

Court No. - 39

Case :- FIRST APPEAL No. - 1228 of 2023

Appellant :- Amit Kumar

Respondent :- Smt. Dipika Sain

Counsel for Appellant :- Manoj Kumar Tripathi

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Manoj Kumar Tripathi 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 19.8.2023 passed by the Principal Judge Family Court, Hapur whereby interim maintenance @ Rs. 3000/- per month from July 2023, one time counsel fee Rs. 7500/- and one time legal expense Rs. 2500/- has been provided to the respondent, under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') during pendency of proceedings in case No. 68 of 2023 instituted by the respondent seeking restitution of conjugal rights. At present, Rs. 25000/- is outstanding against the appellant towards arrears.

3. Submission of learned counsel for the appellant is, marriage between the parties has failed. They had earlier filed proceeding under Section 13-B of the Act seeking dissolution of their marriage. Later, the respondent changed her mind and withdrew from those proceedings. In such circumstances, it has been submitted, proceedings for restitution of conjugal rights may not succeed. Further, it has been submitted that the appellant is not having any means to satisfy the impugned order. In that regard reference has been made to the fact that the appellant is a junior

lawyer practicing at District Court, Hapur whereas the respondent is a highly educated lady.

4. Having heard learned counsel for the appellant having perused the record, we find no good ground to interfere on the merits of the matter. What ultimate merits may or may not be established in the main proceedings for restitution of conjugal rights may never govern the fate of the interim maintenance proceedings. Insofar as it is undisputed to the appellant that the respondent is his married wife and further inasmuch as it could not be established by the appellant before the learned court below that the respondent has no independent means of earning, we do not find any error in the order of the learned court below in providing for minimum means of sustenance to the respondent at the cost of the present appellant. Undisputedly, the appellant is the earning member of the family. Seen in that light, award of monthly maintenance @ Rs. 3000/- per month from the date of application is wholly just and proper. An able bodied citizen who may be having earning working as a manual labourer is expected to provide for such minimum amount as has been awarded against the appellant.

5. Seen in that light, award of one time counsel fee Rs. 7500/- and one time legal expense Rs. 2500/- is also neither excessive nor arbitrary.

6. At this stage, learned counsel for the appellant prays for indulgence to enable the appellant to clear the arrears in installments.

7. Accordingly, present appeal is **disposed of** on the following terms:

(i). The appellant may deposit Rs. 15,000/- on or before 30.11.2023 and Rs. 10,000/- on or before 31.12.2023. The amount of monthly maintenance shall be deposited by the appellant from December 2023 onwards as and when it become due.

Order Date :- 8.11.2023

Faraz

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