IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Mr. Justice Indrajit Chatterjee

C.O. NO. 1628 of 2013

Samir Ranjan Chandra
Vs.
Smt. Lipika Chandra

For the petitioner : Mr. Anit Kumar Rakshit

For the opposite party : Mr. Tarun Jyoti Tewari

Heard On : 02/03/2015

Judgement on : 10/03/2015

Indrajit Chatterjee, J. : This is an application under Section 227 of the Constitution of India in which the present petitioner/husband has assailed the order dated 15.07.2011 as passed by the learned Additional District Judge, Fourth Court, Barasat, within the district of North 24-Paraganas. As per that impugned order the learned Trial Court relying on the Single Bench decision of the Punjab and Haryana High Court as reported in AIR 1983 Page 28 held "So, as per provision of amended Section 19(iiia), the wife, being the petitioner of the application under Section 25 of the Hindu Marriage Act has right to present the petition within the jurisdiction where she resides at the time of presentation of the petition."

The fact can be stated in brief thus that the marriage tie between the petitioner/husband and the wife/opposite party was dissolved by one ex parte decree for divorce as passed in Title Suit No.73 of 2000 by the learned Civil Judge (Senior Division) Sambalpur, Orrisa now Odisha under the Hindu Marriage Act (henceforth called as the said Act). The said decree became final as no further step was taken by the wife/ opposite party.

Thereafter, the wife/opposite party approached the District Judge, North 24-Paraganas by filling one application under Section 25 of Hindu Marriage Act praying for permanent alimony and maintenance from the husband/petitioner. The case was registered as Misc. Case No. 370/04 and the learned Additional District Judge, Barasat, vide the impugned order ordered to entertain the application accepting the territorial jurisdiction of that Court.

The matter was heard extensively and at the time of hearing the learned Advocate appearing on behalf of the petitioner cited the division bench decision of this Court as reported in **AIR 1988 Calcutta 124 (Smt. Shyamali Sarkar Vs. Ashim Kumar Sarkar)** which has relied upon the decisions of the Apex Court as reported in **AIR 1969 SC 1349 (R. S Lala Praduman Kumar V. Virendra Goyal)** and **AIR 1977 SC Page 2328 (Union of India V. Sankalchand)** wherein this Court in Paragraph No. 11 categorically held that "when the decree for the substantive relief has been passed by the appellate court an application

for consequential relief under Section 25 shall also lie in that Court" and the bench further observed by interpreting the words "on the application made to it" in Section 25 of the said Act to say that it would irresistibly indicate that the Court whether appellate or original, which has passed a decree under any of the Sections 9 to 13B of the said Act shall be entitled to entertain an application under Section 25 of the said Act. Thus, it was the submission of the learned counsel that the decision of Punjab and Haryana High Court as cited above cannot undo this decision of the division bench of this Court.

In counter to all these the learned Advocate appearing on behalf of the opposite party/wife submitted that when the decision of this Court or the decisions of the Apex Court were delivered Section 19 of the said was not amended to incorporate Sub-Section (iiia) and also to give one heading of the said Section and as such the decision of this Court or of the Apex Court will not apply in the facts and circumstances of this case as the amendments were not there at that time. He relied on three decisions, which are stated below:

1. 1983 AIR (P & H) 28 (Darshan Kaur Vs. Malook Singh) cited also before the Trial Court,
2. (1995) 34 DRJ 1965 (Prem Chand Gupta Vs. Gita Devi), and,
3. 2011 AIR (Chhat) 27 (Mahadeo Thakre Vs. Chanchal Gaikwar)

Now, the moot question is whether the present opposite party/wife can maintain such an application under Section 25 of the Hindu Marriage Act before the Court at Barasat relying on the decree for divorce as passed by the Civil Judge (Senior Division) Sambalpur at Odisha.

Admittedly when the decision of this Court referred to above or of the Apex Court decisions were delivered Section 19 was not amended to incorporate Sub-Section (iiia). For better appreciation and facility of discussion, Section 19 and Section 25 (1) as amended till date of the said Act are reproduced herein below:-

1. S. 19 – **Court to which petition shall be presented**. – Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction –

    i) the marriage was solemnised, or

    ii) the respondent, at the time of the presentation of the petition, resides, or

    iii) the parties to the marriage last resided together, or

    iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or

iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

2. S. 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."

The decisions of Darshan Kaur and Prem Chand Gupta (supra) were delivered before the Amendment Act of 2003 came into force and naturally such decisions cannot bear any special attention of this Court.

The decision No. 3 was delivered after the Amendment Act came into force. It was held by the Hon'ble Single Judge "*This power is conferred to the Court having jurisdiction to entertain any petition under the act in terms of Section 19 of the Act. On perusal of the provisions contained in Section 19 of the Act, it would appear that Clause (iiia) of Section 19 of the Act was not provided under the original Act. It has been inserted by Act No. 50 of 2003 with effect from 23.12.2003. By inserting this new clause, the wife is also entitled to present any petition under the Act before the District Court within whose jurisdiction she is residing on the date of presentation of the petition. Thus, the intention of the legislature is to enable the wife to present a petition under the Act in the District Court within whose jurisdiction she resides so that the lady is not made to travel and prefer a petition in a Court within whose jurisdiction she is not residing after the matrimonial cord has broken……..*"

In paragraph 6 of the said judgment the Hon'ble Judge held that "Section 19 of the Act makes provision regarding the Court to which the petition under the Act shall be presented. Under Clause (iiia) of Section 19 of the Act, it is provided that when the wife is the Petitioner, she can present the petition at the place where she is residing on the date of presentation of the petition."

It was further held by the Hon'ble Judge that "if an independent application under Section 27 of the Act is maintainable, at the place where the wife resides on the date of presentation of the petition, thus,

the Court at Gariaband would have jurisdiction to entertain the application under Section 27 of the Act." Unfortunately in that decision the Division decision of our Hon'ble Court as passed in Shyamali Sarkar's case (Supra) was not considered.

In that case the Division Bench of this Court differentiated the words like "application" and "petition". An "application" for example may be oral unless expressly provided to be made in writing (Para 3) of the said judgement. In Paragraph-4 of the said decision it was decided, *"The Hindu Marriage Act has provided for four substantive reliefs like restitution of conjugal rights, judicial separation, nullity of marriage and divorce and in Ss. 9, 10, 11, 12, 13, 13A, 13B and 14 where it has provided for those substantive reliefs, it has also provided that the mode to invoke reliefs under those Sections would be by way of petition. But in S. 24 and 25, where the Act has provided for proceeding for pendente lite and also permanent alimony, which can be initiated only as consequential to another original proceeding for any of the substantive reliefs under Ss. 9 to 14 it has provided that the mode to invoke those Sections for such consequential reliefs would be by way of application. In S. 14 itself, while in sub-sec. (1) word petition has been used with reference to substantive proceeding for dissolution of marriage, in the proviso to sub-sec. (1) and in sub-s. (2) the word application has been used to provide for the mode to initiate the incidental proceeding to obtain permission of the Court to present the substantive petition for dissolution of marriage before the*

expiry of one year since the date of the marriage. Now, when in respect of the same subject matter, namely, matrimonial reliefs, different words like "application" and "petition" have been used in the same statute, and even in the same Section of that Statute, then there may very well be a presumption that the Legislature, which is ordinarily presumed to use words precisely and not indiscriminately, has used the two different words to mean different things. When two different words are used in the same Statute, it may be presumed that those words, even if otherwise analogous, have been used with different connotations. Applying these rules of interpretation, it may be held that the expression "petition" in S. 19 of the Hindu Marriage Act would mean original petitions filed for any of the substantive reliefs awardable under Ss. 9 to 13B of the Act and would not cover applications under S. 24 or 25, which can be filed only during the pendency or on the termination of a substantive proceeding under Ss. 9 to 13B, as something incidental or consequential to such a proceeding."

The statement of object of Act 50 of 2003 vide which Section 19 of the Act was amended will go to show that the said Act was enacted to provide that a "petition" for relief under the provision of the said Act and Special Marriage Act may be presented by the aggrieved wife to the district court within local limits of whose jurisdiction she may be residing. Herein also the word "petition" has been used and not "application".

In the decision of this Court referred to the above the decision of the Punjab and Haryana High Court as passed in Malook Singh (Supra) was considered but that was differentiated. This Court preferred to rely on the Single Bench decision of the Bombay High Court as reported in AIR 1983 Bombay 297 (Jugdish vs. Bhanumati) in that decision the Bombay High Court also held that Section 19 would, by itself have no manner of application to an application under Section 25 of the said Act and the same being an application for relief consequential to the decree passed in original proceeding, would have to be filed in the Court which has passed the decree.

Thus, considering the decision of our Hon'ble Court as referred to above this Court is of the opinion that even though Section 19 was amended in the year 2003 incorporating the sub-clause (iiia) in the said Act to give benefit to a wife/opposite party to come up with such a petition before the Court concern where she is residing on the date of the presentation of the petition but this amendment cannot give a right to the present Opposite Party to file an application under Section 25 of the said Act before the District Judge at Barasat particularly when the original decree for divorce was passed by the Civil Judge (Senior Division) at Sambalpur. It is needless to mention that the substantive sections regarding divorce etc. are sections *9, 10, 11, 12, 13, 13A, 13B and 14.* Section 25 or Section 27 is incidental in nature deriving source from that original decree for divorce or etc. Thus, the application under Section 25

of the said Act as filed by the petitioner was not maintainable before the District Judge, North 24 parganas at Barasat being out of jurisdiction. This Court reiterates that law as it stands now the only jurisdiction lies with the appropriate Court at Sambalpur, Odisha.

Thus, the application under Section 227 of the Constitution of India is fit to be allowed and I do that. This Court taking risk of repetition likes to add that the decisions referred to by the learned Lawyer of the respondent/wife as cited above will not apply in view of the contrary decision the division bench of this Court.

Hence it is ordered,

that the application under Section 227 of the Constitution of India as filed by the petitioner/husband is allowed on contest without cost. The impugned order as passed by the Learned Additional District Judge, 4th Court at Barasat, District North 24-parganas on 15.07.2011 in Misc. Case No.370 of 2004 is hereby set aside. The parties have to bear their own costs.

Urgent certified copy be supplied to the parties on prayer as per rules.

This judgment may be reported.

(Indrajit Chatterjee, J.)