

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.3358 of 2015

Date of decision:18.05.2015

Aman Syal

... Petitioner

versus

Rashmi Syal

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashish Chaudhary, Advocate,
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The petitioner/judgment debtor is seeking for adjustment which is incompetent in the light of Order 21 Rules 1&2 CPC. The adjustment sought is to an amount of maintenance granted to the wife and to her child in matrimonial proceedings under Section 24 of the Hindu Marriage Act. It is not denied before me that the amount claimed is only for the period of pendency of proceedings before the matrimonial court. The contention, however, is that as regard the educational expenses quantified in the order passed under Section 24, the petitioner/husband is taking care of the educational expenses and that all expenses which he has incurred must be adjusted against the entitlement pleaded by the wife.

2. I am afraid I cannot accommodate the contentions raised by the counsel for the husband in view of the language expressed under Order 21 Rule 1 of the Civil Procedure Code. Rule (1) CPC details with modes of paying money under decree. Since Section 21 of the Hindu Marriage Act makes possible the applicability of Civil Procedure Code to all proceedings, the order granting interim maintenance by way of money shall be treated as amenable for recovery of money under decree contemplated under Order 21 Rules 1&2 CPC referred to above. The provision further requires that all money payable shall be paid either by deposit into court whose duty it is to execute the decree or payment to the decree holder. Clause (2) details the effect of the fact of payment made under clause (a) which refers to a deposit and clause (c) which makes reference to a court's direction for mode of payment and states that the judgment debtor shall give notice to the decree holder either through the court or directly to him by registered post the acknowledgment of which is due. Clause (3) will govern the situation where the money is paid by postal money order under clause (a) or out of court under clause (b). The money paid shall accurately state the particulars and the liability will cease to run from then on. Such payment shall be duly certified in the manner contemplated under Rule (1) and if it is not done so, it cannot be taken to be a payment under the decree. Where there is a payment out of court to a decree holder which is now arising under

the interim order, Rule (2) states that the decree holder shall certify such payment for adjustment to the court whose duty it is to execute the decree. This certification will be possible only if the judgment debtor moves the Executing Court itself setting out the details as contemplated under Order 21 Rule 2(3) CPC. Sub Rule 2-A of Order 21 Rule 2 CPC states clearly as follows:-

“(2-A) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless-

- (a) the payment is made in the manner, provided in rule 1; or
- (b) the payment or adjustment is proved by documentary evidence; or
- (c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of rule 1, or before the Court.”

3. The legal effect is that any uncertified payment cannot be countenanced in execution as constituting any discharge of liability and it shall be open to a judgment debtor to make such a payment which is uncertified and come with his own suit for recovery, if he is so advised. The plea of discharge of payment which was uncertified was not legally competent and there is no justification for the defendant to seek for such deduction of the alleged educational expenses incurred by the husband.

4. The order is maintained and the civil revision is dismissed.

(K.KANNAN)
JUDGE

18.05.2015
sanjeev