

Court No. - 39

Case :- FIRST APPEAL No. - 1332 of 2023

Appellant :- Sunil Kumar Singh

Respondent :- Seema Singh

Counsel for Appellant :- Vinod Singh, Suraj Kumar Singh

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Vinod 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 25.08.2023 passed by learned Additional Principal Judge, Family Court, Varanasi in Hindu Marriage Petition No. 22 of 2017 (Sunil Kumar Singh Vs. Seema Singh) referable to Section 24 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). The learned court below has awarded interim maintenance @ 8000/- per month to the respondent, and further Rs. 5000/- per month to her minor son from the date of her application i.e. 24.9.2019 and has further provided for one time legal expense Rs. 5000/-.

3. Submission of learned counsel for the appellant are three fold. First, it has been submitted, the respondent had not asked for monthly maintenance. Second, no application was made or is pending before the learned court below providing for interim maintenance to the minor child. In that regard, it has been submitted that the appellant is paying his school fees. Third, it has been submitted, the learned court below has not made any discussion and has not provided for any benefit of

maintenance being paid to the respondent under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act, 2005') @ Rs. 5000/- per month.

4. Having heard learned counsel for the appellant and perused the record, in the first place, learned counsel for the appellant may be right that as a fact the respondent had prayed for lump sum amount and not interim maintenance, and further he may be right that such amount was claimed by the respondent for herself and not her minor son. Further he may be right in his submission that the appellant is paying Rs. 5000/- per month to the respondent under a separate order dated 10.02.2017 passed by learned Judicial Magistrate, Court No.1, Varanasi in Case No. 28 of 2015 (Seema Singh Vs. Sunil Kumar Singh).

5. At the same time, in the overall situation, we are not inclined to offer any interference in the appeal jurisdiction. That interference may defeat the ends of justice.

6. Here, undisputedly, the appellant has instituted a divorce case proceeding against the respondent. The same has remained pending since 2017. Six years have passed. The respondent has been living separately from the appellant since then. On query made, learned counsel for the appellant fairly states that the appellant is working as a Government Teacher drawing about Rs. 58,000/- per month by way of monthly salary, besides other benefits.

7. Thus, though the respondent claimed lump sum maintenance amount and lump sum expense and not monthly interim maintenance, and further that she did not

apportion the amounts required for her own as also of her minor child, we do not find any gross error committed by the learned court below in awarding monthly interim maintenance instead of lump sum interim maintenance. The two may remain a method or mode of competition. The end result to be achieved by award of maintenance, whether an interim maintenance or a lump sum, remains one-to prevent destitution and vagrancy as a negative consequence of a matrimonial discord and also to preserve life and liberty of an estranged/non earning spouse and minor child, with minimum dignity, at the cost of the earning spouse.

8. In view of the facts noted above, since matrimonial case between the parties has stretched for more than six years, the ends of justice may get defeated if we further allow the present appeal proceeding. Therefore, not accepting those submissions in view of the reasoning given above, we do not propose to examine the merits of the case to the extent the learned court below has made provision for monthly interim maintenance to be paid to the respondent and her minor child. We also do not find any justification to interfere with the order of the learned court below providing for one time legal expense.

9. At the same time, this much is to be acknowledged and accepted that two amounts may not be paid to a claimant by way of interim maintenance. The higher would cover the lesser. Also, once an equal amount has been made under one enactment/similar amount may not arise under another enactment.

9. Thus, we **dispose of** the appeal with the observations, subject to the petitioner establishing before the learned

court below that he has duly complied with the order dated 10.02.2017 passed by learned Judicial Magistrate, Court No.1, Varanasi in Case No. 28 of 2015 (Seema Singh Vs. Sunil Kumar Singh) and has been paying Rs. 5000/- towards monthly maintenance to the respondent under the Act, 2005, the equal amount of Rs. 5000/- per month awarded under the present order may not be separately recovered.

10. As to the balance arrears of Rs. 8000/- per month awarded to the respondent and the minor son of the appellant, from September, 2019, about Rs. 4,16,000/- would be due and payable by the appellant.

11. Let that amount be deposited in eight instalments such that first instalment of Rs. 66,000/- be deposited on or before 31.12.2023 and second, third, fourth, fifth, sixth, seventh and eight instalment each of Rs. 50,000/- be deposited on or before 29.02.2024, 30.04.2024, 30.06.2024, 31.08.2024, 31.10.2024, 31.12.2024 and 31.01.2025 respectively.

(i) 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.

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

13. 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.

14. 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 :- 11.12.2023

SA

(Vinod Diwakar, J.)

(S.D. Singh, J.)