

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4049 OF 2006

HARI OM BAJPAYEE

..... APPELLANT

VERSUS

ANJOO BAJPAYEE

..... RESPONDENT

ORDER

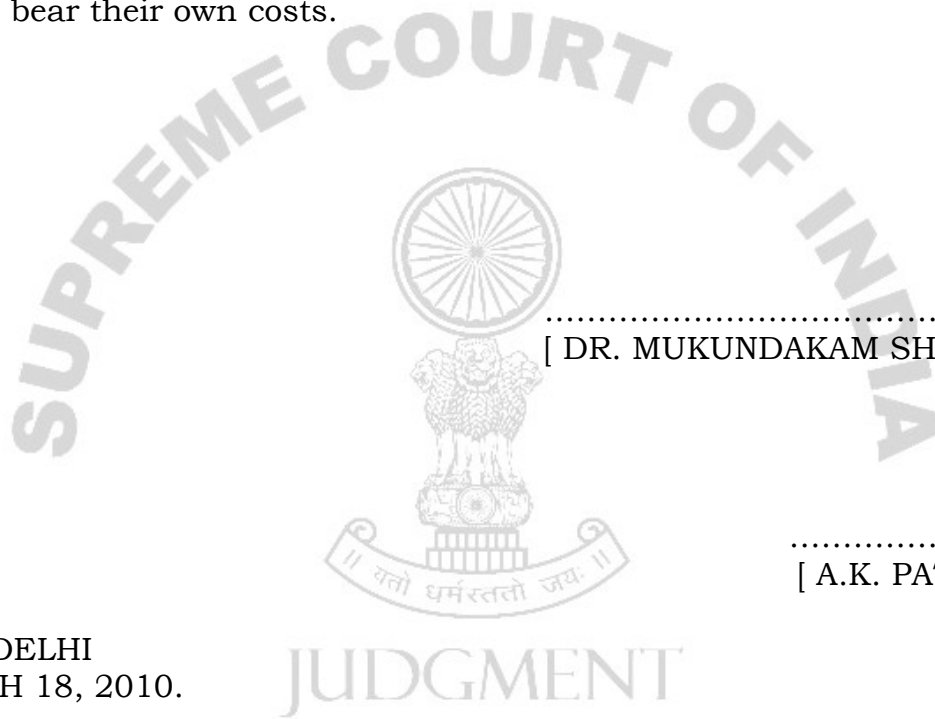
1. Heard the learned counsel appearing for the appellant.
2. In this appeal, the appellant has challenged the validity of the order dated 8th October, 2004, passed by the High Court of Judicature at Allahabad whereby the High Court allowed the appeal of the respondent.
3. The respondent was married to the appellant on 11.03.1991 according to Hindu rites. The parties herein lived together only for a few days after which they separated. Out of the wedlock, a girl child was born to them on 03.12.1993. The appellant had filed a suit for dissolution of the marriage seeking for grant of a decree of divorce against the respondent on the ground of cruelty. The said suit was decreed *ex parte* on 14.07.2000 by the

Family Court, Kanpur Nagar. Feeling aggrieved by the said judgment, the respondent filed an appeal in the Allahabad High Court. It, however, transpires from the record that before the filing of the appeal and after the decree was granted by the trial Court, the appellant had re-married and is now living with his second wife.

4. The appeal which was filed by the respondent came up for hearing before the Division Bench of the Allahabad High Court which by its judgment and order dated 8th October, 2004, held that the findings recorded by the Family Judge, Kanpur Nagar are against the evidence on record and are illegal and erroneous and therefore unsustainable in law. Consequently, the findings of the Family Judge decreeing the suit were set aside. The appeal thus was allowed by setting aside the judgment and decree passed by the trial Court.
5. Being aggrieved by the said judgment of the High Court, the present appeal was filed by the appellant-husband. During the pendency of the present appeal in this Court, an application was preferred by the respondent-wife claiming maintenance for herself and the minor girl and also for covering up the expenses of the litigation. This Court by an order dated 03.03.2008, after hearing the counsel appearing for the parties, passed an order that an amount of Rs. 2,500/- per month shall be paid by the appellant-husband to the respondent-wife and the daughter as an interim relief of maintenance. Counsel appearing for the appellant has stated before us that the aforesaid amount in terms of the directions of this Court was paid for some time only.

6. We have today heard the learned counsel appearing for the appellant on the merits of the appeal. We have also perused the records. After going through the same, we find that the High Court had considered the entire records and only after being fully satisfied, passed an order for setting aside the decree passed by the Family Court. The appellant has made an allegation of cruelty against the respondent-wife. The High Court after going through the records of the case has held that the respondent-husband therein had failed to prove the aforesaid allegation of cruelty by the wife. Significantly, neither any member of the family nor any relative was produced by the appellant-husband to prove the aforesaid allegation. We, therefore, find no reason to interfere with the findings recorded by the High Court. We, accordingly, dismiss the appeal. Consequently, the suit filed by the appellant is also dismissed. Considering the facts and circumstances of the case and also being conscious of the escalating costs of living, however, we deem it appropriate to direct that the appellant shall pay in terms of an interim direction issued by this Court on 03.03.2008 a sum of Rs. 2500/- per month to the respondent wife and the daughter towards their maintenance from 01.03.2008 till 18.02.2010. The appellant shall in terms of the present Order pay a sum of Rs 3500/- per month for the maintenance of both of them with effect from 01.03.2010. We, however, wish to make it clear that the amount already paid by the appellant during the aforesaid period shall be excluded.

7. The arrear amount shall be paid within a period of six weeks from today and the amount in terms of this order shall be paid prospectively on the 10th day of each month. In case, the amount is not paid in terms of this order, the respondent-wife shall be at liberty to have the same executed in accordance with law.
8. The appeal stands dismissed in terms of the aforesaid order leaving the parties to bear their own costs.



..... J
[DR. MUKUNDAKAM SHARMA]

..... J
[A.K. PATNAIK]

NEW DELHI
MARCH 18, 2010.