

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

C.R. No. 8773 of 2014
Date of decision: 22.01.2015

Hanish Kumar

....Petitioner(s)

Versus

Deepika and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. A.S. Sidhu, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition filed by the husband under Article 227 of the Constitution of India is to the order dated 19.11.2014 (Annexure P-4) passed by the Additional District Judge, Bathinda vide which, the application under section 24 of the Hindu Marriage Act, 1955 (in short 'the Act') has been allowed. Vide the said order, sum of ₹3,000/- per month has been granted as maintenance pendente lite to the respondent-applicant and ₹1,000/- to the minor child.

The parties were married on 12.05.2013 at Bathinda according to Hindu Rites and from the wedlock, girl child namely Diya was born. The husband filed a petition under Section 13 of the Act on the ground of cruelty, in which, the application was filed by the respondent-wife under Section 24 of the Act that she has no independent source of income and not doing any work and unable to maintain herself. The child being 2-1/2 months old, required special diet and the husband was doing work in Nestle company and was drawing ₹12,000/- per month. He was also alleged to be getting rent of ₹4,000/- per month. Accordingly, sum of ₹5,000/- per month

for both the applicants was claimed alongwith ₹22,000/- as litigation expenses.

The application was contested on the ground that the wife had sufficient income to maintain herself and child and she knew the work of knitting, sewing and was working in the beauty parlour and was earning between ₹8,000 to ₹10,000/- per month. It was averred that the husband could not properly concentrate on his work and has left the job and now is jobless and the wife was staying alongwith the brother.

The Court came to the conclusion that since the marriage was not disputed and the birth of the child was also not disputed, the husband was under a moral and legal duty to maintain his wife and the minor child. However, it was noticed that there was no document on record showing the income of the husband. However, keeping in view the fact that he was an able bodied person and could earn upto ₹10,000/- in a month, the amount of ₹3,000/- to the wife and ₹1,000/- to the minor child was directed to be paid from the date of application.

Counsel for the petitioner has submitted that the application was filed under Section 24 of the Act and under the Act, maintenance can be granted under Section 26 to the child and not under Section 24 of the Act.

Admittedly, the jurisdiction of the Court to grant maintenance is not disputed. In the application itself, it was specifically averred that the maintenance is being claimed on account of both the wife and the child. In such circumstances, merely because the application was only filed under Section 24 of the Act would not be a ground as such to deny the benefit.

The Apex Court in ***Smt. Jasbir Kaur Sehgal vs. The District Judge,***

Dehradun, 1997 (7) SCC 484, in similar circumstances, allowed maintenance to the wife and elder daughter who was unmarried and living with the mother by holding that there can be no restricted meaning given and the Section cannot be read in isolation. Relevant portion of the judgment reads as under:

“6.In this case since the wife has no income of her own, it is the obligation of the husband to maintain her and her two unmarried daughters one of whom is living with wife and one with him. Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is maintenance of the wife alone and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife. We are aware of the provisions of Section 26 of the Act providing for custody of minor children, their maintenance and education but that section operates in its own field.

7. xxx xxx xxx

8. Wife has no fixed abode of residence She say she is living in Gurudwara with her eldest daughter for safety. On the other hand husband has sufficient income and a house to him. Wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the court. No set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstance of each case. Some scope for liverage can, however, be always there. Court has to

consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those; he is obliged under the law and statutory but involuntary payments or deductions. Amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs.5,000/- per month payable by respondent-husband to the appellant-wife.”

Counsel for the petitioner also relied upon judgment of the Karnataka High Court in ***Smt. Padmavathi and others vs. C. Lakshminarayana, 2002 AIR (Karnataka) 424.***

However, on reading of the said judgment, the same also does not support the case of the petitioner. Rather observations have been made that on an application being made under Section 24 of the Act, Court can also grant relief to the children under Section 26 considering it just and proper. In the said case, the wife has been declined maintenance pendente lite whereas the children had been granted under Section 24 of the Act. The High Court, keeping in mind the status of the parties, granted the benefit to the wife also. The relevant observations read thus:-

“9. The law relating to matrimonial cause provides for rules for payment of maintenance pendete lite and expense of the proceedings. Section 24 of the Act has been enacted with a view to empower the Court

to direct payment of maintenance to the husband or the wife as the case may be, provided he or she has no independent income sufficient for his or her support and necessary expenses of the proceedings. Under this Section 24 the amplest discretion is conferred on the Court to award interim maintenance. However, the Court is required to take into consideration the income of the parties before deciding the quantum of interim maintenance. The Court has to keep in view the need of the applicant and paying capacity of the non applicant. While considering the application under this Section the Court is expected to make a summary enquiry and the Court need not try the issue at length. The granting of maintenance under this Section is a matter of discretion but like all other discretion's exercisable by the Court, this discretion has to be exercised judicially and in accordance with law. The Court is empowered to make an order which is to operate during the pendency of the proceedings.

10. Section 24 of the Act does not provide for award of maintenance to the children separately, but, if the children are under the protection of the wife, the Court would be justified in taking that into consideration in awarding maintenance to the wife. I hasten to add. when the wife makes an application under Section 24 of the Act for grant of interim maintenance to the children also, the Court can grant relief to the children also under Section 26 of the Act, whenever it considers just and proper.”

Keeping in view the above settled position, this Court is of the opinion that there is no scope for interference in the well reasoned order passed by the Court below. The amount which has been awarded is barely enough to sustain the wife and the minor child.

Accordingly, the present revision petition is dismissed.

22.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE