

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 24th April, 2008

versus

\$ SUNITA SEHGAL Respondent
^ Through : Mr. Suresh Sharma, Advocate

CORAM:
***HON'BLE MS. JUSTICE VEENA BIRBAL**

1. Whether the reporters of local papers may be allowed to see the judgment?
Yes
2. Whether the judgment be referred to the reporter or not?
Yes
3. Whether the judgment should be reported in the digest?
Yes

Veena Birbal, J. (ORAL)

1. By way of present petition, petitioner/husband has challenged impugned order dated 22.02.2008 passed by learned ADJ, Delhi on an application of respondent/wife under Section 24 of HMA, in the petition for annulment of marriage of petitioner/husband, wherein interim maintenance @ Rs. 3200/- per month and litigation expenses of Rs. 12,000/- have been granted to her.

2. Briefly, the facts leading to the filing of present petition are that petitioner/husband is aged about 77 years. He got married with respondent on 28.12.2006 according to Hindu rights and customs. As per petitioner, it is his third marriage. Petitioner has alleged that his first wife died in the year 1996 and second wife died in the year 2002. The status of respondent/wife was widow at the time of marrying petitioner. The allegations of the petitioner are that respondent/wife had concealed factum of having children from the previous husband while marrying the petitioner and on that ground he has filed petition under Section 12 of Hindu Marriage Act seeking annulment of marriage.

3. In the aforesaid petition, respondent/wife moved an application under Section 24 of Hindu Marriage Act for the grant of maintenance pendente lite and litigation expenses. Respondent/wife has denied that she made concealment as is alleged. According to her, husband is getting a pension of Rs. 12,000/- per month. He also got handsome amount at the time of retirement. She has alleged that he is indulged in money lending business and getting an interest of Rs. 20,000/- per

month and is also working as a property dealer with one Mr. Ravinder Vohra and is earning Rs. 15,000/- per month from the said business. He has also got various FDR's in his name and has got jewellery worth lakhs. As per respondent/wife, petitioner is earning Rs. 40,000/- per month in all. By way of application under Section 24 of Hindu Marriage Act, she had claimed Rs. 15,000/- per month towards maintenance and Rs. 20,000/- towards litigation expenses. Petitioner/husband has opposed the said application by filing reply wherein he has alleged that he is only getting pension of Rs. 6,700/- per month and he is not having any other source of income as is alleged by wife. He has alleged that respondent/wife has got sufficient money with her by way of share of her deceased husband and is not entitled for any maintenance.

4. Perusal of record shows that in order to determine the financial capacity of the parties, learned ADJ has also examined both the parties on oath. Thereafter, impugned order is passed granting Rs. 3200/- per month to respondent/wife towards maintenance and Rs. 12000/- as litigation expenses as is stated above.

5. Counsel for petitioner has contended that learned ADJ has arbitrarily fixed the maintenance of respondent/wife without considering the financial status of respondent/wife. It is further contended that learned ADJ has passed impugned order without considering the conduct of respondent/wife as it is alleged that consent of petitioner/husband for marriage was obtained by concealing material fact concerning the respondent, i.e. she was having three children from the previous wedlock. It is prayed that the impugned order granting maintenance pendente lite to respondent/wife is an illegal order and the same be kindly set aside.

6. On the other hand, counsel for respondent/wife has contended that impugned order is legal and valid in all respects and does not call for any interference by this Court.

7. I have considered the submissions made and perused the record.

8. Perusal of record shows that no material has been placed on record by petitioner/husband to substantiate the alleged earning of wife. Respondent/wife has categorically stated

having no source of income in an application under Section 24 of HMA. She has also made a statement on oath before Learned ADJ wherein she has stated that she is unemployed and has got no source of income, no movable or immovable property or bank account in her name. Under the circumstances, Learned ADJ has rightly not considered the alleged earning of respondent/wife. Learned ADJ has also not believed the bald assertion of the wife that petitioner/husband is doing property dealing/money lending business as is alleged. There is a statement on oath of petitioner/husband wherein he has stated that he is drawing pension of Rs. 6,833/- per month. He has also got a DDA flat in his name. As per his statement, he has also got three FDR's in three different banks for the value of Rs. 50,000/-, Rs. 60,000/- and Rs. 80,000/-. The applicant/wife is also living in the house of petitioner/husband. During course of arguments, it is stated that the petitioner/husband is getting interest @ 9% p.a. on these FDR's. Under the circumstances, it cannot be said that the maintenance amount of Rs. 3,200/- awarded to applicant/wife is on higher side as is alleged. The cost of living has gone very high. Considering the status of the parties and the material on record, Learned ADJ has awarded

maintenance to respondent/wife. Thus, the contention that maintenance is arbitrarily fixed has no force and is rejected.

9. As regards the contention of petitioner/husband about conduct of wife wherein it is alleged that she concealed factum of having children from previous husband at the time of marriage, the same is a subject matter of evidence and cannot be gone into at the stage of deciding application for the grant of interim maintenance. In that regard reference may be made to judgment in ***Amar Singh v. Smt. Vimlesh & Anr.***, reported in 64 (1996) DLT 426, wherein it is held as under:

“It is needless to say that proceedings under Section 24 of the Act are intended to be summary proceedings in nature and it would not be appropriate at this stage to decide if the spouse making the application under Section 24 is or is not entitled to the said payment because of the misconduct or commission of matrimonial offence by him or her. A plain reading of provisions of Section 24 shows that the only condition precedent for grant of maintenance pendente lite to any of the parties sufficient for his or her support and to provide him or her necessary wherewithal to enable him or her to seek appropriate relief in proceedings under the Act.”

In ***Mrs. Bijal Parag Dave v. Mr. Parag Labhe Shankar Dave***, AIR 1999 Bom. 237, it is held that the proceedings under Section 24 of Hindu Marriage Act are summary in nature and at

that stage court cannot embark upon enquiry about conduct of the spouse. Otherwise the very object of enacting Section 24 of Hindu Marriage Act will be defeated.

In ***Surendra Kumar Asthana v. Smt. Kamlesh Asthana***, reported in AIR 1974 All 110, it is held that the grant of relief under Section 24 is not dependant either on the merits of the petition or on the decision of any particular issue or issues in the case or upon the ultimate success or failure of the petition.

10. In view of above discussion, learned ADJ has rightly not considered the material allegation concerning alleged conduct of wife as the same pertains to merits of the case and is to be seen at the final stage of the case after recording the evidence of parties.

11. Considering the totality of facts and circumstances, there does not appear any legal infirmity in the conclusion drawn by learned ADJ in granting maintenance pendente lite and litigation expenses to the respondent/wife. There is no error of

jurisdiction or illegality in the impugned order warranting interference by this Court.

12. In view of the above discussion, the present petition stands dismissed with no order as to costs.

VEENA BIRBAL, J

APRIL 24, 2008
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