

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 11696 of 2023

Petitioner :- Rakesh Kumar Gaur

Respondent :- Smt. Kusum Devi Gaur

Counsel for Petitioner :- Brijesh Kumar Pandey

Hon'ble Ashutosh Srivastava,J.

Heard Shri Brijesh Kumar Pandey , learned counsel for the petitioner.

Considering the nature of the order that is proposed to be passed, the service of notice upon respondent is being dispensed with.

The present petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 27.4.2023 passed by the Addl. Principal Judge, Family Court, Court No. 4, Allahabad in Case No. 1163 of 2018 (Rakesh Kumar Gaur versus Smt. Kusum Gaur), so far as it relates to imposition of cost of Rs.10,000/- on withdrawing the case under Section 9 of the Hindu Marriage Act registered as Case No. 1163 of 2018 and granting interim maintenance under Section 24 of the Act from the date of filing the application up to date of withdrawal of the case.

It is the case of the petitioner that his marriage with the respondent was solemnized on 19.4.1998 according to the Hindu rites and rituals. Out of the wedlock, two children were born. The relations between the petitioner and the respondent became strained and the respondent left the matrimonial home of the petitioner in the year 2007 along with her children and since then is living separately from the petitioner. The respondent has instituted a case under Section 125 Cr.P.C. claiming interim maintenance registered as Case No. 752 of 2018 in which she has stated that she does not want to live with the petitioner. The petitioner has instituted the suit for restitution of conjugal rights registered as Case No. 1163 of 2018. The proceedings for restitution have been instituted on 25.7.2018. The respondent has appeared in the proceedings and filed an application under Section 24 (Paper No. 7-C) of the Hindu Marriage Act, 1955 claiming interim maintenance. Since the respondent has appeared in the proceedings and expressed her will not to cohabit with the petitioner and the petitioner moved an application dated 24.3.2023 (Paper No. 15A) to withdraw the said

proceedings under Section 9. The learned Addl. Principal Judge, Family Court, Court No. 4 Allahabad vide order dated 27.4.2023 took up both the withdrawal application (Paper No. 15A) and Application No. 24 (Paper No. 7C) and has allowed the withdrawal application (Paper No. 15A) by imposing cost of Rs.10,000/- and the application under Section 24 (Paper No. 7C) by awarding maintenance of Rs.2,000/- per month from the date of the application up to passing of the order dated 27.4.2023.

Learned counsel for the petitioner submits that the order passed by the learned Addl. Principal Judge, Family Court, Court No. 4, Allahabad is patently erroneous inasmuch as, there was no occasion to award the cost of Rs.10,000/- for allowing the withdrawal application (15A). He also submits that there is absolutely no basis to award maintenance to the respondents at the rate of Rs.2,000/- per month from the date of application as it was the respondent who left the matrimonial home along with the children.

I have heard learned counsel for the petitioner and have perused the record as also the order dated 27.4.2023 passed by the Addl. Principal Judge, Family Court, Court No. 4, Allahabad and find that the petitioner has instituted the proceedings for restitution of conjugal rights on false and manipulated grounds. As per the averments made in the petition for restitution of conjugal rights, the petitioner has set up a case that out of the wedlock with the respondent, 02 children were born. However, the records reveal that the petitioner has four children. The eldest daughter Pushpa Gaur is already married of. The other children Sachin, Anju and Tanu live with the respondent. The petitioner has abandoned the respondent and is living with another lady at Bombay where he is employed. The respondent was turned out of the matrimonial home sometime in the year 2017 and soon thereafter, the case under Section 9 was got instituted to avoid payment of maintenance etc. No maintenance is being paid by the petitioner to the respondent and the respondent is taking care of the children by doing odd jobs in households.

The learned Addl. Judge, Family Court, Court No. 4, Allahabad has recorded adequate reasons for granting the maintenance amount of Rs.2,000/- per month from the date of application under Section 24 of the Hindu Marriage Act up to the withdrawal of the case. The order dated 27.4.2023 calls for no interference in that regard. However, as far as the cost of Rs.10,000/- imposed upon the petitioner is concerned, the Court is of the opinion that the same be reduced to a sum of Rs.5,000/- which the petitioner is

liable to pay along with maintenance amount awarded.

Learned counsel for the petitioner submits that the petitioner has been ordered to deposit the amount of maintenance from the date of the application under Section 24 i.e. 29.10.2018 upto 27.4.2023. The same works out to 54 months x Rs.2,000/- per month = 1,08,000/-. He submits that the petitioner may be permitted to deposit the same by fixing installments.

In the opinion of the Court, the petitioner is permitted to deposit a sum of Rs.50,000/- within a month from today before the learned Addl. Principal Judge, Family Court, Court No. 4, Allahabad along with cost of Rs.5,000/-. The said amount of Rs.55,000/- upon deposit by the petitioner within the time allowed, shall be released in favour of the respondent for which the learned Addl. Principal Judge, Family Court, Court No. 4, Allahabad shall issue notice to the respondent for claiming the amount.

The balance amount of Rs.58,000/- shall be paid in four equal monthly installments. In the event any default is committed by the petitioner in depositing the amount as directed, appropriate proceedings for recovery of the unpaid amount may be initiated against the petitioner.

The petition is accordingly, ***disposed of***.

Order Date :- 4.12.2023

Ravi Prakash

(Ashutosh Srivastava, J.)