

Neutral Citation No. - 2025:AHC:87646-DB

AFR

Court No. - 39

Case :- FIRST APPEAL No. - 1116 of 2024

Appellant :- [REDACTED]

Respondent :- [REDACTED]

Counsel for Appellant :- Ambrish Kumar Pandey, Lok Nath Shukla

Counsel for Respondent :- Gyanendra Singh

Judgment reserved on:- 21st May, 2025

Hon'ble Arindam Sinha, J.

Hon'ble Avnish Saxena, J.

(Per Hon'ble Arindam Sinha, J.)

1. Mr. Shalvin, learned advocate appears on behalf of appellant and on 15th May, 2025, with reference to earlier order dated 16th April, 2025, had handed up demand draft no.026265 dated 23rd April, 2025 issued by Central Bank of India in favour of respondent, for Rs.1 lac. He submitted, Rs. 6 lacs was earlier paid. That he is ready to proceed with hearing of the appeal. Mr. Diwakar Tiwari assisted by Mr. Gyanendra Singh, learned advocates appearing on behalf of respondent, on query had confirmed, Rs. 6 lacs was earlier paid to his client by appellant.

2. The appeal stands preferred against judgment dated 31st March, 2022 directing appellant to pay Rs.10,54,364/- in lieu of returning '*stree dhan*' articles. We have ascertained, the marriage stood subsequently dissolved on judgment dated 1st May, 2023 of the Family Court. Prior to that respondent had filed application dated 13th May, 2015 and obtained order dated 11th August, 2017 directing payment of maintenance under section 125 in Code of Criminal Procedure, 1973. Appellant earlier paid

Rs. 6 lacs and had handed up said demand draft for payment of another Rs. 1 lac.

3. Submission on behalf of appellant is, impugned judgment was made invoking provision in section 27 of Hindu Marriage Act, 1955. It allows for inclusion of such provisions in the decree with respect to joint property, presented at or about the time of marriage. There cannot be an independent order made under the provision. The marriage stood dissolved on judgment dated 1st May, 2023. There was no direction for maintenance nor any direction regarding '*stree dhan*'. Such direction could only be made in decree passed in the proceeding for dissolution of the marriage but not otherwise.

4. Mr. Shalvin relies on view taken by a Division Bench in the High Court of Chhattisgarh on **judgment dated 12th September, 2017** reported in **2018 AIR Chh 40 (Babita @ Gyatri V/s ModPrasad @ Pintu)**, paragraph 7 (Lawsuit print). Said paragraph is reproduced below.

*"[7] The expression used in the above quoted provision contained in Section 27 of the Act, 1955 would explicit, on a bare reading, that the Court may make provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife. **When any matrimonial proceeding under the Act is not decided between the parties, the provision does not clothe the Court with jurisdiction to entertain an independent application under Section 27 of the Act without there being any further proceeding under the Act as contemplated in Section 9 to 13 and 13-A and 13-B of the Act, 1955. The provision has been made with an intent to avoid multiplicity of litigation and to entitle the wife to move application for return of Streedhan properties in the same proceedings, in which a matrimonial dispute has been brought to the Court for adjudication. However, Section 27 itself has not been considered to be a separate and independent matrimonial proceeding so as to entitle the Court to entertain such independent application under Section 27 of the Act, 1955.**"*

(emphasis supplied)

Mr. Shalvin submits further, the Family Court, in impugned judgment, had recorded that the incident of respondent being thrown out of the house happened on 24th November, 2014, when allegedly his client forcibly snatched jewellery, beat and tortured and threw her out of the house. Respondent, in her written statement, had attached photocopy of FIR Crime no.886/ 2014 under sections 498A, 326B of Indian Penal Code, 1860 and section 3/4 of Dowry Prohibition Act, 1961, in which his client is named. However, respondent clearly admitted in sixth line from bottom of page one of her deposition in cross-examination that at the time of alleged incident, his client was not present in Karwi but was in Bombay, at his job. The application for return of alleged '*stree dhan*' was fictitious. It ought to have been dismissed.

5. Mr. Diwakar Tiwari submits, his client had duly proved the documents disclosed, to show that she had '*stree dhan*' given to her at the time of marriage and subsequently, she was turned out of the marital home wearing only the clothes she had on. With regard to record of appellant's argument before the Family Court, of the incident happened on 24th November, 2014, same was dealt with in last paragraph of impugned judgment. On query he is unable to point out, who was found by the Family Court to have taken away respondent's jewellery and thrown her out of the house on 24th November, 2014. He submits further, appellant had filed for review of impugned judgment but was unsuccessful. Not having preferred appeal from rejection of his review, he is estopped from prosecuting the appeal. So much so, his client initiated execution proceeding and there was part recovery, also not challenged by appellant.

6. It appears from impugned judgment, jewellery receipts tendered by respondent were photocopies. There is no indication as to why they were accepted as secondary evidence. Also, impugned judgment does say that in the application, appellant had been accused that on 24th November, 2014 he had forcibly snatched jewellery, as mentioned, from respondent, beat, tortured and threw her out of the house. Here we note, in FIR dated

24th November, 2014 allegation was of conspiracy. Seven persons including appellant were named as accused. Respondent in her written statement herself attached photocopy of FIR Crime no.886 of 2014 under provisions in Indian Penal Code, 1860 and Dowry Prohibition Act, 1961, naming appellant. The learned Judge went on to record appellant's argument based on respondent's admission in cross-examination that, he was not present when alleged incident of 24th November, 2014 took place. Yet, the learned Judge did not deal with this aspect of appellant's argument, in impugned judgment. The learned Judge however said, appellant had not refuted the receipts of the jewellery issued by Neelam Jewellers and hence, it is justified to admit the price of the jewellery mentioned in the receipts. Here we must observe, as aforesaid, the receipts were photocopies. Respondent's case was, they were receipts for jewellery purchased by her side and given to her as '*stree dhan*'. Appellant, therefore, could have had no knowledge of the transactions reflected in the copy receipts, for him to be saddled with admission, required as proof to act upon the copy documents. A document can only be proved by the maker of it. It may also be proved by someone receiving an original document, who testifies that he witnessed the maker of it, making it and handing it over to the witness. As aforesaid, there is no indication why secondary evidence was admitted. On tender of the photocopies and omission to object, inference of admission was drawn, to rely upon the documents. That would only prove purchase. Possession of the '*stree dhan*' jewellery, still was needed to be established.

7. The learned single Judge appears to have accepted the allegations of appellant forcibly taking away the jewellery, beating up, torture and throwing respondent out of the house because complaint was lodged by her and criminal case is pending before the Court at Banda. It was an oblique way of not directly dealing appellant's contention that respondent had admitted in cross-examination, of him not being present at the time of incident.

8. Besides the factual matrix, there is also the question of law that had been raised before the Family Court. It was that an independent proceeding under section 27 could not be initiated to result in a decree. We respectfully agree with view taken in **Babita @ Gyatri** (supra) that section 27 has not been considered to be a separate and independent matrimonial proceeding so as to entitle the Court to entertain such independent application. The Division Bench went on to refer to a judgment of the Supreme Court in **Balkrishna Ramchandra Kadam vs. Sangeeta Balkrishna Kadam** reported in **AIR 1997 SC 3562** to say, the Apex Court had said, section 27 provides alternative remedy to the wife so that she can recover the property, which is covered by the section. Accordingly we hold, return of '*stree dhan*' has to be an issue, to be determined at trial in a proceeding under the Act and not independently on application made under section 27.

9. We would like to add, section 25 allows for a spouse to, subsequent to decree for dissolution of marriage, apply for direction on maintenance, either by monthly or gross sum. Section 27 empowers the Court passing decree to include provisions in it with respect to any property presented, at or about the time of marriage, which may belong jointly to the parties. We see that there was no direction in respect of property, joint or otherwise, made in the judgment and decree dated 1st May, 2023 dissolving the marriage.

10. Impugned judgment is set aside in appeal. On 15th May, 2025, the draft was handed over to Mr. Singh on acknowledgement made by him denoting receipt thereof. His client may appropriate same in adjustment of her claim for maintenance, emanating from aforesaid order dated 11th August, 2017. She thus has received aggregate Rs. 7 lacs. Her claim can only be till on or before date of judgment dissolving the marriage i.e. 1st May, 2023. Photocopies of the instrument were signed by Mr. Singh. One was kept in the record and the other handed over to Mr. Shalvin, who had submitted, in addition to aggregate Rs. 7 lacs,

respondent recovered Rs. 2,10,000/- by part execution of impugned judgment. Said sum be also adjusted against respondent's claim pursuant to said maintenance order dated 11th August, 2017 made under section 125 in Code of Criminal Procedure, 1973. We direct accordingly, in exercise of our appellate power under rule 33 in order XLI, Code of Civil Procedure, 1908.

11. Before parting with the case we are required to deal with respondent's contention that appellant was unsuccessful in seeking review of impugned judgment as well as had not preferred appeal against the execution proceeding initiated by her. While grounds of review stand provided in section 114 and the procedure in order XLVII, appeal is statutory right, conferred by section 96 and provided for in order XLI. So far as the execution is concerned, appellant having succeeded in the appeal, the execution case must be dropped, as pursuant to impugned order passed without jurisdiction, being a nullity. The executing Court will act accordingly on such question arisen on adjudication of the appeal, to be determined by the executing Court, under section 47.

12. The appeal is **allowed** and disposed of.

Judgment Date :- 27th May, 2025

Gurpreet Singh

(Arindam Sinha, J.)

(Avnish Saxena, J.)