

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM (M) 1274/2007 & CM No. 12773/2007

Dated 25th March, 2008

MR. AMAR JOT SINGH

Petitioner

Through: Mr. A.K. Sharma, Advocate

Versus

HARVINDER KAUR

Respondent

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

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

Veena Birbal, J. (Oral)

By the present petition, petitioner has challenged order dated 16.07.2007 by which learned ADJ has awarded maintenance pendente lite to the respondent/wife @ Rs. 3,000/- per month from date of application under Section 24 of HMA till the disposal of divorce petition. A sum of Rs. 3,000/- has been awarded to her towards litigation expenses.

The grievance of petitioner is that petitioner/husband is earning only Rs. 3,000/- per month while working as a Lab Assistant, in a Nursing Home which is in a village at Hoshiarpur (Punjab). It is submitted that while disposing of the maintenance application, learned ADJ has observed that petitioner has not filed salary certificate to show that he is earning Rs. 3,000/- per month and has disbelieved him. It is contended that the salary certificate was placed on record by petitioner and it has escaped the attention of learned ADJ. It is submitted that as the maintenance awarded to wife is without considering the relevant document i.e. salary certificate, the impugned order may be set aside.

Notice of aforesaid petition was issued to respondent. But she has failed to appear despite service.

I have considered the submission made and perused the record.

The proper remedy for the petitioner in this case was to file review application before the learned ADJ. However, petitioner has not done so. As noted above, respondent/wife has failed to appear despite service. The contention of the petitioner is that salary certificate was filed but the same has not been taken into consideration by the court while disposing of the maintenance application of respondent/wife. The

contention of filing of salary certificate is contrary to the record. In any event, without going into this controversy and especially when respondent has failed to appear, I consider it appropriate that the learned ADJ may look into the matter afresh after considering the salary certificate of the petitioner if the same is on record. Learned ADJ will be at liberty to pass any order on application under Section 24 of HMA of respondent/wife for the grant of maintenance pendent lite. It may be mentioned that any observation made herein will have no bearing on the fresh order which will be passed by the learned ADJ.

It is stated that the next date of hearing in the matter is 28th March, 2008. Petitioner shall make the payment of litigation expenses to respondent/wife as is awarded by the learned ADJ on the said date.

Petition stands disposed of accordingly.

Veena Birbal, J.

March 25, 2008
kks