

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

**CMM No. 169 of 2013 in/and
FAO No. 6518 of 2012(O&M)**

Date of Decision: February 1 , 2016.

Dhiraj Sharma NON-APPLICANT/APPELLANT (s)

Versus

Jyoti Sharma APPLICANT/RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE RAJIVE BHALLA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. S.S.Rangi, Advocate
for the non-applicant/appellant.

Mr. Vikram Singh, Advocate
for the applicant/respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

RAJIVE BHALLA, J.

The prayer in this application is to award maintenance *pendente lite* at the rate of ₹15,000/- to the respondent-wife, who has to look after herself and their two minor children.

Counsel for the applicant/respondent submits that the appellant is working as a Medical Representative and is earning more than ₹25,000/-

per month. The appellant has been ordered to pay ₹7,000/- per month as maintenance, vide order dated 01.04.2011 passed under Section 125 Cr.P.C. The non-applicant/appellant is in arrears of ₹1,50,000/- as regards maintenance assessed under Section 125 Cr.P.C. The appellant filed a petition before the District Judge, Ambala seeking guardianship of the minors and averred in paragraph 5 of the petition that he has sufficient means to bring up the children as he is in the wholesale business of selling medical goods but in his reply filed to the present application, has stated that he has no job and no income.

Counsel for the non-applicant/appellant states that the appellant has resigned from his job and has no income to support himself, much less the respondent and their children. The averments in the petition under Section 25 of the Guardian and Wards Act, 1890 were made in support of his claim to the guardianship of the minors and, therefore, are not relevant for proceedings under Section 24 of the Hindu Marriage Act.

We have heard counsel for the parties, perused averments in the application, the reply and considered averments in a certified copy of the petition filed by the non-applicant/appellant under Section 25 of the Guardian and Wards Act, 1890 before the District Judge, Ambala seeking custody of the minor children of parties, wherein the non-applicant/appellant has specifically pleaded as follows:-

“5. That moreover the respondent has no sufficient means to pull on the liability of the wards -Dhrub and Vaibhav in future and she can earn only for her maintenance and as such the

future of the wards will remain in dark being the wards in forcible custody of the respondent; whereas the respondent is capable to bring-up the wards nicely and provide them proper education and good atmosphere of life and moreover the family atmosphere of the petitioner is good, his father is a Govt. Retired Personnel and he himself is a wholesaler of Medical goods and earning a very good sum and the future of the wards in the forcible custody of the respondent is not safe; rather is in dark keeping in view of welfare and interest of the wards the petitioner is capable to earn for providing better education to the wards- Dhruv and Vaibhav to make their career and to keep them stand in their own legs in the coming future.”

The averments in Para 5 of the reply to the application filed under Section 24 of the Hindu Marriage Act, read as follows:-

“5. That the contents of para no.5 of the application are totally incorrect. Previously the answering respondent was working as medical Representative with Cipla Company. He resigned the said company in Aug., 2008. Now he is unemployed. As such the answering respondent is not in a position to maintain the applicant, when she herself is earning handsome salary, whereas the answering respondent is unemployed and having ill health and have no source of income. He is dependent on his retired father.”

A perusal of the aforesaid pleadings clearly prove that averments in the reply filed to the application under Section 24 of the Hindu Marriage Act that the appellant is unemployed and has no income, is

false to the knowledge of the appellant. The appellant is, therefore, not only trying to evade responsibility to maintain his wife and minor children, but has concealed his true income and has made an attempt to mislead this Court.

Taking into consideration the fact that maintenance *pendente lite* was awarded at the rate of ₹7,000/- per month i.e., about five years ago, the appellant is directed to pay maintenance *pendente lite* at the rate of ₹10,000/- per month from the date of application i.e., 24.09.2013, minus any amount being paid as maintenance, and this apart, issue notice to the appellant to show cause why he should not be prosecuted for filing a false affidavit.

At this stage, Sh. Dhiraj Sharma, the appellant who is present in Court, states that the appeal may be dismissed as withdrawn as he is ready to resume matrimony with the respondent and shall go to her paternal house, at Karnal to fetch her and their minor children. Sh. Dhiraj Sharma assures the Court that he has not made this statement because of the maintenance assessed or the show cause notice and would abide by his decision.

Ms. Jyoti Sharma, the respondent is also present in Court and states that she is satisfied with the *bona fides* of the statement made by Sh. Dhiraj Sharma and that she and their children shall accompany Dhiraj Sharma to their matrimonial home.

In view of the statement made by the appellant, Dhiraj Sharma,

the appeal is dismissed as withdrawn but with liberty to the respondent to seek revival/further directions, in case the appellant does not abide by his statement.

(RAJIVE BHALLA)
JUDGE

February 1 , 2016.
'om'

(LISA GILL)
JUDGE