MANISH GOEL
v.
ROHINI GOEL
(Special Leave Petition (C) No. 2954 of 2010)

FEBRUARY 5, 2010

[Aftab Alam and Dr. B.S. Chauhan, JJ.]
2010 (2) SCR 414

The Order of the Court was delivered by

O R D E R

DR. B.S. CHAUHAN, J. 1. This case reveals a very sorry state of affairs that the parties, merely being highly qualified, have claimed even to be higher and above the law, and have a vested right to use, misuse and abuse the process of the Court. Petitioner, the husband, possesses the qualifications of CA, CS and ICWA, while the proforma respondent-wife is a Doctor (M.D., Radio-Diagnosis) by profession. The parties got married on 23rd July, 2008 in Delhi. Their marriage ran into rough weather and relations between them became strained immediately after the marriage and they are living separately since 24.10.2008. Petitioner-husband filed a Matrimonial Case under Section 12 of the Hindu Marriage Act, 1955 (hereinafter called as "the Act") for annulment of marriage before a competent Court at Gurgaon. The respondent-wife, Smt. Rohini Goel filed a petition under Section 12 r/w Section 23 of the Domestic Violence Act, 2005 before the competent Court at Delhi. An FIR was also lodged by her against petitioner-husband and his family members under Sections 498-A, 406 and 34 of Indian Penal Code, 1860 at PS Janakpuri, New Delhi.

2. It is stated at the Bar that by persuasion of the family members and friends, the parties entered into a compromise and prepared a Memorandum of Understanding dated 13.11.2009 in the proceedings pending before the Mediation Centre, Delhi by which they agreed on terms and conditions

incorporated therein, to settle all their disputes and also for dissolution of their marriage. The parties filed an application under Section 13-B(1) of the Act before the Family Court, i.e. ADJ-04 (West) Delhi seeking divorce by mutual consent. The said HMA No.456 of 2009 came before the Court and it recorded the statement of parties on 16.11.2009. The parties moved another HMA No. 457 of 2009 to waive the statutory period of six months in filing the second petition. However, the Court rejected the said application vide order dated 1.12.2009 observing that the Court was not competent to waive the required statutory period of six months under the Act and such a waiver was permissible only under the directions of this Court as held by this Court in *Anil Kumar Jain v. Maya Jain* (2009) 10 SCC 415. Hence, this petition.

3. The learned counsel for the petitioner submits that there is no prohibition in law in entertaining the petition under Article 136 of the Constitution against the order of the Family Court and in such an eventuality, there was no occasion for the petitioner to approach the High Court as the relief sought herein cannot be granted by any court other than this Court. Thus, the petitioner has a right to approach this Court against the order of the Family Court and the petitioner cannot be non-suited on this ground alone.

4. Article 136 of the Constitution enables this Court, in its discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

Undoubtedly, under Article 136 in the widest possible terms, a plenary jurisdiction exercisable on assuming appellate jurisdiction has been conferred upon this Court. However, it is an extra-ordinary jurisdiction vested by the Constitution in the Court with implicit trust and faith and thus, extra ordinary care and caution has to be observed while exercising this jurisdiction. There is no vested right of a party to approach this Court for the exercise of such a vast discretion, however, such a course can be resorted to when this court

feels that it is so warranted to eradicate injustice. Such a jurisdiction is to be exercised by the consideration of justice and call of duty. The power has to be exercised with great care and due consideration but while exercising the power, the order should be passed taking into consideration all binding precedents otherwise such an order would create problems in the future. The object of keeping such a wide power with this Court has been to see that injustice is not perpetuated or perpetrated by decisions of courts below. More so, there should be a question of law of general public importance or a decision which shocks the conscience of the court are some of the prime requisites for grant of special leave. Thus, unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity warranting review of the decision appealed against, such exercise should not be done. The power under Article 136 cannot be used to short circuit the legal procedure prescribed in overriding power. This Court generally does not permit a party to by-pass the normal procedure of appeal or reference to the High Court unless a question of principle of great importance arises. It has to be exercised exceptionally and with caution and only in such an extra-ordinary situations. More so, such power is to be exercised taking into consideration the well established principles which govern the exercise of overriding constitutional powers (vide *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal* AIR 1955 SC 65; *The Union of India v. Kishorilal Gupta & Bros.* AIR 1959 SC 1362; *Murtaza & Sons & Anr. v. Nazir Mohd. Khan & Ors.* AIR 1970 SC 668; *Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax, Hyderabad* AIR 1970 SC 1520**;** *The Municipal Corporation, Bhopal v. Misbahul Hasan & Ors.* AIR 1972 SC 892; *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ors.* AIR 1991 SC 2176; *Tirupati Balaji Developers Pvt. Ltd. & Ors. v. State of Bihar & Ors.* AIR 2004 SC 2351; and *F.G.P. Ltd. v. Saleh Hooseini Doctor* (2009) 10 SCC 223)**.**

5. In *Union of India & Ors. v. Karnail Singh* (1995) 2 SCC 728, this court while dealing with the similar issue held as under:

> "It is true that this Court when exercises its discretionary power under Article 136 or passes any order under Article 142, it does so with great care and due circumspection. But, when we are settling the law in exercise of this court's discretion, such law, so settled, should be clear and become operational instead of being kept vague, so that it could become a binding precedent in all similar cases to arise in future."

6. It has been canvassed before us that under Article 142 of the Constitution, this Court is competent to pass any order to do complete justice between the parties and grant decree of divorce even if the case may not meet the requirement of statutory provisions. The instant case presents special features warranting exercise of such power.

We are fully alive of the fact that this court has been exercising the power under Article 142 of the Constitution for dissolution of marriage where the Court finds that marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. Decree of divorce has been granted to put quietus to all litigations between the parties and to save them from further agony, as it is evident from the judgments in *Romesh Chander v. Savitri* AIR 1995 SC 851; *Kanchan Devi v. Promod Kumar Mittal* AIR 1996 SC 3192; *Anita Sabharwal v. Anil Sabharwal* (1997) 11 SCC 490; *Ashok Hurra v. Rupa Bipin Zaveri* AIR 1997 SC 1266; *Kiran v. Sharad Dutt* (2000) 10 SCC 243; *Swati Verma v. Rajan Verma* AIR 2004 SC 161; *Harpit Singh Anand v. State of West Bengal* (2004) 10 SCC 505; *Jimmy Sudarshan Purohit v. Sudarshan Sharad Purohit* (2005) 13 SCC 410; *Durga P. Tripathy v. Arundhati Tripathy* AIR 2005 SC 3297;; *Naveen Kohli v. Neelu Kohli* AIR 2006 SC 1675; *Sanghamitra Ghosh v. Kajal Kumar Ghosh* (2007) 2 SCC 220; *Rishikesh Sharma v. Saroj Sharma* (2007) 2 SCC 263; *Samar*

Ghosh v. Jaya Ghosh (2007) 4 SCC 511; and *Satish Sitole v. Ganga* AIR 2008 SC 3093.

However, these are the cases, where this Court came to rescue the parties on the ground for divorce not provided for by the legislature in the statute.

7. In *Anjana Kishore v. Puneet Kishore* (2002) 10 SCC 194, this Court while allowing a transfer petition directed the court concerned to decide the case of divorce by mutual consent, ignoring the statutory requirement of moving the motion after expiry of the period of six months under Section 13-B(2) of the Act.

8. In *Anil Kumar Jain* (supra), this Court held that an order of waiving the statutory requirements can be passed only by this Court in exercise of its powers under Article 142 of the Constitution. The said power is not vested with any other court.

9. However, we have also noticed various judgments of this Court taking a contrary view to the effect that in case the legal ground for grant of divorce is missing, exercising such power tantamounts to legislation and thus transgression of the powers of the legislature, which is not permissible in law (vide *Chetan Dass v. Kamla Devi* AIR 2001 SC 1709; and *Vishnu Dutt Sharma v. Manju Sharma* (2009) 6 SCC 379).

10. Generally, no Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (Vide *State of Punjab & Ors. v. Renuka Singla & Ors* (1994) 1 SCC 175; *State of U.P. & Ors. v. Harish Chandra & Ors.* AIR 1996 SC 2173; *Union of India & Anr. v. Kirloskar Pneumatic Co. Ltd.* AIR 1996 SC 3285; *Vice Chancellor, University of Allahabad & Ors. v. Dr. Anand Prakash Mishra &*

Ors. (1997) 10 SCC 264; and *Karnataka State Road Transport Corporation v. Ashrafulla Khan & Ors.* AIR 2002 SC 629).

11. A Constitution Bench of this Court in *Prem Chand Garg & Anr. v. Excise Commissioner, U.P. & Ors.* AIR 1963 SC 996 held as under:

> "An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but *it cannot even be inconsistent with the substantive provisions of the relevant statutory laws."*

The Constitution Benches of this Court in *Supreme Court Bar Association v. Union of India & Anr.* AIR 1998 SC 1895; and *E.S.P. Rajaram & Ors. v. Union of India & Ors.* AIR 2001 SC 581 held that under Article 142 of the Constitution, this Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. It is not to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure.

12. Similar view has been reiterated in *A.R. Antulay v. R.S. Nayak & Anr.* (1988) 2 SCC 602; *Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra* (1995) 6 SCC 447; *Common Cause, a Registered Society v. Union of India & Ors.* AIR 1999 SC 2979; *M.S. Ahlawat v. State of Haryana* AIR 2000 SC 168; *M.C. Mehta v. Kamal Nath & Ors.* AIR 2000 SC 1997; *State of Punjab & Anr. v. Rajesh Syal* (2002) 8 SCC 158; *Government of West Bengal v. Tarun K. Roy & Ors.* (2004) 1 SCC 347; *Textile Labour Association v. Official Liquidator* AIR 2004 SC 2336; *State of Karnataka & Ors. v. Ameerbi & Ors.* (2007) 11 SCC 681; *Union of India & Anr. v. Shardindu* AIR 2007 SC 2204; and *Bharat Sewa Sansthan v. U.P. Electronic Corporation Ltd.* AIR 2007 SC 2961.

13. In *Teri Oat Estates (P) Ltd. v. UT. Chandigarh* (2004) 2 SCC 130, this Court held as under:

"36….. sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. … despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision."

14. In *Laxmidas Morarji (dead) by L.Rs. v. Behrose Darab Madan* (2009) 10 SCC 425, while dealing with the provisions of Article 142 of the Constitution, this Court has held as under:

" ….The power under Article 142 of the Constitution is a constitutional power and hence, not restricted by statutory enactments. Though the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. This means that *acting under Article 142, the Supreme Court cannot pass an order or grant relief which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case.* The power is to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties." (Emphasis added)

15. Therefore, the law in this regard can be summarised to the effect that in exercise of the power under Article 142 of the Constitution, this Court generally does not pass an order in contravention of or ignoring the statutory provisions nor the power is exercised merely on sympathy.

16. The instant case requires to be examined in the light of aforesaid settled legal propositions. Parties got married on 23.7.2008 and as they could

not bear each other, started living separately from 24.10.2008. There had been claims and counter claims, allegations and criminal prosecution between them. Petitioner approached the Competent Court at Gurgaon for dissolution of marriage. Admittedly, that case is still pending consideration. Parties filed the petition for divorce by mutual consent only in November 2009 before the Family Court, Delhi. Learned counsel for the petitioner could not explain as to how the case for divorce could be filed before the Family Court, Delhi during the pendency of the case for divorce before the Gurgaon Court. Such a procedure adopted by the petitioner amounts to abuse of process of the court. Petitioner has approached the different forums for the same relief merely because he is very much eager and keen to get the marriage dissolved immediately even by abusing the process of the Court. In *Jai Singh v. Union of India* AIR 1977 SC 898, this Court while dealing with a similar issue held that a litigant cannot pursue two parallel remedies in respect of the same matter at the same time. This judgment has subsequently been approved by this Court in principle but distinguished on facts in *Awadh Bihari Yadav v. State of Bihar* AIR 1996 SC 122; and *Arunima Baruah v. Union of India* (2007) 6 SCC 120.

17. In *Dr. Buddhi Kota Subbarao v. K. Parasaran & Ors.* AIR 1996 SC 2687, this Court has observed as under:-

> "No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions."

18. Even otherwise, the statutory period of six months for filing the second petition under Section 13-B(2) of the Act has been prescribed for providing an opportunity to parties to reconcile and withdraw petition for dissolution of marriage. Learned counsel for the petitioner is not able to advance arguments on the issue as to whether, statutory period prescribed

under Section 13-B(1) of the Act is mandatory or directory and if directory, whether could be dispensed with even by the High Court in exercise of its writ/appellate jurisdiction.

Thus, this is not a case where there has been any obstruction to the stream of justice or there has been injustice to the parties, which is required to be eradicated, and this Court may grant equitable relief. Petition does not raise any question of general public importance. None of contingencies, which may require this Court to exercise its extraordinary jurisdiction under Article 142 of the Constitution, has been brought to our notice in the case at hand.

19. Thus, in view of the above, we do not find any justification to entertain this petition. It is accordingly dismissed.