

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

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CM(M) No. 77/2025

Reserved on: 03.07.2026
Pronounced on: 10.07.2026
Uploaded on: 10.07.2026

Whether the operative part or full
Judgment is pronounced: **Full**

Rajinder Kumar

.....Petitioner(s)

Through: **Mr. Vasudha Sharma, Adv.**

Versus

Suman Kumari

.....Respondent(s)

Through: **None**

CORAM: HON'BLE MR JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This petition has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 23.08.2024 passed by the learned Principal District Judge, Samba (hereinafter referred to as "the trial court"), whereby the petitioner's right to file objections to the respondent's application under Section 24 of the Hindu Marriage Act, was closed and the petitioner was directed to pay maintenance *pendente lite* of ₹5,000/- per month along with ₹10,000/- towards litigation expenses.
2. Briefly stated, the petitioner filed a divorce petition under Section 13 of the Hindu Marriage Act, before the learned Trial Court. Pending

disposal, the respondent-wife filed an application for maintenance *pendente lite* and litigation expenses under Section 24 of the Act on 07.11.2023. The petitioner failed to file his objections within time, leading the learned Trial Court to strike off/close his right to file objections vide the impugned order dated 23.08.2024. In the same order, the Court proceeded to determine the quantum of maintenance by accepting the respondent's unilateral claims that the petitioner runs a successful business, owns various immovable properties, and earns exceeding ₹80,000/- per month.

3. It is submitted that parallel to the proceedings under the Hindu Marriage Act, the respondent has initiated multiple rounds of litigation seeking maintenance. Firstly, in proceedings instituted under Section 125 of the Cr.P.C. before the learned Additional Special Mobile Magistrate, Samba, interim maintenance of ₹3,000/- per month each was awarded to the respondent and the minor child vide order dated 15.03.2024. Secondly, the respondent filed a petition under Sections 12 and 23 of the Protection of Women from Domestic Violence Act, before the learned Judicial Magistrate 1st Class, R.S. Pura, wherein an additional interim maintenance of ₹4,000/- per month was granted to the respondent vide order dated 13.08.2024.
4. Aggrieved of the order dated 23.08.2024 passed by the learned trial court, the petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.
5. Learned counsel for the petitioner contended that the impugned order is ex-facie arbitrary, illegal, and passed in gross violation of the

principles of natural justice. It is submitted that the learned Trial Court closed the petitioner's right to file objections without affording him a reasonable and effective opportunity of being heard, subsequently deciding the application solely on the basis of the respondent's unsubstantiated assertions. Furthermore, the Trial Court erroneously accepted the respondent's self-serving allegations regarding the petitioner's income and ownership of immovable properties in the total absence of any supporting documentary evidence. In reality, the petitioner merely operates a small grocery (*Karyana*) shop at Bari Brahmana, earning a meagre income of approximately ₹10,000/- per month, and possesses neither the properties nor the financial resources falsely attributed to him. Learned counsel further emphasized that the respondent had suppressed the factum of already being granted interim maintenance in parallel proceedings under Section 125 of the Cr.P.C. from the learned Trial Court.

6. The respondent was put to notice. As per the report of the Registry, she has refused to accept the notice. Accordingly, she is set ex parte.
7. Heard learned counsel for the petitioner and perused the record.
8. The primary grievance projected by the petitioner is the blatant suppression of material facts by the respondent. While she chose to disclose the receipt of interim maintenance of ₹4,000/- per month awarded under the Domestic Violence Act by the Court of the learned Judicial Magistrate 1st Class, R.S. Pura, she actively concealed the factum of another subsisting maintenance order. Specifically, she withheld the information that the Court of the learned Additional

Special Mobile Magistrate, Samba, vide order dated 15.03.2024, had already directed the petitioner to pay interim maintenance of ₹3,000/- per month each to the respondent and their minor son.

9. A perusal of the impugned order reveals that while the learned Trial Court took note of the fact that the respondent had already been granted maintenance of ₹5,000/-per month under the Protection of Women from Domestic Violence Act. (However, the impugned order incorrectly records the amount of such maintenance as ₹5,000/- per month, whereas the respondent had, in fact, been awarded maintenance of ₹4,000/- per month under the said Act). The order dated 15.03.2024 passed by the learned Additional Special Mobile Magistrate, Samba, under Section 125 of the Cr.P.C. awarding a further interim maintenance of ₹3,000/- per month each to the respondent and the minor son, was unfortunately not brought to the notice of the learned Trial Court by either party during the summary determination.
10. Inasmuch as, the said factum of the parallel maintenance order was not placed before the learned Trial Court, it is a settled principle of law that this Court cannot adjudicate upon the validity of an order based on a ground that was neither pleaded nor agitated before the court of first instance. Consequently, the impugned order cannot be faulted for failing to consider an exigency that was never brought to the notice of Trial Court.
11. In view of the foregoing, the present petition is disposed of, granting liberty to the petitioner to approach the learned Principal District

Judge, Samba, by way of an appropriate application seeking modification of the impugned order dated 23.08.2024. In the event such an application is preferred, the learned Court below shall consider the impact and effect, if any, of the parallel maintenance awarded vide order dated 15.03.2024, and pass appropriate orders thereon strictly in accordance with law.

12. It is made clear that this Court has not expressed any opinion on the merits of the respective claims of the parties, and the learned Trial Court shall remain entirely free to adjudicate upon the application on its own merits.
13. Disposed of.

(Rajnesh Oswal)
Judge

Jammu
10.07.2026
Karam Chand

Whether approved for reporting? No

