

Mis-Interpretation by Sub-ordinate Judiciary

We are all humans and nobody can do away with mistakes. The same also happens with the judiciary either higher or lower. Everybody person has his own understanding of law but again we are bound to follow the interpretation of higher judiciary. Surely, interpretations of higher judiciary, most specifically the Supreme Court, are well founded on legality, rationality indeed it takes into account and covers each and every concerned area of law which is required for social justice. Anyways, I am not concerned here with the authenticity of any judgment but only with the fact of mistake which might have cost the litigant another two-three years along with injustice.

I was going through some cases on Sec 125 CrPC wherein I found several judgments authenticating the fact that even if the divorce is done with mutual consent, the wife retains the right with her to file petition for maintenance u/s 125 CrPC. This was a good knowledge for me since the section clearly excludes the wife to claim for maintenance who is living separately with mutual consent. Explanation to the section also says that the wife includes the person who has been divorced but not remarried. Surely, the first impression to anyone, after reading the said section, will convey that if there is a divorce under mutual consent the wife shall not be entitled for maintenance u/s 125 CrPC. May be, the legislators also wanted to say the same thing but they left some lacunae which gives us, the lawyers as well as the judiciary, to interpret laws in other way. The way the Supreme Court as well as other High Courts interpreted the said section keeping in mind the social justice and definitely, with rational thinking was awesome. I was truly impressed by the said decision.

The said sub-section says ***“No wife shall be entitled to receive an allowance from her husband under this Section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”***

I have reproduced the extract of the said judgment of the Apex Court which was pronounced in ***Smt. Vanamala vs Shri H.M.Ranganatha Bhatta 1995 SCC (5) 299*** : *“On a plain reading of this Section it seems fairly clear that the expression ‘wife’ in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the women to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. In our view, therefore, this contention is not well founded.”*

But again, the Rajasthan High Court in its recent judgment applied the section in its literal meaning which came out to be inconsistency with the precedent set by the Apex Court and also therefore, the litigants would have suffered a lot which becomes immeasurable.

The said judgment in ***Shashi Alias Mala vs State And Anr.RLW 2007 (1) Raj 672*** runs as :
"A holistic reading of the provisions would clearly reveal that in case a wife is divorced on the ground of mutual consent, then she is disentitled from claiming any maintenance or interim maintenance and expenses of proceedings from the husband. Unfortunately the said provision has not been noticed by the learned Magistrate while passing the order dated 1.2.02. In the said order he has observed that a divorce on the ground of mutual consent would not disentitle the wife from claiming the maintenance. Such an observation is clearly against the provisions of Section 125(4) of the Code. However, as the divorce decree on the ground of mutual consent is under challenge, it is for the learned Magistrate to consider the effect of such challenge upon the maintainability or non-maintainability of the application under Section 125 of the Code."

This kind of situation must have happened several times in fact I too had posted similar blog earlier too but what I believe that the higher judiciary must take extra caution while delivering judgments since for majority of litigants, the same is the last resort. Litigants have other remedies available with them apart from revision or appeal yet this costs them unnecessary harassment or may be injustice.

Manish Singh, Advocate (Corporate)
Delhi