

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.6209 OF 2009
(Arising out of S.L.P. (C) No.14921 of 2009)

Ajay Lawania

...Appellant(s)

Versus

Shobhna Dubey

...Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the appellant and the respondent, who has appeared in-person.

The parties were married on 1.10.2001. After about seven years, the appellant filed a petition in the Family Court at Agra under Section 13 of the Hindu Marriage Act, 1955 [for short, "the Act"] for grant of the decree of divorce. The same was registered as H.M. Petition No. 1026/2007. The respondent also filed a petition on 14.12.2007 in the Family Court at Lucknow under Section 9 of the Act for restitution of conjugal rights. The same was registered as Petition No. 2077/2007. By an order dated 18.3.2009 passed in Transfer Application No. 82/2008, a learned single Judge of Allahabad High Court transferred the case pending in the Court of Principal Judge, Family Court, Agra to the Court of Principal Judge, Family Court, Lucknow.

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After receipt of the records from the Court of Principal Judge, Family Court, Agra, the appellant's petition was numbered as R.S. No. 669/2009. By an order dated 25.4.2009, the Principal Judge, Family Court, Lucknow, directed that both the petitions will be disposed of together because the parties are common. The respondent challenged that order in Writ Petition No. 2407/2009. While issuing notice of the writ petition, the learned Single Judge of Allahabad High Court stayed the operation of order dated 25.4.2009 passed by the Family Court, Lucknow and, at the same time, directed the Principal Judge, Family Court, Lucknow to make every possible endeavour to decide Petition No. 2077/2007 within a period of one month by taking up the case on day-to-day basis. Special Appeal No. 378/2009 filed by the appellant was dismissed by the Division Bench by observing that it was not inclined to interfere with order of the learned Single Judge. While doing so, the Division Bench also took notice of the plea of the respondent that the special appeal itself is not maintainable. Nevertheless, a direction was given for expeditious disposal of the case filed by the appellant under Section 13 of the Act.

It is well settled that if two petitions are filed under the Act, one under Section 9 and the other under Section 13, then, in order to avoid conflicting decisions, it is expedient that both the cases are heard by the same Court. Evidence in the two cases should be recorded one after the other, arguments should be heard separately and thereafter, separate judgments should be delivered on one day.

In view of the above, it must be held that the High Court was not at all justified in staying the operation of order dated 25.4.2009 passed by the Presiding Officer, Family Court, Lucknow and, at the same time, directing him to decide the petition for restitution of conjugal rights within a period of one month. This procedure is not sanctioned by law. If the petition filed by the respondent for restitution of conjugal rights was to be disposed of in terms of the direction given by the learned Single Judge of the High Court (that could not happen because of the stay order passed by this Court), the appellant's cause in the divorce petition would have been seriously prejudiced.

For the reasons stated above, the appeal is allowed, the orders passed by the learned Single Judge and Division Bench are set aside and the writ petition filed by the respondent before the High Court is dismissed because, in our considered view, no useful purpose will be served by keeping the same pending.

We have been informed that evidence in the petition filed under Section 9 of the Act has been practically concluded, but in the divorce case no progress has been made. It is given out that even the written statement has not been filed. Therefore, we direct the Principal Judge, Family Court, Lucknow to first conclude the recording of evidence in the petition for restitution of conjugal rights. Thereafter, the pleadings of the divorce petition be completed and evidence in that case be recorded. After recording of evidence in both the cases, the concerned Court should hear arguments, one after the other, and dispose of the two cases by separate judgments which should be delivered on the same day.

The respondent pointed out that she had filed a petition under Section 24 of the Act for grant of interim maintenance as early as 22nd December, 2007, but the same has not been decided. This has not been controverted on behalf of the appellant. Therefore, instead of directing the trial Court to decide that petition, we have thought it proper to pass appropriate order in that petition as well. The appellant, who is represented by an Advocate, is present in the Court. He agreed to pay maintenance to the respondent at the rate of Rs.15,000/- per month. As the petition for interim maintenance was filed sometime in December, 2007, we direct the appellant to pay maintenance to the respondent at the rate of Rs.15,000/- per month with effect from 1st January, 2008 till the disposal of petitions filed under Sections 9 and 13 of the Act. The arrears payable to the respondent from 1st January 2008 to 31st August, 2009 shall be paid within a period of two months from today. The current amount of maintenance beginning from the month of September, 2009 shall be paid by 15th day of the following month. This means that maintenance for the month of September, 2009 shall be paid by 15th October, 2009 and in the like manner for the subsequent months. All the payments shall be made by an account payee demand draft drawn in favour of the respondent on a scheduled bank at Lucknow.

Since the petitions filed for grant of divorce and restitution of conjugal rights are pending for last almost two years, we direct the trial Court to dispose of the

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same within a period of six months from the date of receipt / production of copy of this order.

.....J.
[B.N. AGRAWAL]

.....J.
[G.S. SINGHVI]

New Delhi,
September 11, 2009.

