

Court No. - 3

Case :- FIRST APPEAL No. - 25 of 2017

Appellant :- Mohd. Irshad

Respondent :- Smt. Anjum Bano

Counsel for Appellant :- Amit Mishra

Counsel for Respondent :- Ramakar Shukla

Hon'ble Anil Kumar,J.

Hon'ble Saurabh Lavania,J.

The present appeal has been filed under Section 19 of the Family Court's Act against the order dated 09.12.2015, passed by the Principal Judge, Family Court, Sultanpur, in petition No. 85/2014 (Mohd. Irshad v. Smt. Anjum Bano).

While passing the order dated 09.12.2015, the Principal Judge, Family Court, Sultanpur observed as under:-

"पत्रावली के अवलोकन से स्पष्ट है कि याची मो० इरसाद द्वारा प्रस्तुत याचिका धारा-9 हिन्दू विवाह अधिनियम में विवाह पुनर्स्थापन हेतु दिनांक 16.05.2014 को योजित किया गया है। दिनांक 05.12.2014 को विपक्षी उपस्थित हुई है और अन्तरिम गुजारा हेतु प्रार्थना-पत्र प्रस्तुत किया है। पत्रावली पर उपलब्ध सम्पूर्ण साक्ष्य से यह स्पष्ट है कि विपक्षी वर्तमान में याची से अलग अपने माता पिता के साथ रही है। उसके पास स्वयं के आय का कोई श्रोत नहीं है। जब से विपक्षी, यात्री से अलग रह रही है तब से याची ने उसका कोई खोज खबर नहीं लिया है। उपलब्ध साक्ष्य से यह स्पष्ट है कि याची और विपक्षी पति पत्नी है तथा उन दोनों के संसर्ग से एक बच्ची भी है। ऐसी स्थिति में याची जो कि विपक्षी का पति है और अपनी पुत्री का पिता है। ऐसी स्थिति में याची का दायित्व है कि वह अपनी पत्नी व बच्चों का गुजर बसर करे। परन्तु याची द्वारा विपक्षी को गुजारे के लिए किसी प्रकार के भरण पोषण की धनराशि की अदायगी नहीं की जा रही है। जबकि उसकी यह नैतिक जिम्मेदारी है। अतः मामले के सम्पूर्ण तथ्य एवं परिस्थितियों को दृष्टिगत रखते हुए दौरान मुकदमा विपक्षी को याची से प्रतिमाह अन्तरिम गुजारे के लिए एक निश्चित धनराशि तथा मुकदमा व वाद व्यय के रूप में एक निश्चित धनराशि दिलाये जाने हेतु आदेशित किया जाना न्यायोचित है। इसी आशय से विपक्षी का आवेदन स्वीकार किये जाने योग्य है।

आदेश

विपक्षी का अन्तरिम भरण पोषण आवेदन आंशिक रूप से स्वीकार किया जाता है। याची को आदेशित किया जाता है कि वह वाद व्यय एवं मुकदमे के खर्च के रूप में अंकन 5000 रुपये विपक्षी को अदा करें तथा प्रतिमाह अंकन 2000 रुपये विपक्षी को अन्तरिम भरण पोषण के एवज में प्रतिमाह माह की सात तारीख तक अदा करें। तदनुसार आपत्ति निस्तारित की जाती है। पत्रावली दिनांक 24.03.2016 को जबाबदावा हेतु पेश हो।"

In view the said facts, this Court on 23.10.2019 passed an order which reads as under:-

"Heard Shri Amit Mishra, learned counsel for the appellant and Shri Avinab Singh holding brief of Shri Ramakar Shukla, learned counsel for the respondent.

The present appeal has been filed under Section 19 of Family Court's Act against the order dated 09.12.2015 passed by Principal Judge, Family Court, Sultanpur in Original Suit No.85/2014 "Mohd. Irshad vs. Smt. Anjum Bano".

Facts in brief of the present case are that marriage between the appellant and respondent was solemnized about four years ago as per Muslims Customs and out of their wedlock, a daughter was born. After some time, their matrimonial relations have become estrange and thereafter, respondent/Smt. Anjum Bano left her matrimonial home and at present, she is living in parental home. Thereafter, the appellant filed a suit registered as Petition No.85 of 2014 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights (दावा रुखसती जौजा) in the Court of Principal Judge, Family Court, Sultanpur. In the said matter, an application for interim maintenance. Vide order dated 09.12.2015, the court below/Principal Judge, Family Court, Sultanpur has passed an order. The relevant portion of the same reads as under :-

"विपक्षी का अन्तरिम भरण पोषण आवेदन आंशिक रूप से स्वीकार किया जाता है। याची को आदेशित किया जाता है कि वह वाद व्यय एवं मुकदमें के खर्च के रूप में अंकन 5000 रुपये विपक्षी को अदा करें तथा प्रतिमाह अंकन 2000 रुपये विपक्षी को अन्तरिम भरण पोषण के एवज में प्रतिमाह माह की सात तारीख तक अदा करें। तदनुसार आपत्ति निस्तारित की जाती है।"

After hearing learned counsel for the parties and going through the records, the admitted position which emerges is that both the parties are Muslims and suit filed by the appellant was registered as Original Suit No.85 of 2014 under Section 9 of Hindu Marriage Act, which is incorrect as per law and also the court below has wrongly decided the application for interim maintenance made therein.

In view of the above said facts, the operation and implementation of the order dated 09.12.2015 passed by Principal Judge, Family Court, Sultanpur as well as further proceedings of Original Suit No.85 of 2014 shall remain stayed by the next date of listing.

List/put up on 18.11.2019.

On the said date, Principal Judge, Family Court, Sultanpur shall appear in person before this Court and shall explain as under what circumstances, the Original Suit No.85 of 2014 "Mohd. Irshad vs. Smt. Anjum Bano"

has been registered under Section 9 of Hindu Marriage Act.

Registrar of this Court is directed to send the necessary information to the Principal Judge, Family Court, Sultanpur for his appearance on 18.11.2019."

In response to the order dated 23.10.2019, the Principal Judge, Family Court, Sultanpur send a letter dated 12.11.2019 to this Court, relevant portion of the same reads as under:-

"Sir,

With reference to the Hon'ble Court's D.O. letter No. 9949 dated: 02.11.2019, on the above noted subject I have the honour to submit details as below:-

1. The aforesaid order dated 09.12.2015 passed by Sri Pramod Kumar-II, the then Principal Judge, Family Court, Sultanpur, who was posted as Principal Judge, Family Court, Sultanpur from 11.05.2015 to 08.05.2017.

2. The aforesaid suit restitution of conjugal rights was filed by Mohd. Irshad against opposite party Smt. Anujum Bano on 16.05.2014. Mohd Irshad appeared personally before the court. The suit heard by Sri Pramod Kumar-II, the then Principal Judge, after hearing the suit was registered as original suit no. 85 of 2014 of restitution of conjugal rights & issue notice to opposite party.

3. The notice served upon opposite party Smt. Anujm Bano & she appeared before the court on 05.12.2014 and moved an interim maintenance application for maintenance of herself & minor daughter & case expenses. The court invited objection on the interim maintenance application from the first party.

4. The first party the Mohd. Irshad filed an objection against interim maintenance application. The then Principal Judge, Sri Pramod Kumar-II, heard the parties on the interim maintenance application & passed order dated 09.12.2015.

5. The aforesaid original suit no. 58 of 2014 was transferred on 26.08.2019 to the court of Addl. Principal Judge, Family Court-III, Sultanpur for disposal according to law.

6. On the fixed date 21.10.2019 the application of the petitioner Paper no. 21 ka for not pressing the suit but he was not present on the date, so the suit no. 58 of 2014 was dismissed on 21.10.2019 by Sri Anand Prakash-II, Addl. Principal Judge, Family Court-III, Sultanpur.

The report is being submitted to the Hon'ble Court for kind perusal."

Pursuant to order dated 23.10.2019, passed by this Court, Sri Manoj Kumar Shukla, Principal Judge, District- Sultanpur appeared before this Court.

Sri Manoj Kumar Shukla submitted that at the time of passing of the order dated 09.12.2015, he was not the Principal Judge of District- Sultanpur.

We asked a question to him that who was the Judge concerned at that time of District Sultanpur. In response to the said facts, Sri Manoj Kumar Shukla submitted as under:-

"(i) He has been unnecessarily called before this Court even when he has not passed the order dated 23.10.2019.

(ii) This Court should not have called the Judicial Officer in such a manner in which he has been called inspite of the fact that he has not passed the said order.

(iii) The Hon'ble Apex Court time and again reminded that a Judicial Officer should not be called before the Court and even then, he has been called by this Court."

He further submitted that such types of mistakes are committed by a Judicial Officer, due to heavy rush of work in the Family Court and such errors are bound to take place as only one Steno (judgment writer) has been provided for writing order/judgment.

In view of the aforesaid, we told him that even if there is heavy rush of work and lack of other infrastructural facilities, Judge is duty bound to see that whether he is passing the order correctly by applying the correct law.

However, in loud voice he questioned about the functioning of this Court and also started shouting in louder voice before the Members of the Bar who were sitting in the Court.

Sri Manoj Kumar Shukla further submitted that in past also, he was summoned by a Bench of this Court consisting of Justice Mateen and after some time he said the other Judge Upadhyay.

At this stage, we reminded him to take the name of Hon'ble Judge with respect, however, ignoring the said fact, he said that at that time also, he was unnecessarily called for by the High Court and now again he has been unnecessarily called for and he commented adversely on the functioning of this Court.

We cautioned him that his attitude and submission may lead to unwarranted consequences and may even affect his future career. In response to same, he submitted as under:-

"(a) What I have said is correct and I do not care about anything.

(b) I was appointed in judicial service through U.P. Public Service Commission.

(c) You may observe what I have stated before this Court and the manner in which I have made the statement."

In view of the above, we are constrained to observe, that too, with a heavy heart and affliction that the scene created by the Judicial Officer, Sri Manoj Kumar Shukla today inside the Court room has diminished the image of Judiciary which was unwarranted and also it manifested disrespect to this Court which is not expected of a Judicial Officer.

The conduct of the Judicial Officer in full view of the members of the Bar was not only disrespectful but was an attempt to show this Court in poor light. Our Constitutional Scheme recognizes and provides for a hierarchical system of Courts in achieving the goal of dispensation of justice. In such a hierarchy, if a Judge of a subordinate court fails to conduct himself in a manner expected of the Judicial Officer, it is not only bound to lower the dignity and majesty of the Court but it may even tend

to shake the faith and trust of the litigant who is the most important stake holder in the justice dispensation system.

The behaviour and conduct of the Officer inside the Court room was such that it even caught the attention of the learned Members of the Bar who felt annoyed and even requested this Court to initiate appropriate action against the Officer.

However, we feel it appropriate to refer the entire matter to Hon'ble the Chief Justice, who being the *parens patriae* needs to be apprised of any such misdemeanor by a Judicial Officer, who in this case, most astonishingly is of the rank of District Judge.

We, therefore, direct the Senior Registrar to place this order before Hon'ble the Chief Justice for taking appropriate and necessary action.

List after three weeks.

Order Date :- 18.11.2019

Arun/-