

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17121 OF 2024

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Jaidev Rajnikant Shroff

...Petitioner

Versus

Poonam Jaidev Shroff

...Respondent

Mr. Zal Andhyarujina, Senior Advocate a/w. Mr. Sameer Tapia, Ms. Ishani Khanwilkar, Mr. Rohan Marathe, Advocates, i/b. ALMT Legal, for the Petitioner.

Mr. Girish Godbole, Senior Advocate a/w. Mr. Dhruva Gandhi and Ms. Anisha Nair, Advocates, i/b. Naik Naik & Co., for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 23rd JANUARY 2025

P. C.:

1. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the order dated 19th November 2024 passed by the learned Judge, Family Court at Bandra, Mumbai below Exhibit-239 in Marriage Petition No.A-2742 of 2015. By the said Application bearing Exhibit-239, objection has been raised to the maintainability of the Application filed by the Respondent for permanent alimony and also that the Application should have been filed under the provisions of the Special Marriage Act, 1954 and not under the

provisions of the Hindu Marriage Act, 1955. The said Application has been rejected by the impugned order.

2. It is the main contention of Mr. Andhyarujina, learned Senior Counsel appearing for the Petitioner that such Application is to be filed under Section 37 of the Special Marriage Act, 1954, after the decree of divorce is passed. He submitted that even under Section 25 of the Hindu Marriage Act, 1955 also what is contemplated is that the Application seeking permanent alimony should have been filed after the decree of divorce is passed.

3. For appreciating the submissions of Mr. Andhyarujina, learned Senior Counsel, Section 25 of the Hindu Marriage Act, 1955 as well as Section 37 of the Special Marriage Act, 1954 are required to be considered. The same are reproduced herein below for ready reference:

Section 25 of the Hindu Marriage Act, 1955

“25. Permanent alimony and maintenance

(1) Any court exercising jurisdiction under this Act, may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or

periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].”

(Emphasis added)

Section 37 of the Special Marriage Act, 1954

“37. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability

[the conduct of the parties and other circumstances of the case], it may seem to the court to be just.

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, [it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.]”

(Emphasis added)

4. It is clear that any Court exercising jurisdiction under both these Acts at the time of passing any decree or at any time subsequent to the decree can consider Application filed seeking permanent alimony and maintenance. Thus, there is no impediment in filing the Application seeking permanent alimony when Marriage Petition No.A-2742 of 2015 filed by the Petitioner-Husband seeking divorce is pending as at the time of passing any decree in the said Marriage Petition, the Court can pass appropriate order on the Application seeking permanent alimony.

5. The other contention raised by Mr. Andhyarujina, learned Senior Counsel is that the Application for permanent alimony should have been filed under the provisions of the Special Marriage Act and not under the Hindu Marriage Act. However, it is very important to note that the provisions set out herein above of the Hindu Marriage Act and the Special Marriage Act are almost identical and therefore, there is no substance in the said contention.

6. In view of the above position, Mr. Andhyarujina, learned Senior Counsel appearing for the Petitioner seeks withdrawal of the Writ Petition.

7. Accordingly, the Writ Petition is allowed to be withdrawn and disposed of as such.

8. At this stage, Mr. Andhyarujina, learned Senior Counsel appearing for the Petitioner states that the Petitioner has not filed reply to the Application bearing Exhibit-224 filed by the Respondent in Marriage Petition No.A-2742 of 2015 seeking permanent alimony. He states that reply will be filed within a

period of two weeks from today. Accordingly, the Petitioner is granted two weeks time to file reply to said Exhibit-224 Application filed by the Respondent in said Marriage Petition No.A-2742 of 2015.

9. Accordingly, the Writ Petition is allowed to be withdrawn and disposed of as such, subject to above.

[MADHAV J. JAMDAR, J.]