

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 1013 of 2019

Smt. Rashmita Patel, D/o Bisikesan Patel, Aged About 27 Years, R/o Remta, Barpali, District- Bargarh, Orissa.

--- Petitioner

Versus

Vivekanand Patel, S/o Late Motilal Patel, Aged About 35 Years, Police Sub-Inspector, R/o Potali Camp, Police Station Aranpur, District- Dantewada (C.G.)

--- Respondent

For Petitioner	:	Mr. M.D. Sharma, Advocate & Mr. K.N. Nande, Advocate.
For respondent	:	Mr. Alok Bakshi, Advocate & Mr. Dashrath Prajapati, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05/03/2021

1. This writ petition has been brought under Article 227 of the Constitution of India, against the order dated 16.12.2019 (Annexure P/1) passed by the learned Principal Judge, Family Court, Raigarh in Civil M.J.C. No. 46/2019, dismissing the application filed by the petitioner under Section 24 of the Hindu Marriage Act, 1955 (for short "the Act, 1955").
2. It is submitted by learned counsel for the petitioner, that the respondent in fraudulent manner obtained decree of divorce in

Civil Suit No. F-66-A/2017, in which, the divorce was granted on mutual consent. The petitioner having First Appeal (Misc.) No. 250/2018, which has been disposed of vide order dated 24.09.2019, in which, the petitioner was granted liberty to file application under Section 151 of the C.P.C. to challenge the decree of divorce mentioned hereinabove. The petitioner has then, filed an application under Section 151 of the C.P.C., which has been registered as Civil M.J.C. No. 46/2019. It was in this proceeding, the petitioner moved an application under Section 24 of the Act, 1955, praying for grant of maintenance during pendency of the proceeding and the same has been dismissed by the impugned order.

3. It is further submitted that the proceeding under Section 151 of the C.P.C. is outcome of the proceeding of divorce, which was filed under the provisions of the Act, 1955. Therefore, the petitioner had entitlement for such maintenance during pendency of the proceeding.
4. Reliance has been placed on the judgment of High Court of Madhya Pradesh in **Suresh Kumar Verma (Dr.) Vs. Smt. Hemlata Verma**, reported in **2001 (2) JLJ 93**, in which, it was held that such prayer can be made in any proceeding, therefore, this proceeding under Section 151 of the C.P.C., is also covered in that ratio. Reliance has also been placed on the judgment of Supreme Court in **Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun & others**, reported in **AIR 1997 Supreme Court 3397**. It is prayed that this writ petition be allowed, the impugned

order be set aside and the learned Family Court be directed to consider on merits of the application of the petitioner filed under Section 24 of the Act, 1955.

5. Learned counsel for the respondent opposes the submissions and submits that the proceeding initiated on the application filed under Section 151 of the C.P.C., is not under the Act, 1955. This High Court in **First Appeal (Misc.) No. 250 of 2018** vide order dated **24.09.2019**, directed that the learned Family Court shall hold an enquiry in the matter and finally decide the same within a period of 8 weeks and shall not grant unnecessary adjournment to any of the party. The petitioner is adopting dilatory tactic, therefore, the proceeding in the case under Section 151 of the C.P.C. is held up. It is also submitted that the petitioner has no entitlement to make any claim under Section 24 of the Act, 1955 for the only reason that the proceeding is not under the Act, 1955, hence, this writ petition be dismissed.
6. Heard learned counsel for the parties and perused the documents placed on record.
7. Considered on the submissions. It is a case, in which, the petitioner has challenged decree of divorce on mutual consent in Civil Suit No. F-66-A/2017 granted by learned Family Court, Raigarh, on the ground that the decree was obtained by the respondent by playing fraud upon the Family Court. The petitioner had never appeared before the Family Court and some impostor has given appearance for the petitioner,

subsequent to which, the decree was passed. This decree was challenged in FAM No. 250/2018, in which, the Division Bench of this Court, after considering on the submissions and the material present, held that the issue as alleged, needs detailed enquiry, therefore, the petitioner was directed to move application under Section 151 of the C.P.C. before the Family Court.

8. In **Suresh Kumar Verma (Dr.) (Supra)**, any proceeding under the Act, has been elaborated, which may be original, interlocutory, appellate or revisional so long it concerns any right or liability created by or under the Act. Reference was also made to the judgment of **Dwarka Prasad Vs. Krishna Devi**, reported in **1986 JLJ 179** and **Yogini Tiwari (Smt.) Vs. Basant Kumar Tiwari**, reported in **1996 (1) MPWN 103**. It was also observed that the proceeding under Order 9 Rule 13 of the C.P.C. also attracts the provision under Section 24 of the Act, 1955. There is reference of another judgment of **Rishi Dev Anand Vs. Smt. Devindar Kaur**, reported in **AIR 1985 Delhi 40**, in which, it was held that the application under Order 9 Rule 4 of the C.P.C. also attracts the provisions under Section 24 of the Act, 1955. It was also held that the language used in Section 24 of the Act, 1955 has to be construed in a purposive manner.
9. In **Suresh Kumar Verma (Dr.) (Supra)**, it has been held in paragraph 6, which is as under:-

“6. After bestowing my anxious consideration to the submissions raised by Mr. J.L. Mishra, I am of the considered view that the language used in

Section 24 of the Act has to be construed in a purposive manner so that, the purpose of the Legislature is achieved. It cannot be said that the Legislature while using the words 'any proceeding under this Act' intended to confine it only to the substantive proceedings. The purpose of the aforesaid provision is to provide financial assistance to the indigent spouses during their indigency. There is nothing under Section 24 of the Act to suggest that there is prohibition against matrimonial Courts from granting maintenance allowance when the main petition is not pending. If such an interpretation is allowed it will only affect the interest of the spouse who is not in a position to maintain himself or herself. A narrower interpretation would frustrate the purpose of the provision."

10. Hence, looking to the wide interpretation that has been given regarding applicability of Section 24 of the Act, 1955 in variety of proceeding, which may be under the provision of the Act, 1955 or connected with the same. The circumstances in this case, is needed to be examined. This proceeding has originated from the decree in Civil Suit No. F-66-A/2017, which is alleged to have been obtained by fraud and it is in compliance of the order passed by the Division Bench of this Court in **First Appeal (Misc.) No. 250 of 2018**, that the proceeding under Section 151 of the C.P.C., has been filed by the petitioner, which is pending for consideration before the learned Family Court.
11. The decree of divorce under the Act, 1955, is now being disputed by the petitioner side. On the basis of wide interpretation of

Section 24 of the Act, 1955 as mentioned hereinabove, I am of this view that the entitlement of the petitioner to make prayer under Section 24 of the Act, 1955 is available in the present proceeding. Hence, the impugned order, which has been passed on this consideration, that the provision under Section 24 of the Act, 1955 is not applicable to the present proceeding, is not correct conclusion drawn by the learned Family Court. Hence, on the basis of the discussion made hereinabove and the conclusion drawn, this writ petition is allowed at the motion stage. The impugned order is set aside.

12. The learned Family Court, Raigarh is directed to give fresh consideration on the application filed by the petitioner under Section 24 of the Act, 1955 and pass order in accordance with law.
13. In view of the above, the instant writ petition is allowed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge