the Court had no occasion to make the provision in that decree with respect to property alleged to have been presented to her at or about the time of marriage. On this short ground, in my humble view, the respondent's petition filed under Section 27 of the Act was not maintainable. Accordingly, this appeal is liable to be allowed on this count alone.

10. *In the alternative my finding is that since the respondent's specific allegation is that all the properties mentioned in Annexure A, were presented to her at the time of marriage that is her stridhan and as all these properties are lying with the appellant, he should be directed to return them to her. She has stated so on oath as well. Hence, even according to her all these properties do not belong jointly to them but they are part and parcel of her stridhan. Under Section 27 of the Act properties which are characterised as stridhan cannot be ordered to be returned by the husband if at all they are in his possession. Under Section 27 of the Act, only those properties can be ordered to be returned which are in husband's possession and which belong jointly to both of them. (See Anil*

Kumar v. Smt. Jyoti, 1987 (2) HLR 1632; Suresh Kumar's case (supra) and Padmja Sharma v. Ratan Lal (Raj), 1994 (1) HCR 576). But this was not the respondent's case in the Lower Court. On this count also, the appeal is liable to accepted."

In **Inderjit Singh v. Manjit Kaur (P&H) 1987(2) HLR 496**, it was observed :

"4. I have heard the learned counsel for the parties and have gone through the relevant evidence on the record. In view of the judgment delivered by this Court in Dr. (Mrs.) Suraj Parkash's case (Supra), no order could be passed with respect to the property which exclusively belongs to the wife under Section 27 of the Act. It could not be disputed that as regards the jewellery, it being the stridhan property of the wife, was her exclusive property and, therefore, no order could be passed with respect to that property. In the order under appeal, its value has been taken to be Rs. 33,000/- and, therefore, that amount is to be excluded from Rs. 50,000/- as ordered by the trial Court. It may be made clear that any finding given by the trial Court with respect to the jewellery will not be binding on the parties in any subsequent appropriate proceedings which may be taken by either of them."

Lastly, the civil suit was filed on 17.12.2010 and decided by the Civil Court on 29.11.2012 much before the divorce petition, which was filed by the respondent on 12.7.2013 and decided on 15.4.2014. Section 27 of the Act contemplates an order being passed in proceedings under the Act. As there were no proceedings under the Act when the civil suit was instituted and decided, Section 27 of the Act had no applicability at all.

Accordingly, there is no merit in the petition.

Dismissed.

December 13, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No