

RAMESH CHAND DAGA

v.

RAMESHWARI BAI

MARCH 16, 2005

[B.P. SINGH AND S.B. SINHA, JJ.]

Code of Civil Procedure, 1908—Section 2(2)—Decree—High Court directing husband to return the ornaments to the wife and on failure, to pay price of ornaments and interest thereon—No time frame fixed for return of the ornaments—Husband returned the ornaments within reasonable time—Wife claiming interest on the price of ornaments—Maintainability of claim—Held : Wife cannot claim interest on the price of ornaments, since after return of ornaments the question of paying price and interest thereon did not arise.

Respondent-wife had approached Family Court for judicial separation, maintenance and return of ornaments, which directed appellant-husband to return the ornaments within one month and on failure, to pay to the respondent Rs. 3.25 lacs, but no decree of interest on the said sum was passed. Appellant and respondent aggrieved by the order came up before High Court. The High Court held that in case ornaments are not returned, respondent would be entitled to interest @ 9% p.a. from the date of decree. However, no time frame for return of ornaments was specified.

Respondent initiated execution proceedings. Appellant wrote letter dated 15.3.2000 to respondent to personally collect the ornaments within 15 days after receipt of the letter. Respondent raised certain objections. Ultimately, ornaments were delivered on 2.7.2003. Family Court also directed payment of interest on Rs. 3.25 lacs from the date of decree. Appellant filed revision before High Court, which held that liability to pay interest had already commenced since the date of decree.

In appeal to this Court, appellant contended that the Executing Court, and subsequently the High Court, committed a serious error of law in directing payment of interest and that in view of the fact that no time was fixed for return of the ornaments, and the appellant having offered the same to the respondent within a reasonable time, no interest on the

A said sum of Rs. 3.25 lacs was payable.

Allowing the appeal, the Court

B HELD : 1. The Family Court in its original decree did not grant any interest on the said sum of Rs. 3.25 lacs. An alternative decree was only passed to the effect that the respondent would be entitled to a sum of Rs. 3.25 lacs in the event, the ornaments are not returned to the respondent by the appellant. [934-E-F]

C 2.1. A decree in the nature of mandatory injunction directing a party to the suit to deliver certain movable property in favour of the appellant cannot be equated with a decree for payment of a specified sum. The question of the appellant's paying the price of the ornaments valued at Rs. 3.25 lacs together with interest @ 9% p.a. from the date of the decree of the Family Court dated 9.10.1995 could have arisen only if the appellant had not returned the same to the respondent within a reasonable time.

[934-F-G, H; 935-A]

D 2.2. The Family Court directed the appellant to return the ornaments within one month from the date of the decree, and only on his failure to do so he was made liable to pay the value thereof. The High Court while upholding that part of the decree, did not fix any time. In absence of any direction having been issued by the High Court upon the appellant to return the ornaments within the time specified, the ornaments could be returned by him to the respondent within a reasonable time. The order of the High Court, therefore, was a conditional one. The Appellant offered delivery of the ornaments to the respondent by his letter dated 15.3.2000. The High Court wrongly proceeded to hold that the appellant could not have avoided his liability merely by giving the said notice of 15 days on 15.3.2000. [935-B-D, E]

G 3. The High Court failed to notice that the direction upon the Appellant to pay interest was subject to the condition that if he did not return the ornaments, the direction to pay interest on the amount of Rs. 3.25 lacs would operate, and it was thus not an unconditional decree. If the appellant had fulfilled the conditions specified in the judgment, the question of his incurring the liability to pay the price of the ornaments specified by High Court did not arise. Thus direction upon appellant to return the ornaments is not concomitant with the order to pay the price thereof. The second direction was, thus, a conditional one, which comes into operation only upon non-fulfillment of the first direction. Thus, by

reason of the first direction no decree to pay interest on a specified sum was passed. Neither the Family Court nor the High Court had directed payment of any interest on the ground of deliberate and wrongful withholding of the ornaments by the appellant. Even on the said count, no interest could have been directed to be paid but what could be directed was payment of compensation. [935-F-H; 936-A-B]

Rameshchandra Rampratapji Daga v. Rameshwari Rameshchandra Daga, (2004) 10 Scale 391; *Islamic Academy of Education and Anr. v. State of Karnataka and Ors.*, [2003] 6 SCC 697; *M/s Zee Telefilms Ltd. and Anr. v. Union of India and Ors.*, JT (2005) 2 SC 8 and *P.S. Sathappan v. Andhra Bank Ltd.*, [2004] 11 SCC 672, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1780 of 2005.

From the Judgment and Order dated 12.3.2004 of the Madhya Pradesh High Court in C.R. No. 110 of 2004.

Sushil Kumar Jain, A.P. Dhamija, H.D. Thanvi, Sarad Singhania, Ms. Rani Maheshwari and Ms. Pratibha Jain for the Appellant.

S.C. Birla and Subrat Birla for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J : Leave granted.

Interpretation of the judgment and order dated 20.1.2000 passed by the High Court of Madhya Pradesh falls for consideration in this appeal which arises out of a judgment and order dated 12.3.2004 passed in C.R. No. 110 of 2004, whereby and whereunder the revision application filed by the Appellant herein from an order dated 11.9.2003 passed by the First Additional District Judge, Ratlam in execution of a transferred decree from Family Court, Bombay, was dismissed.

LEGAL PROCEEDINGS BETWEEN THE PARTIES :

An application for judicial separation, maintenance and return of ornaments/property etc. was filed by the Respondent against the Appellant herein before the Family Court at Bombay purported to be in terms of Section 10 of the Hindu Marriage Act, 1955. An alternative prayer was made therein

A to the effect that if the ornaments were not returned, a decree for a sum of
Rs. 3,25,655 together with interest thereon from the date of filing of the
application may be passed. In the said proceeding, the Appellant herein raised,
inter alia, a contention that the marriage between the parties was a nullity.
By a judgment and order dated 9.10.1995, the Family Court allowed the said
B application in part by granting a decree of judicial separation, maintenance
and return of the ornaments. It was, however, directed that in the event the
ornaments were not returned the Respondent would be entitled to the value
thereof, namely, a sum of Rs. 3,25,655. However, no decree of interest on the
said sum was passed.

C The Family Court directed :

“The respondent is also directed to return all the articles mentioned
in Exh.A-1 attached to the petition comprising of articles described
in Clause A to G totaling to Rs. 3,25,655. If he fails to return the
D articles mentioned therein as far as possible within one month of the
date of this decree, he shall pay the value thereof mentioned against
the said articles not returned as mentioned in the list.”

The Appellant herein preferred an appeal thereagainst before the High
Court. The Respondent filed a cross-objection in the said appeal as regard
non-grant of interest on the said sum. By a judgment and order dated
E 20.1.2000, the High Court set aside the decree of judicial separation upon a
declaration that the marriage between the parties herein was null and void.
The decree as regard grant of maintenance to the Respondent herein as also
her daughter was, however, upheld. The High Court observed :

“As regards the claim of the Respondent for return of her
F ornaments and other valuable articles, we find that the Trial Court
has taken into consideration both oral and documentary evidence in
that respect and arrived at the conclusion that the Respondent wife is
entitled to get back all the Ornaments and Articles mentioned in list
Exhibit ‘A’ to the petition or in the alternative price thereof. We do
not see any reason to interfere with that, except the fact *that in case*
G *the said ornaments or articles are not returned by the Appellant to*
the Respondent, he will have to pay interest on the price thereof
which has been quantified at Rs. 3,25,655. In our opinion interest at
the rate of 9% p.a. on the said amount from the date of the decree of
the Trial Court i.e. 9.10.1995 will be proper and reasonable interest.”

H (Emphasis applied)

However, it was directed :

“...We, however, maintain the decree of the Trial Court in all other respects. We further partly allow the cross-objections of the Respondent wife to the extent of granting interest at the rate of 9% p.a. on the price of Rs. 3,25,655 from the date of the decree of the Trial Court i.e. 9.10.1995...”

The Appellant herein, thus, was not directed to return the ornaments or articles to the Respondents within a time frame. The only direction was to pay interest on the price thereof from the date of the decree of the Trial Court i.e. 9.10.1995 only in the event of the Appellant's failure to return the same to the Respondent.

Two applications for grant of special leave to appeal against the said judgment of the High Court were filed by the parties herein. Leave having been granted by this Court, the appeals were marked as Civil Appeal Nos. 1774 and 1775 of 2001.

We may, however, notice that in Special Leave Petition (Civil) No. 8195 of 2000 giving rise to Civil Appeal No. 1774 of 2001, a limited notice was issued by this Court confining it to the question as to whether 'the wife is entitled to maintenance after the court held that the marriage was nullity'.

In the meanwhile, the Respondents herein initiated an execution proceeding. The Appellant by a letter dated 15.3.2000 called upon the Respondent herein to come personally to Ratlam to get all the ornaments and other articles mentioned in the list 'A' of the order of the Family Court dated 16.12.1995. In the said letter, it was stated :

“If you will not come within 15 days after receipt of this letter otherwise you should be responsible for not receiving the ornaments and articles mentioned in the order/judgment. You will not be entitled to claim the amount with interest mentioned as a price of the ornaments and articles described in the list.”

Together with the said letter a Demand Draft of Rs. 2,000 drawn in the name of Smt. Rameshwari G. Lakohitia was annexed. In response to the said letter, the Respondent herein only returned the demand draft contending that the same should be drawn up in the name of Smt. Rameshwari R. Daga.

The Appellant thereafter filed an application before the Executing Court

A expressing his intention to return the ornaments on 31.3.2003 whereupon the matter was directed to be placed on 1.4.2003, on which date an objection was raised by the Respondent as regard, weight as also quality of the ornaments produced in court. The matter was directed to be placed on 29.4.2003, on which date the Respondent having not been accompanied by her advocate or male companion and allegedly having regard to the safety of the ornaments
B stated that she would like to come to court on the next date for the said purpose. Ultimately the ornaments were delivered to the Respondent on 2.7.2003. The quality and quantity of the ornaments, thus, were not disputed.

C Despite the same, the learned Family Court, keeping in view the judgment and order dated 20.1.2000 passed by the High Court, directed payment of interest on the aforementioned sum of Rs. 3,25,655 by the Appellant from the date of the original decree i.e. 9.10.1995.

D The Appellant herein being aggrieved by and dissatisfied with the said order filed a revision application before the High Court which by reason of the impugned judgment dated 12.3.2004 was dismissed by a learned Single Judge holding :

E “In my considered opinion, the learned A.D.J. had not committed any error. It is noteworthy that Bombay High Court had not fixed any date by which ornaments and other articles had to be returned. As per decree interest was payable since the date on which the Family Court had decreed the case i.e. from 9.10.1995. Thus, the liability to pay interest had already commenced since 9.10.1995. Simply because the applicant had given a notice of 15 days on 15.3.2000 to the non-applicant to come and take her ornaments and other articles, the liability to pay interest under the decree of the Bombay Court could not be put into abeyance. Executing Court had to execute the decree as the same was, it could neither add anything to it or subtract anything from it...”

F The Appellant is, thus, before us.

G Before advertng to the rival contentions raised at the Bar, we may notice that the aforementioned two civil appeals filed by the parties herein came up for hearing and by a judgment and order dated 13.12.2004, both the appeals were dismissed. The said judgment has since been reported in 2004 (10) SCALE 391.

THIS COURT'S JUDGMENT :

This Court in its aforementioned judgment and order dated 13.12.2004 upon interpreting Section 25 of the Hindu Marriage Act, 1955 upheld the judgment and decree passed by the learned Family Court holding :

"It is well known and recognized legal position that customary Hindu Law like Mohammedan Law permitted bigamous marriages which were prevalent in all Hindu families and more so in royal Hindu families. It is only after the Hindu Law was codified by enactments including the present Act that bar against bigamous marriages was created by Section 5(i) of the Act. Keeping into consideration the present state of the statutory Hindu Law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependant. It is with the purpose of not rendering a financially dependant spouse destitute that Section 25 enables the court to ward maintenance at the time of passing *any type of decree* resulting in breach in marriage relationship."

However, as regard the matter relating to grant of interest it was observed:

"We are told that the order of the High Court in so far as it directs the husband to return ornaments of the wife or its equivalent value in the sum of Rs. 3,25,655 with 9% per annum, is a subject-matter of a separate appeal. We, therefore, express no opinion with regard to the same."

SUBMISSIONS :

Mr. Sushil Kumar Jain, the learned counsel appearing on behalf of the Appellant would contend that having regard to the judgment and order passed by the High Court dated 20.1.2000, the Executing Court, and subsequently the High Court, committed a serious error of law in directing payment of interest. The learned counsel submitted that in view of the fact that no time was fixed for return of the ornaments, and the Appellant having offered the same to the Respondent within a reasonable time, no interest on the said sum of Rs. 3,25,655 was payable.

Mr. S.C. Birla, the learned counsel appearing on behalf of the H

- A Respondent, on the other hand, would contend that the reliance placed by the Appellant herein on the letter dated 15.3.2000 is misconceived as no such letter was issued. According to the learned counsel only a demand draft dated 21.2.2000 was sent to the Respondent, which was returned by her in terms of a letter dated 13.4.2000 stating that the same should have been drawn up in the name of Smt. Rameshwari R. Daga.

- B
C Mr. Birla would submit that in view the judgment and order of the High Court dated 20.1.2000 as also the judgment of this Court dated 13.12.2004, the dispute between the parties had attained finality and, thus, the same could not have been reopened in the executing proceeding and in that view of the matter, the High Court has rightly dismissed the revision application filed by the Appellant herein.

CONSTRUCTION OF THE JUDGMENT :

- D A judgment, as is well known, is not to be read as a statute. A judgment, it is trite, must be construed upon reading the same as a whole. For the said purpose the attendant circumstances may also be taken into consideration. [*Islamic Academy of Education and Anr v. State of Karnataka and Ors.*, [2003] 6 SCC 697, *M/s Zee Telefilms Ltd. and Anr. v. Union of India and Ors.*, JT (2005) 2 SC 8 and *P.S. Sathappan v. Andhra Bank Ltd.*, [2004] 11 SCC 672.

- E The Family Court in its judgment and order dated 9.10.1995 did not grant any interest on the said sum of Rs. 3,25,655. An alternative, decree was only passed to the effect that the Respondent would be entitled to a sum of Rs. 3,25,655 in the event, the ornaments are not returned to the Respondent by the Appellant herein.

- F A decree in the nature of mandatory injunction directing a party to the suit to deliver certain movable property in favour of the Appellant cannot be equated with a decree for payment of a specified sum.

- G The High Court moreover did not allow the cross objection filed by the Respondent herein in its entirety. It was allowed only in part.

- H The question of the Appellant's paying the price of the ornaments' value at Rs. 3,25,655 together with interest @ 9% p.a. from the date of the decree of the Family Court dated 9.10.1995 could have been the subject-matter of the Execution Petition only if the Appellant did not return the same

to the Respondent within a reasonable time. The High Court did not interfere with the judgment of the Family Court to the effect that the Respondent was entitled to get back all the ornaments except the fact that in case the said ornaments or articles are not returned by him, he will have to pay interest on the price thereof. Thus, the question of payment of interest would have arisen only in the event of the Appellant's failure to return the ornaments to the Respondent.

We have noticed hereinbefore that whereas the Family Court directed the Appellant herein to return the ornaments within one month from the date of the decree, and only on his failure to do so he was made liable to pay the value thereof. The High Court while upholding that part of the decree, did not fix any time therefor. In absence of any direction having been issued by the High Court upon the Appellant to return the ornaments within the time specified therefor, the ornaments could be returned by him to the Respondent within a reasonable time. The order of the High Court, therefore, was a conditional one. The Appellant herein offered delivery of the ornaments to the Respondent by his letter dated 15.3.2000. The receipt of the said letter has been disputed before us but from a scrutiny of the records it does not appear that the said contention was raised before the courts below. No such contention had been raised before the High Court. In fact the High Court wrongly proceeded to hold that the Appellant could not have avoided his liability merely by giving the said notice of 15 days on 15.3.2000. Issuance of the said notice by the Appellant as also the contents thereof, therefore, had not been denied or disputed by the respondent.

The High Court moreover misconstrued and misinterpreted its earlier judgment dated 20.1.2000. It failed to notice that the direction upon the Appellant to pay interest was subject to the condition that if he did not return the ornaments, the direction to pay interest on the aforementioned amount of Rs. 3,25,655 would operate, and it was thus not an unconditional decree. If the Appellant had fulfilled the conditions specified in the judgment, the question of his incurring the liability to pay the price of the ornaments specified by the High Court did not arise.

Thus, the direction upon the Appellant to return the ornaments is not concomitant with the order to pay the price thereof. The second direction was, thus, a conditional one which comes into operation only upon non-fulfillment of the first direction. Thus, by reason of the first direction no decree to pay interest on a specified sum was passed. In that view of the

A matter, if no occasion had arisen for paying the aforementioned sum of Rs. 3,25,655, the question of paying any interest thereupon would not arise. Neither the Family Court nor the High Court had directed payment of any interest on the ground of deliberate and wrongful withholding of the ornaments by the Appellant. Even on the said count, no interest could have been directed to be paid but what could be directed was payment of compensation.

B As this Court in its earlier judgment had no occasion to consider the effect of the judgment dated 9.10.1995 passed by the Family Court, Bombay and the judgment dated 20.1.2000 passed by the High Court of Bombay, the same did not attain finality.

C CONCLUSION :

We are, therefore, of the opinion that the judgment of the High Court is not sustainable which is set aside accordingly. The appeal is allowed. However, in the peculiar facts and circumstances of the case, we direct the Appellant to bear the costs of the Respondent in this appeal which is quantified at Rs. 10,000. The said sum shall be paid to the Respondent by the Appellant within four weeks from date.

D.G.

Appeal allowed.