

The appellate Judge found that sufficient cause was not proved for the delay in presenting the appeal and he dismissed the appeal with all costs on the appellant following *Karsondas Dharamsey v. Bai Gungabai*⁽¹⁾.

Defendant 1 preferred a further appeal and he having died pending the appeal his legal representatives were brought on the record.

B. R. Desai for the appellants (legal representatives of defendant 1).

G. S. Rao for respondent 3 (defendant 2).

SCOTT, C. J. :—We cannot say that as a matter of law there was sufficient cause for extending the time under section 5, and we do not think there was any objection to the learned Judge entertaining the question after he had provisionally admitted the appeal to the file in the absence of the respondent. We are of opinion that this is a second appeal and not a first appeal, because it is an appeal from a decree of an appellate Court. We dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

⁽¹⁾ (1905) 30 Bom. 329.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

GOOLBAI BEHRAMSHA HARVER, PLAINTIFF, v. BEHRAMSHA D.
HARVER, DEFENDANT.*

1913.

July 4.

Parsis—Maintenance—The Parsi Marriage and Divorce Act (XV of 1865), section 31—Suit by a Parsi wife for permanent maintenance without claim for judicial separation—The High Court on its Original Side has no jurisdiction in such suit to pass an order for maintenance.

The Bombay High Court on its Original Side has no jurisdiction in a suit between a Parsi husband and a Parsi wife to make an order for permanent

* Suit No. 105 of 1913.

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alimony whether accompanied or not by any order for judicial separation. The only way in which a Parsi wife is entitled to get a decree for permanent alimony is to file a petition in the Parsi Matrimonial Court and there establish facts coming within section 31 of the Parsi Marriage and Divorce Act.

THE plaintiff, who was the wife of the defendant, filed this suit alleging in the plaint (*inter alia*) that the defendant had treated her with such cruelty as to render it impossible for her to live with him and claiming (*inter alia*) that the defendant might be decreed to make proper provision for the maintenance and residence of the plaintiff.

Wadia with *Moos*, for the plaintiff.

Kanga with *Davar*, for the defendant.

MACLEOD, J. :—The plaintiff, a Parsi married woman, has filed this suit for maintenance alleging that her husband has treated her with such cruelty as to render it improper that she should be compelled to live with him ; and that, therefore, in law that amounts to desertion, or a failure on the part of the husband to fulfill the legal liability entailed upon him to maintain his wife. The question arises whether she is entitled to file a suit on the Original Side of the Court for maintenance. It appears that in England, when the Ecclesiastical Courts had exclusive jurisdiction in Matrimonial matters, those Courts only granted maintenance or alimony when the order was coupled with a decree for what was equivalent to the present decree for judicial separation. There is no record of any Ecclesiastical Court having given a decree simply for maintenance on the ground that the husband had failed to maintain his wife. The powers of the Ecclesiastical Courts were handed over to the High Court in the Probate and Divorce Division by the Matrimonial Causes Acts, and no authority has been cited to me to show that the High Court, either under or apart from the divorce jurisdiction, has jurisdiction to pass orders for main-

tenance in a suit by a wife against her husband on the ground that the husband has declined to maintain his wife. In England the Justices have now summary powers to order a husband to maintain his wife if she can prove that her husband has deserted her, and in case the Justices refuse to order maintenance there can be a reference to the High Court, which I presume would be made to the High Court in its Probate and Divorce Jurisdiction.

In the case of Parsis there is a special Act which establishes a special Court for the purpose of deciding matrimonial disputes amongst the Parsis; and though there is apparently no provision by which a Parsi wife can apply to the Parsi Matrimonial Court for an order of maintenance by itself on the ground of desertion, she can on certain grounds claim that she is entitled to demand judicial separation, and on the Court granting a decree for judicial separation, the Court can order that the husband provide her with permanent alimony.

Now, the plaintiff in this case in her plaint alleged facts which come within section 31 of the Parsi Matrimonial Act, and if she could establish those facts she would be entitled in the Parsi Matrimonial Court to a decree for judicial separation. She comes to this Court to establish those very facts on the ground that she is not bound to ask for a judicial separation, but is entitled to get from this Court on its Original Side an order for permanent alimony. It seems to me clear that this Court has no jurisdiction in a suit between a Parsi husband and a Parsi wife to make an order for permanent alimony unaccompanied by any order for judicial separation, which admittedly by itself this Court has no jurisdiction to grant.

There is no question about a denial of justice, because the plaintiff can file her petition in the Parsi Matri-

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monial Court and there establish the very facts which she relies upon in her present plaint. Apparently she has some objection to applying for a decree for judicial separation, but as I pointed out, as far as I can see, in the Matrimonial Courts, both in England and India, this is the only way by which a wife is entitled to get a decree for permanent alimony.

I may add that it appears that under the Parsi Matrimonial Act such questions of fact as are alleged in this case are questions which the Act specifically directs should be tried by the Parsi delegates in the Parsi Matrimonial Court, and not by the Judge.

Attorneys for the plaintiff : *Messrs. Payne & Co.*

Attorneys for the defendant : *Messrs. Ardeshir, Hormusji, Dinshaw & Co.*

H. S. C.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1914.
 March 16. R. D. SETHNA, OFFICIAL ASSIGNEE AND ASSIGNEE OF THE ESTATE AND EFFECTS OF WILMOT HARRISON (APPELLANT AND DEFENDANT), v. GRACE EDITH HEMINGWAY (RESPONDENT AND PLAINTIFF).^o

Indian Succession Act (X of 1865), section 190—Letters of Administration obtained by plaintiff after suit filed but before hearing and decree—Transfer of Property Act (IV of 1882), section 130—Order to banker to pay money held to the credit of customer, effect of when acted on—Stamp Act (II of 1899), section 36—Resulting trust.

One W had a deposit of Rs. 10,500 in a bank under a deposit receipt which fell due on the 7th of August 1912 W had a grand-nephew, H, to whom he wished to transfer the money, meaning that H should have the benefit of the money, but not intending that he should be able to make away with the money in W's life-time or to draw the interest without making due provision

^o Appeal No. 62 of 1913 : Suit No. 699 of 1913.