

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 393 of 2023

Appellant :- Arvind Kumar Yadav

Respondent :- Kirti Yadav

Counsel for Appellant :- Ram Prakash Shukla, Babita Shukla

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Shri Ram Prakash Shukla, learned counsel for the appellant.
2. Present appeal has been filed carrying a short delay of 55 days.
3. Keeping the nature of explanation furnished and also the order proposed to be passed, delay is deemed to be condoned.
4. Accordingly, the appeal is heard on merits.
5. Present appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from the order dated 24.5.2023 passed by Additional Principal Judge, Family Court First, Jaunpur in Case No. 819 of 2014 (Arvind Kumar Yadav vs Kriti Yadav). By that order, with reference to the powers of the learned court below under Section 24 of the Hindu Marriage Act, 1955, learned court below has awarded monthly maintenance allowance @ Rs. 2,500/- per month to the respondent with effect from April 2023. Also, it has awarded one time legal expense Rs. 3,000/-.
6. Submission of learned counsel for the appellant is that the respondent is not living with the appellant and there is doubt as to paternity of the child born. In that regard, reference has been made to order passed by this Court in *Application u/s 482 No. 5791 of 2023 (Arvind vs State of U.P. & Anr.)*. For ready reference, the

operative portion of that order reads as below:

It is made clear that the applicant shall continue to pay the monthly maintenance amount to opposite party no.2 regularly without any default as has been ordered by the court below. However, it is also made clear that in the event of failure on part of the applicant to comply with any part of the order, coercive measures be revived from that stage without any further reference to this Court.

7. On query made, learned counsel for the appellant further informs that the appellant has been paying to the respondent monthly maintenance @ Rs. 1,000/- per month awarded under Section 125 Cr.P.C.

8. Having heard learned counsel for the appellant, we find no good ground to offer any interference in the impugned order providing for interim maintenance. Certain minimum amounts are necessary to be provided to the estranged spouse having no source of income at the cost of the earning spouse. Here, it is undisputed that the appellant is an able bodied citizen. Though he claims to be unemployed, according to the respondent, he is working in a private corporation and having other sources of income. In any case, being an able bodied citizen, it can be safely assumed that the appellant is capable of earning Rs. 12,000/- per month by performing manual labour. Therefore, minimum needs for sustenance of the respondent are to be provided by the appellant.

9. Accordingly, learned court below has not erred in providing for such maintenance amount Rs. 2,500/- per month to the respondent with effect from April 2023. Similarly, there is no error in the order of the learned court below providing for lumpsum legal expense of Rs. 3,000/-.

10. As to the submission of learned counsel for the appellant that the appellant has been paying Rs. 1,000/- per month to the

respondent under Section 125 Cr.P.C., it may remain open to the appellant to seek adjustment of that amount while complying with the impugned order. For purposes of clarity, it is noted that the appellant may not be required to deposit anything more than Rs. 2,500/- per month with effect from April 2023 including the amount of maintenance @ Rs. 1,000/- per month under Section 125 Cr.P.C.

11. With the above observations, present petition stands **disposed of**.

Order Date :- 31.10.2023
Prakhar

(Shiv Shanker Prasad,J.)

(S.D.Singh, J.)