

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 433 of 2023

Appellant :- Mahip Tiwari

Respondent :- Smt. Akanchha Tiwari

Counsel for Appellant :- Arun Kumar Singh

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Shri Arun Kumar Singh, 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 18.03.2023 passed by Principal Judge Family Court, Jhansi, whereby monthly interim maintenance @ Rs. 7000/- per month has been awarded to the respondent from the date of her application i.e. 26.09.2022. Further one time legal expense Rs. 5000/- has also been awarded. Against the above amount awarded, appellant states, he has deposited Rs. 5000/-. Thus, up to November, 2023, Rs. 1,05,000/- is due and outstanding against the appellant.

3. Present appeal has been filed with the delay of 144 days. Even if the issue of delay is kept aside, we find no good ground to offer any interference in the impugned order. On the one hand, certain amounts are necessary to be provided to an estranged spouse having no independent source of income at the cost of the other who may be enjoying such source of income and on the other hand it is the appellant who is an able bodied citizen claiming to earn income by taking tuition classes. Though the appellant claims that he is not earning enough as may allow him to discharge the liability of the interim maintenance @ Rs. 7000/- per month that

too from the date of application, no credible material was brought on record before the learned court below to establish that the appellant's income was not enough to meet the liability imposed by the learned court below. The appellant being a teacher taking tuition classes, it may be presumed that he was earning enough to be able to spare Rs. 7000/- per month towards interim maintenance.

4. Since such amount is to be provided from the date of the claim petition made, in absence of any special circumstance shown to exist to make departure from that principle, no interference is warranted on that count, either. Further amount of one time legal expense is also just and reasonable.

5. Last, it has been submitted, as on date, the appellant would be in arrears of about Rs. 1,05,000/-. Some time may be granted. The aforesaid prayer is accepted.

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

(i) Subject to the appellant furnishing adequate security to the tune of Rs. 1,05,000/- to the satisfaction of the learned court below in the shape of other than cash or bank guarantee by 30.11.2023 from today, no coercive measure shall be adopted against the appellant, subject to other conditions provided herein.

(ii) As to the balance amount of Rs. 1,05,000/- being arrears of maintenance (up to the month of November, 2023), the appellant shall deposit the same in four quarterly instalments such that first instalment of Rs. 30,000/- shall be deposited on or before 31.12.2023 and second, third and fourth instalment of Rs. 25,000/-

shall be deposited on or before 31.03.2024, 30.06.2024 and 30.09.2024 respectively.

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

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

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

9. 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 be revived from that stage without any further reference to this Court.

Order Date :- 24.11.2023
SA

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