

Court No. - 39

Case :- FIRST APPEAL No. - 1188 of 2023

Appellant :- Atendra Kumar

Respondent :- Smt. Rashmi

Counsel for Appellant :- Yashwant Singh, Ashok Kumar Pandey

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Shri Ashok Kumar Pandey, learned counsel for the appellant and perused the record.
2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from the order dated 2.9.2023 passed by Principal Judge, Family Court, Kanpur Dehat in divorce case proceedings instituted by the present appellant being Case No. 557 of 2022 (Atendra Kumar vs Smt. Rashmi).
3. At present, learned court below has passed the impugned order referable to Section 24 of the Hindu Marriage Act, 1955 and awarded monthly maintenance @ Rs. 8,000/- per month from the date of application filed by the respondent being 7.9.2022. Also, learned court below has awarded one time legal expense Rs. 5,000/-. Thus, the appellant is in arrears of Rs. 1,17,000/- (up to October 2023).
4. Having heard learned counsel for the appellant and having perused the record, we find no ground to offer any interference on merits. Inasmuch undisputedly the appellant is a government teacher in receipt on monthly salary of about Rs. 50,000/-, at the same time, it is not disputed that the respondent is a home-maker having no source of income. Her employment status could not be established before the learned court below.

5. Keeping in mind the above facts and the principle to be applied in these cases being that for the benefit of an estranged spouse having no independent source of income, minimum needs for sustenance are necessary to be provided at the cost of the earning spouse, we find that the award of interim maintenance @ Rs. 8,000/- per month is neither excessive nor arbitrary. Further, we do not find any error committed by the learned court below in providing for such maintenance from the date of application. Maintenance money is necessary to sustain life on day to day basis. Primarily, such award may be made from the date of application.

6. Similarly, we find no error in the order of the learned court below in providing for one time legal expense Rs. 5,000/-.

7. Last, it has been submitted, some time may be granted to the appellant to clear the arrears Rs. 1,17,000/-. That prayer we find acceptable.

8. Accordingly, the present appeal is **disposed of** with the following directions:

(i) Subject to the appellant furnishing adequate security to the tune of Rs. 1,25,000/- to the satisfaction of the court below in the shape of other than cash or bank guarantee by 15 November 2023, no coercive measure shall be adopted against the appellant, subject to other conditions provided herein. The appellant may also deposit Rs. 17,000/- out of Rs. 1,17,000/- within the same time.

(ii) As to the balance amount of Rs. 1,00,000/- being remaining arrears of maintenance, the appellant shall deposit the same in ten equal installments of Rs. 10,000/- each to be deposited by him

before the learned court below on or before tenth day of each calendar month beginning from 10 December 2023.

(iii) The appellant shall continue to pay to the respondent or deposit before the learned court below, monthly maintenance allowance from the period November 2023 onwards as and when it becomes due under the terms of impugned order.

9. Any amount already deposited by the appellant may be adjusted towards payment/s to be made by the appellant towards the last installment/s.

10. All the amounts may be either paid to the respondent, directly or be deposited by the appellant with the learned court below within time indicated above. In the latter case the amount/s shall be released to the respondent, forthwith.

11. However, it is made clear, in the event of failure on part of the appellant to comply with any part of the order, coercive measures shall be revived from that stage without any further reference to this Court.

Order Date :- 31.10.2023
Prakhar

(Shiv Shanker Prasad,J.) (S.D.Singh, J.)