

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

+ CRP No.110/2009 & CM No.11182/2009

Date of Decision: 8th April, 2010

NARENDRA PAL SINGH Revisionist
Through: Ms. Pushpa Kumari
Mishra, Advocate.
versus

HARPREET KAUR Respondent
Through: None.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J. (Oral)

CRP No. 110/2009

1. Vide this revision petition, petitioner-husband has challenged the order of the Trial Court dated 28th May, 2009, whereby his application for review of the order dated 11th September, 2008 passed on an application filed by respondent under

Section 24 of the Hindu Marriage Act (hereinafter referred to as the 'Act') was dismissed.

2. Learned counsel for the respondent has submitted that no revision petition lies against the impugned order in view of findings of the Supreme Court in '*Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers & Ors.*', AIR 2003 SC 2434 and only remedy available to the petitioner is to invoke Article 227 of the Constitution of India.

3. Learned counsel for the petitioner has submitted that an order passed on an application under Section 24 of the Act is final in nature and therefore, revision petition lies under Section 115 of the Code of Civil Procedure. Her submissions are devoid of merits.

4. Under Section 24 of the Act, any of the parties to the petition can move the Court for grant of interim maintenance till final disposal of the petition on merits. Such applications are decided on the basis of documentary evidence as well as oral submissions made by their respective counsel or the parties in person, as the case may be. Court can award permanent maintenance only on an application filed under Section 25 of the Act

at the time of final disposal of the divorce petition on merits.

5. Vide order dated 11th September, 2008, Trial Court granted maintenance *pendente lite* @ Rs.2,000/- per month to respondent from the date of filing of the application i.e. 10th April, 2008 besides litigation expenses of Rs.5,000/-. It is pertinent that order dated 11th September, 2008 is not under challenge in this appeal.

6. In ***Shiv Shakti Coop. Housing Society's*** case (*supra*), Supreme Court has observed as follows:-

“32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is 'yes' then the revision is maintainable. Suit on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act and Section 32(2) (i) of the Amendment Act. While in the former, there was

clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation.”

7. Thus, it is clear that cardinal principle of law is that Court cannot read anything into a statutory provision. It is plain and unambiguous. A Statute is a creation of the Legislature and unambiguity in a Statute is the determinative factor of Legislative intent.

8. Determination of maintenance *pendente lite* is essentially an interim measure which generally does not call for any interference from this Court under Section 115 of the Code of Civil Procedure, specially after amendments having been carried out in the said Section. While referring *Shiv Shakti Coop. Housing Society's* case (*supra*), this Court in “*Annurita Vohra Vs. Sandeep Vohra*’, 2004 (110) DLT Delhi 546, has observed:-

“5. The determination of maintenance *pendente lite* is essentially an interim measure which

normally does not call for interference under Section 115 of the Code of Civil Procedure, especially after the amendments carried out in the Code of Civil Procedure. On an understanding of the law as enunciated in *Shiv Shakti Coop. Housing Society, Nagpur vs. Swaraj Developers and Others.*, (2003) 6 SCC 659, no scope for discussion on this question remains.

9. Learned counsel for the petitioner has referred to '*Smt. Pushpa @ Pooja @ Bhawna Vs. State of U.P.*', *AIR 2005 Allahabad 187*, to emphasize that a revision petition under Section 115 CPC, challenging the order passed under Section 24 of the Act is maintainable. However, since this Court has repeatedly held that an order under Section 24 of the Act is an interlocutory order and so has been held by the Supreme Court. This judgment therefore is of no help to the petitioner. Reference is also made to '*Rajat Taneja Vs. Harmeeta Singh*' *142 2007 DLT 377*.

10. Hence, this revision petition against impugned order of the Trial Court dated 28th May, 2009 is not maintainable and is liable to be dismissed.

11. Coming to the merits of the case, as discussed above,

order passed by the Trial Court on an application under Section 24 of the Act has not been challenged before this Court. While deciding the review petition, Trial Court also observed that the documents, which were filed along with review petition and were made basis for the review of the order dated 11th September, 2008, were never produced before the Court at the relevant stage though, all those documents were available with the petitioner before filing of the application for maintenance. It is of importance to note that before deciding the application under Section 24 of the Act, Trial Court did examine the petitioner on oath under Order 10 Rule 2 CPC.

12. After taking into consideration the additional documents placed on record along with review petition, Trial Court rightly observed that none of the documents placed along with the review petition including the bank pass book could convince the Court that respondent is employed or has any source of income.

13. Hence, even on merits, no interference is required in the impugned order of the Trial Court, whereby it dismissed the review petition filed by the petitioner.

CM No.11182/2009 (for stay)

14. With dismissal of the revision petition, this application has become infructuous. It is accordingly disposed of.

ARUNA SURESH, J.

APRIL 08, 2010

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