Equivalent citations: AIR 2005 Bom 62, 2005 (1) BomCR 591, 2004 (4) MhLj 1052

Bench: S Mhase, R Mohite

Sudha Suhas Nandanvankar vs Suhas Ramrao Nandanvankar on 15/9/2004

JUDGMENT

S.B. Mhase, J.

1. This appeal is directed against the Judgment and Order passed in Misc. Application No. 60 of 2000 on 5-8-2000 by the Family Court, Bandra in an application preferred under Sections 27 and 25 of the Hindu Marriage Act, inter alia, making prayer that the stridhan of the applicant be returned and also permanent alimony be granted. The said application was partly allowed by the Family Court. However, in respect of part rejection of the application, this appeal has been preferred.

2. The applicant was married with the opponent on 21-5-1995 according to Hindu Laws. The said marriage has been annulled by a-decree of nullity dated 16-3-1996 on a ground that the applicant-wife was suffering from epilepsy at the time of marriage. Even though the said decree was ex-parte, the said decree was not challenged by the applicant-wife. However, after passing of the said decree, the notice was issued by the applicant for return of the articles which were presented to her at the time of marriage by her parents as per the list. It is further claimed that the expenses incurred for the said marriage of Rs. 31,876/- be returned. During the pendency of this application the applicant-wife further submitted the application (Exh.16) for return of the articles and jewellery which was presented to her by her in-laws at the time of marriage. She has further claimed permanent alimony. The Family Court has rejected the claim of Rs. 31,876/- which was incurred by the parents of the' applicant-wife for the purposes of marriage expenses on the ground that there is no provision to return such amount. At the time of argument of this matter, the learned Counsel for the appellant-wife fairly conceded that there is no provision for return of such marriage expenses and therefore, unless there is a provision to that effect, the trial Court was justified in rejecting the claim for the marriage expenses to the extent of Rs. 31,876/-. The trial Court has also rejected the claim in respect of the golden articles and jewellery as listed in (Exh.16). This appeal is mainly directed against the said finding of the trial Court. We need not go to list of those articles but what we find that all these articles, as per the claim made by the applicant-wife, have been presented to her by the in-laws viz. mother-in-law, sister-in-law i.e. (sister of the husband), another sister-in-law i.e. the wife of the brother of the husband and so on. Naturally, as these Articles have been presented by the in-laws, the applicant has not produced any evidence to demonstrate that these articles were purchased by her in-laws at any point of time. However, she had entered into witness box and stated that these articles were presented to her. In order to support her testimony, she has produced the photographs which were taken at the time of marriage wherein these articles were reflected as having been put on her and thereby claiming that these articles were with her and they have not been returned by the husband. Since they found to be stridhan, she is entitled to return of the same. The husband has denied that such articles were ever presented to the applicant-wife. According to him these articles were not presented at any point of time and he further made a suggestion in the cross-examination that these articles were of the parents of the appellant-wife which were put on by her parents in order to have a show of the presentation of such articles and he calls it as a "mandap show". Such suggestion has been denied by the applicant-wife. However, it is pertinent to note that if these articles were presented to her, she should have examined some witnesses who were present at the time of marriage in the presence of whom these articles were presented by her in-laws. However, she has not examined her father and mother. She has not examined any friend who may be accompanied her at the time of said marriage ceremony to demonstrate that such articles were presented during the marriage ceremony to her. As against this, what we have noticed that the respondent-husband has entered into witness box to depose that such articles were not presented. Apart from that respondent-husband has examined his parents. The parents have also stated that such articles were not presented to the appellant-wife and therefore, the respondent has brought on record the primary evidence to demonstrate that

such articles were never presented. Learned Counsel for the applicant tried to submit that since these articles will have to be returned to the appellant-wife, the respondent and his parents are making statements that such articles were not presented. However, what we find that in that eventuality, these witnesses have been cross-examined and nothing have been brought in the cross-examination to demonstrate that these witnesses were supressing the truth. We have gone through the evidence of the parents and noticed that the evidence is convincing one and the trial Court has rightly appreciated the evidence. Therefore, we find that appellant has failed to establish that such articles were presented by her in-laws in the marriage ceremony.

3. Apart from this, we have taken into consideration that when the first notice was given the articles mentioned in the list Exh.16 were not demanded. Not only that when the application was filed, in the said application there was no demand for the articles. It is during the pendency of the application, the Exh.16 was submitted to the Family Court making claim towards specific articles. Those articles were golden and jewellery articles and such important stridhan will not be forgotten by the appellant-wife till the pendency of the application. In that context it is reflected that it is a after thought decision to claim the articles and we find that the observation and finding recorded by the Family Court are proper and justified one and we find that there is no merit in the submission of the learned Counsel that the Family Court should have allowed the list (Exh.i6).

4. So far as the articles which are directed to be returned to the appellant-wife, we find that the findings have been rightly recorded and no interference is called for. Apart from that there was a counter appeal filed by the first party challenging the said order. The said appeal is withdrawn by the respondent-husband as not pressed and therefore, we confirm that part of the Family Court's order.

5. The last question which requires consideration is in respect of the alimony. It is an admitted fact that the decree for nullity has been passed under Section 5(ii)(c) since the appellant was suffering from epilepsy. Since the learned Advocate for the appellant submits that under Section 25 the alimony has to be paid at the time of passing of the final decree. He relied on the decision in the case of Shantaram Tukaram Patil and anr. vs. Dagubai Tukaram Patil and ors. reported in 1987 Mh.LJ. 179. He further pointed out that the said Judgment is relied upon by the single Judge in a subsequent Judgment in the case of Krishnakant vs. Reena reported in 1999 (1) Mh.LJ. 388 and submitted that even though the decree of nullity was passed the petitioner is entitled to claim alimony under Section 25. The learned Counsel for the respondent submitted that both these Judgments have considered the aspect that the entitlement of the party for permanent alimony and more specifically right of the wife. However, he submitted that the said right is available on condition that taking into consideration the conduct and the circumstances of case the Court is satisfied that alimony shall be granted. According to him after marriage, immediately there was a "Satyanarayan Pooja" and for the first time husband and wife came together. The respondent-husband found that the appellant-wife is a patient of epilepsy and on the next day, he has called on to the parents of appellant-wife and the father of the appellant came along with the Doctor to discuss. Learned Counsel further stated that the father requested respondent to allow the appellant to stay with respondent and the medical expenses will be borne by the father of the appellant. He submitted that thus the fact that the appellant was suffering from epilepsy was not disclosed at the time of settlement of marriage and till the marriage is performed. He further submitted that even though on 1 or 2 occasions, prior to the marriage there was a meeting of respondent husband and appellant-wife, still the appellant wife has not disclosed that she is a patient of epilepsy. Thus he submitted that the conduct of the appellant and her parents in not disclosing that the appellant wife is suffering from epilepsy is itself a fraudulent and therefore, the party which takes the benefit of it, shall not be allowed to take such benefit and this circumstance may be taken into consideration. Relevant portion of Section 25 of the Hindu Marriage Act, 1955 is as follows :-

Section 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 reward 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.

In the facts and circumstances of the present case what we find that since the decree for nullity of marriage is passed under Section 5(ii)(c) we have to consider as to whether order for amount of alimony is to be passed. In view of the above referred 2 Judgments which have been relied by the Counsel for the appellant, we do not find any difficulty to conclude that in such a decree the wife is entitled to have a permanent alimony. However, whether the conduct of the parties and other circumstances involved in this case will allow us to pass such order is the main question. It is an admitted fact that the marriage was celebrated on 21-5-1995 and within 4 days from the date of marriage, 'Satyanarayan Pooja' was performed in the matrimonial home and thereafter husband and wife were allowed to stay with each other. However, when it was found that the appellant-wife is suffering from epilepsy the marriage was not consumated and on 27-5-1995 the respondent-husband has contacted the appellant's father. The applicant's father and mother accompanied by the Doctor attached to the Poddar hospital came to the house of the respondent-husband and thereafter they discussed about the fact of suffering of the epilepsy. The appellant's father showed willingness to incur the medical expenses for the treatment of the appellant. However, he requested the Respondent to allow the appellant to stay in the house of the respondent-husband. This was not accepted by the respondent and therefore, the father of the appellant has taken the appellant and thereafter, a petition for nullity of marriage was filed in which ex-parte decree was passed. The said decree is not challenged. Thereafter, the applicant has filed this application for the permanent alimony. It is pertinent to note that the parents and/or father of the appellant have not entered into a witness box either to depose that the fact of the epilepsy was disclosed to the respondent husband at the time of settlement of carriage nor the appellant has stated in her evidence that at any point of time prior to the marriage when they have seen each other said fact was disclosed to the respondent-husband. Therefore, the only inference is that till the marriage is performed the respondent was not aware of the fact that the appellant is a patient of epilepsy. The moment he got knowledge, he has not consummated the marriage and called the parents of the appellant and thereafter appellant was taken by the parents. This shows that had the fact been disclosed prior to the performance of the marriage, the respondent-husband would not have conducted such marriage with the appellant-wife. The non disclosure by the parents of the appellant and the appellant accepting the decree as it is without making any grudge that in respect of the ground that the appellant was suffering from the epilepsy prior to the marriage reflects upon the conduct of the appellant and if we take into consideration this aspect what we find is that the appellant is trying to take advantage of her wrong or fraud and is trying to harass the respondent by claiming the amount of alimony. But what we find is that after a decree of annulment the respondent has married and he is having a child. Now this appears to be an attempt on the part of the appellant and her parents to disturb the marital life of the respondent which he has tried to settle after annulment of the marriage. This is an attempt to shift the liability of maintenance by the appellant-wife on a husband who was not at fault and who has not consummated the marriage. Even though the law permits the right of the alimony in favour of the appellant, however, the conduct and the circumstances involved in the present case does not permit us to pass an order of permanent alimony in favour of the appellant. We find that the findings recorded by the Family Court are just and proper and no interference is called for.

6. In the result, we find that there is no substance in the appeal and hence, appeal is hereby dismissed with no order as to costs.