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MA-2136-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 7th OF SEPTEMBER, 2026MISC. APPEAL No. 2136 of 2016*SMT. USHABAI**Versus**LALIT BISEN*

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Appearance:

Shri Pradeep Kumar Naveria - Advocate for the appellant.

Shri Rahul Kumar Tripathi- Advocate for the respondent.

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ORDER

The appellant-wife has preferred this miscellaneous appeal under Order 43 Rule 1(d) of the Code of Civil Procedure, 1908, against the order dated 05.07.2016 passed by the learned Second Additional District Judge, Waraseoni, District Balaghat in Civil M.J.C. No.55/2015, whereby her application under Order IX Rule 13 of the CPC for setting aside the ex-parte judgment and decree passed in the matrimonial proceeding was dismissed.

2. Learned counsel for the appellant, at the outset, submits that the respondent-husband has already remarried after obtaining the decree of divorce. It is further submitted that, having regard to the age of the parties and the circumstances prevailing, the appellant is not interested in prosecuting the matter insofar as the decree of divorce is concerned. However, it is submitted that the learned matrimonial Court has not considered the question of alimony in favour of the appellant-wife.



Therefore, the matter may be remitted to the learned matrimonial Court for consideration of the said question.

3. Learned counsel for the respondent submits that the respondent has already given some property to the girl child and is also paying a sum of Rs.5,000/- per month in compliance with the order passed under Section 125 of the Code of Criminal Procedure by the concerned Judicial Magistrate First Class. However, he submits that if the appellant is not challenging the decree of divorce and is seeking only an order for alimony, she may proceed independently before the learned matrimonial Court.

4. Heard learned counsel for the parties and perused the record.

5. From the record, it is evident that the matrimonial proceeding was instituted by the respondent against the appellant under the Hindu Marriage Act, 1955 and the same culminated in an ex-parte judgment and decree dated 09.07.2015. The appellant had thereafter preferred an application under Order IX Rule 13 of the CPC seeking setting aside of the said ex-parte judgment and decree. The said application was dismissed by the learned Court below vide impugned order dated 05.07.2016.

6. At this stage, learned counsel for the appellant has categorically submitted that the appellant is not interested in prosecuting the matter insofar as the decree of divorce is concerned and is only seeking an opportunity to pursue her claim for alimony. Thus, in view of the aforesaid submission, there appears to be no necessity to remit the matter for restoration or further adjudication of the proceedings insofar as the decree of divorce is concerned. However, it is evident from the record that the question of



alimony in favour of the appellant-wife was not considered by the learned matrimonial Court while passing the judgment and decree.

7. Section 25(1) of the Hindu Marriage Act, 1955 reads as under:—

“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, while the applicant remains unmarried, 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.”

8. The scope and manner of exercise of the power under Section 25 of the Hindu Marriage Act has also been considered by this Court in **Surajmal Ramchandra Khati Vs. Rukminibai d/o Prabhulal**, 2000 (1) MPLJ 19. Though the facts and circumstances of the said case are somewhat different from those of the present case, the principle laid down therein is relevant for the present controversy. While considering the expression “on application made to it” occurring in sub-section (1) of Section 25 of the Hindu Marriage Act, this Court, keeping in view the scheme and object of the Act, has held that the Act has adopted a broader approach while dealing with matrimonial cases and, therefore, the aforesaid expression cannot be construed in a narrow or technical sense. It does not necessarily mean that in every case the spouse seeking permanent alimony is required to present a separate formal



application for that purpose. The provision is intended to protect the interest of the spouse against whom a decree has been passed and, therefore, the expression “on application made to it” has to be understood in the broader context of the object sought to be achieved by Section 25 of the Act.

9. The aforesaid principle also finds support from the decision of the Gujarat High Court in **Patel Dharamshi Premji Vs. Bai Sakar Kanji**, 1967 SCC OnLine Guj 4, wherein the scope of Section 25(1) of the Hindu Marriage Act was considered with reference to the stage at which an application for permanent alimony may be made. The Gujarat High Court has held that the expression “wife or the husband” used in Section 25(1) refers to a party to the matrimonial proceeding and does not require that such person must continue to occupy that status on the date of making the application. It has further been held that an application seeking the incidental relief of permanent alimony may be made in the main proceeding before or at the time of passing the decree granting substantive relief, or at any time subsequent thereto. Thus, the statutory scheme itself contemplates consideration of permanent alimony even subsequent to the passing of the decree.

10. In view of the aforesaid legal position, the fact that a decree of divorce has already been passed does not, by itself, preclude the appellant from seeking the relief of permanent alimony under Section 25 of the Hindu Marriage Act. The learned matrimonial Court is competent to consider such application and pass an appropriate order in accordance with law, after taking into consideration the relevant factors contemplated under Section 25 of the Hindu Marriage Act.



11. Therefore, since the appellant is not interested in prosecuting the case insofar as the decree of divorce is concerned, there is no need to remit the matter for its restoration or further hearing on merits. However, since the impugned decree does not provide for alimony, the appellant is at liberty to file an application under Section 25 of the Hindu Marriage Act before the learned matrimonial Court, which shall be decided by the said Court after hearing both the parties, in accordance with law.
12. With the aforesaid liberty, this appeal is disposed of.

(RAMKUMAR CHOUBEY)
JUDGE

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