

PETITIONER:
ANITA LAXMI NARAYAN SINGH

Vs.

RESPONDENT:
LAXMI NARAIN SINGH

DATE OF JUDGMENT 24/03/1992

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
VENKATACHALLIAH, M.N. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1992 AIR 1148 1992 SCR (2) 316
1992 SCC (2) 562 JT 1992 (2) 349
1992 SCALE (1) 722

ACT:
Hindu Marriage Act, 1955 :

Section 13-Divorce-Petition by husband at Bombay-Wife required to travel a long distance to defend proceedings-Transfer petition by wife-Supreme Court directing sufficient expenses for wife's stay and travel expenses-Grant of meagre amount of wife by Family Court-Consequent inability of wife to attend proceedings-Ex-parte divorce decree in favour of husband-Held grant of meagre amount of wife resulted in denial of justice-Ex-parte decree of divorce set aside.

HEADNOTE:

The respondent was married to appellant at Ghaziabad. He filed a Divorce Petition at Bombay and the appellant-wife filed applications for maintenance and expenses of the divorce proceedings. Subsequently she filed a Transfer petition in this Court for transferring the case from Bombay to Ghaziabad which was disposed by this Court directing that (i) the respondent-husband would pay Rs.2500 for wife's next visit to Bombay; and (ii) the Family Court would insist on the husband depositing the to and fro fare for the wife and her companion and also an amount sufficient for their stay in Bombay on each visit. The Family Court dismissed the wife's application for interim maintenance and expenses of proceedings on the ground that she was gainfully employed but awarded Rs. 700 as expenses and further directed that she will be paid an additional amount of Rs. 150 per day in case of her stay for more than one day at Bombay. Against this order the appellant filed a Special Leave petition in this Court. Since she was held up for attending to her petition in this Court the Family Court granted an ex-parte decree of divorce to the husband. She filed a petition in this Court as she could not attend the Court on account of her inability to meet the expenses for travel and residence in Bombay.

Allowing the appeal, this Court,

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HELD : 1. While disposing the appellant's Transfer Petition this Court had clearly directed that the Family Court will insist on the husband not only depositing the to

and for travel expenses for the wife and her companion but also an amount sufficient for their stay in Bombay on each visit. But the Family Court has been far from just to the wife who was required to travel a long distance to defend herself. Nothing has been allowed by way of transport charges and lodging and boarding charges even if she has not to stay for an additional day in Bombay. [320 D-F]

2. The interim order passed by the Family Court is for reasons best known to it, highly biased. This is more so because this Court's order granting expenses to visit Bombay provided sufficient guideline for determining the quantum of expenses to be awarded. Besides the Family Court has not awarded any amount to meet the cost of the proceedings on the specious plea that the appellant is gainfully employed. To say the least the order is far from satisfactory and has resulted in gross denial of justice. The impugned order is accordingly set aside. [321 A-C]

3. As the interim order made it impossible for the wife to contest the divorce petition in the Family Court and facilitated an ex-parte divorce decree in favour of the husband, in the extraordinary and peculiar circumstances of this case, the ex-parte divorce decree is set aside. [321 C-D]

4. Interest of justice requires transfer of the proceedings from the Family Court, Bombay to the District Court, Ghaziabad. The restored divorce proceedings will stand transferred from Family Court Bombay to the District Court, Ghaziabad. [321 E-F]

JUDGMENT:

ORIGINAL JURISDICTION : Interlocutory Application No. 4 of 1991 in Transfer Petition (Civil) No. 521 of 1990.
(Petition under Section 25 C.P.C.)

WITH

C.A. No. 1119 of 1992

WITH

C.A. No. 1118 of 1992

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Mrs. Sureshtha Bagga for the Appellant.

Vimal Dave for the Respondent.

The Judgment of the Court was delivered by

AHMADI, J. Delay condoned. Special leave granted in both matters. The facts leading to these cases, briefly stated, are that the appellant Anita married respondent Laxmi Narain on November 1, 1987 at Ghaziabad according to Hindu rites. It is the appellant's case that on the very next day at the Bidai ceremony the relatives of her husband raised a dispute regarding inadequacy of dowry amount. However, that dispute was settled for the time being by respected persons but Anita was not happy at her husband's home on account of ill-treatment meted out to her by the respondent. Ultimately on March 11, 1988 she left for her father's house in Ghaziabad and since then she has been living there.

The respondent sent a notice through his Advocate dated November 16, 1988 and followed it up by filing a Divorce Petition under Section 13 of the Hindu Marriage Act in the City Civil Court at Bombay. On the appellant being served with the notice of the divorce petition she went to Bombay and entered an appearance and also filed an application for maintenance pendente lite. Even thereafter she attended court on several adjournments but there was no progress in the matter. On October 3, 1989 the proceedings were

transferred to the Family Court at Bandra, Bombay, and the appellant was informed about the same. The appellant filed a complaint under Section 498A, IPC against the respondent at Ghaziabad on December 13, 1989. The appellant paid several visits to Bombay to attend the divorce proceedings in the Family Court but the matter was only adjourned from time to time. An effort was made by the Marriage Counsellor of the Family Court to bring about a settlement on May 22, 1990 but in vain. Tired of making long trips from Ghaziabad to Bombay the appellant preferred a Transfer Petition in this Court for transferring the case from Bombay to Ghaziabad wherein notice was issued and the respondent filed his counter. The Transfer Petition was ultimately disposed of by this Court's order dated January 14, 1991 to the following effect :

"Since the matter is pending in the Family Court in which the petitioner herself has also filed an application bearing No. 4091/89, We think it would be advisable to allow the Family

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Court to dispose of the matter expeditiously. The ends of justice would suffice if we direct that on each occasion the petitionerwife is required to attend the Family Court, the Family Court will first insist on the husband depositing the to and fro fare for the petitioner and a companion and also an amount sufficient for their stay in Bombay on each visit. For the next visit to Bombay we direct the husband to deposit a sum of Rs. 2500 in the Family Court under notice to the petitioner. We also hope that the Family Court will appreciate the difficulty of the petitioner-wife and try to dispose of the matter and vacate the stay but with liberty to the petitioner-wife to move this Court in case of difficulty."

It was only after this order was passed that the respondent filed his reply to the appellant's application for grant of interim maintenance and cost of proceedings. As her first application was not taken up for hearing she filed another application for payment of expenses, etc. The Family Court dismissed her application for interim maintenance and expenses of proceedings on the ground that she was gainfully employed. The only amount allowed by the Family Court was Rs. 700 towards second class sleeper Railway fare for herself and her companion. The Family Court also observed that if she and her companion are required to stay in Bombay the respondent will pay Rs. 150 for additional days. After this order dated April 20, 1991 the appellant was directed to file her statement by May 20, 1991.

Feeling aggrieved by this order the appellant approached this Court seeking special leave to appeal against the said order. She also filed I.A. No. 4 of 1991 in Transfer Petition No. 521/90 in view of the liberty reserved unto her by this Court's order dated January 14, 1991. In the meantime the divorce proceedings were listed before the Family Court on September 23, 1991 and as the appellant was held up for attending to her special leave petition against the interim order she sought an adjournment by a letter sent through courier service on September 21, 1991. However that being a holiday the Family Court did not hold its sitting but took up the matter on the next day. Since the letter written by the appellant had reached the Family Court, the Family Court adjourned the matter to October 7, 1991 with a direction to obtain a stay from the

Supreme Court or else the matter

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would proceed. Intimation about the said order was sent to the appellant at her old address even though her new address was communicated to the Family Court earlier. The proceedings were adjourned from October 7, 1991 to October 11, 1991 and thereafter to October 19, 1991 without intimation to the appellant. The evidence was recorded on October 19, 1991 and the judgment was pronounced on October 21, 1991 allowing the divorce petition and granting a decree for divorce ~~expert~~. The appellant has preferred a special leave petition against the said order granting divorce on the plea that she had been condemned unheard by the Family Court as she could not attend the court on account of her inability to meet the expenses for travel and residence in Bombay. These are the circumstances in which the aforesaid proceedings have arisen before this Court.

From the facts set out above it is evident that this court did not order transfer of the case because it felt that the Family Court, Bombay, which was seized of the matter would be able to resolve the controversy at an early date. This Court had clearly directed that the Family Court will insist on the husband not only depositing the to and from travel expenses for the wife and her companion but also an amount sufficient for their stay in Bombay on each visit. Even according to the Family Court the second class fare from Bombay Central to Delhi by mail train and from Delhi to Ghaziabad comes to Rs. 326 + Rs. 12 i.e. Rs. 338 for two persons. The Family Court, therefore, awarded Rs. 700 by way of expenses and added that she will be paid an additional amount of Rs. 150 per day if she has to stay for more than one day. To say the least, the Family Court has been far from just to the wife who was required to travel a long distance from Ghaziabad to Bombay Central to defend herself. Nothing has been allowed by way of transport charges and lodging and boarding charges even if she has not to stay for an additional day in Bombay. Where does the Family Court expect her to put up in Bombay after a 24 hour journey ? If the case is adjourned it seems the Family Court expects her to leave on the same day post-haste for Delhi. Even on reaching Bombay after a tiring journey of 24 hours she is not provided any expense by way of hotel charges, lodge and board, for the day. Does the Family Court expect her to rush to Court from the station and rush back to station from the Court on the proceedings being adjourned for the day? Even the meagre payment of Rs. 150 is made available to her if she has to stay in Bombay for an additional day. The Family Court, with respect, also did not realise that it would be impossible to find a modest living place for two for Rs. 150 per day in a

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costly city like Bombay, leave aside the expense for meals, etc. It seems to us that the interim order passed by the Family Court is, for reasons best known to it, highly biased. This is more so because it had before it this Court's order granting Rs. 2500 by way of expenses to visit Bombay which provided sufficient guideline for determining the quantum of expenses to be awarded. Besides, the Family Court has not awarded any amount to meet the cost of the proceedings on the specious plea that she is gainfully employed. To say the least the order is far from satisfactory and has resulted in gross denial of justice. The order made it impossible for the wife to meet the expenses of frequent visits to Bombay and facilitated an ex-parte divorce decree in favour of the husband.

In the result we allow the appeal and set aside the impugned order dated 20th April, 1991 passed in M.J. Petition No. 146 of 1989. As the said order of 20th April, 1991 made it impossible for the wife to contest the divorce petition in the Family Court and facilitated an ex-parte divorce decree in favour of the husband, in the extraordinary and peculiar circumstances of this case, we allow the appeal and set aside the ex-parte divorce decree.

Having regard to the fact that the husband is a high ranking railway officer who would be entitled to travel facilities, we think in the backdrop of events that have taken place, it would be expedient in the interest of justice of transfer the proceedings from the Family Court, Bombay, to the District Court, Ghaziabad, for disposal in accordance with law. The restored divorce proceedings will stand transferred to the District Court, Ghaziabad. The Family Court, Bombay will forthwith transmit the record and proceedings, inclusive of pending interim applications including the one in which the impugned order of 20th April, 1991 came to be passed, to the District Court, Ghaziabad, for disposal in accordance with law. The respondent-husband will pay the cost of the present three proceedings which we quantify at Rs. 5,000 (Rupees five thousand only).

T.N.A.

Appeal allowed.

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