

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-306 of 2014

Date of Decision: 19.1.2015

Pawan Kumar

....Appellant.

Versus

Goldy

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: Mr. Satish Kumar Yadav, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Being aggrieved by the judgment and decree dated 3.2.2014 passed by the Additional District Judge, Narnaul, whereby the petition filed under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") by him for dissolution of marriage by a decree of divorce was dismissed, the appellant-husband has approached this Court by way of instant appeal.

2. Sans unessential, the facts relevant for adjudication of the present appeal as narrated therein may be noticed. The marriage of the parties was solemnized on 24.4.2004 as per Hindu rituals and customs at village Nehrugarh, Tehsil Kosli, District Rewari. The marriage was consummated and out of the said wedlock, one female child, namely, Amarjyoti was born on 27.5.2005. Marriage of Suresh Kumar, the elder brother of the appellant was also solemnized with the elder sister of the

respondent, namely, Pinki on the same day. Their relations became strained as Pinki was having illicit relations with some third person and she had become pregnant before her marriage. She aborted her pregnancy. The brother of the appellant had not made any physical relation with his wife and after ten days of the marriage, Pinki returned to her parental house. However, the respondent continued to live in her matrimonial home. Pinki had moved an application before the Women Cell, Rewari regarding harassment on account of demand of dowry in which they were summoned. In the month of January 2006, on the eve of Sakrant festival, the brother of the respondent took her on the pretext to attend a function of engagement of his sister in their family. After one week, the appellant visited the village Nehrugarh to bring the respondent but the father of the respondent refused to send her with him with the condition that until and unless the matter of Pinki is settled he would not send the respondent. Thereafter, the appellant along with his father and relatives visited the house of the respondent to bring her back but they refused to send the respondent and even Pinki had refused to live with Suresh. The appellant made efforts to maintain his matrimonial relation with the respondent but she had been deserting him since January 2006 without any reasonable cause or excuse. The respondent in collusion with her elder sister Pinki got FIR No. 94 lodged on 30.5.2008 under Sections 498-A, 406, 34 of the Indian Penal Code which is pending consideration. Besides this, a petition under Section 125 of the Code of Criminal Procedure was moved which is also pending. Accordingly, the appellant filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce. The said petition was contested by the respondent by filing a written statement. It was pleaded that the

appellant had turned her out of the matrimonial house. The marriage of her sister had also been consummated with the brother of the appellant and she had become pregnant. However, the brother of the appellant and his family members administered medicines due to which she had come in depression and this led to her abortion. After settlement before the Women Cell, Pinki had gone to her matrimonial home. The appellant and his family members demanded motorcycle, cash and put a condition to convince her family members for divorce to Pinki otherwise they would not maintain her as a wife. On 31.5.2005, the appellant and his family members had beaten her on account of non-fulfilment of their demand of dowry and she was turned out from her matrimonial home. The respondent and her father made efforts to convince the appellant and his family members for bringing back the respondent but they refused to maintain her. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled to a decree of divorce, on the grounds mentioned in the petition, as alleged? OPP
2. Relief.
3. In support of his case, the appellant examined himself as PW1, Bihari as PW2, Munshi Ram as PW3 and Balwan as PW4. On the other hand, the respondent examined herself as RW1 and Pratap Singh as RW2.
4. The trial court on appreciation of evidence led by the parties, decided the issue No.1 against the appellant holding that the appellant had failed to prove the grounds of cruelty and desertion.

Accordingly, the trial court vide judgment and decree dated 3.2.2014 dismissed the petition filed under Section 13 of the Act. Hence, the present appeal.

5. This Court vide order dated 30.9.2014 had directed the appellant to bring a bank draft for a sum of ₹ 25,000/- in favour of the respondent towards litigation expenses. However, the learned counsel for the appellant had failed to comply with the order dated 30.9.2014 and showed inability of the appellant to pay the litigation expenses to the respondent.

6. It would be expedient to refer to Section 24 of the Act which reads thus:-

“24. Maintenance pendente lite and expenses of proceedings- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable: Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of

within sixty days from the date of service of notice on the wife or the husband, as the case may be.”

7. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this Section are summary in nature and confers a substantial right on the applicant during the pendency of the proceedings. Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available under Section 28A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said Court. In other words, the striking off the defence of the spouse not honouring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realising the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure.

Needless to say, the remedy under Section 28A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off.

8. The Madras High Court in **Narayana Nadar v. Jayakodi Ammal 1990(1) DMC 596** dealing with similar situation had noticed as under:-

“The purpose behind Section 24 of the Act is that parties to a matrimonial case should not take undue and unfair advantage of a superior financial capacity, to defeat the rightful claims of a weaker party. The proceedings under Section 24 of the Act serve a limited purpose, i.e. during the pendency of the proceedings to enable the weaker party to establish rights without being in any manner hindered in that attempt by lack of financial support. It is true that Section 28A of the Act provides for the enforcement of orders of execution; but the process of such execution is a long and arduous one and if execution is to be considered the only method of enforcement, the matrimonial proceedings have to be stayed till the execution is completed. To put it differently, to secure the benefit of an order under Section 24 of the Act by resort to the process of execution, the parties may have to endure, in some cases at least, an endless

wait. The enforcement by execution would not also further the objects of the Act. Matrimonial proceedings should be dealt with expeditiously and relief afforded to the parties.”

9. Concurring with the aforesaid view and following the pronouncement of Calcutta High Court in **Anita Karmokar v. Birendra Chandra Karmokar, AIR 1962 Cal. 88**, Andhra Pradesh High Court in **Atreyapurapu Venkata Subba Rao v. Atreyapurapu Venkata Shyamala, 1990(II) DMC 486** and this Court in **Ram Swaroop v. Janak, AIR 1973 P&H 40**, the Kerala High Court in **C.S. Mangalam v. Velayaudhan Asari, AIR 1993 Kerala 181** had opined as under:-

“7. In the light of the above decisions, I hold that the order passed by the learned Subordinate Judge in I.A. No. 3603 of 1991 dated 7-11-1991 is clearly illegal and perverse. The court below had inherent jurisdiction under Section 151 of the Civil P.C. to give effect to its order. It had inherent jurisdiction to prevent the abuse of the process of the court. In giving effect to its order, the court below would have been justified to strike off the defence, even if there is no such provision in the Hindu Marriage Act. Instead of exercising the jurisdiction so vested in the court, the lower court has thrown its hands in despair and has offered a gratuitous legal opinion to the revision petitioner to file an execution petition, which, as stated by Banerjee, J. in Anita Karmokar's case AIR 1962 Cal 88, is not an easy going highway, and is beset

with all imponderables and practical difficulties.”

10. Where the maintenance pendente lite was not paid in pursuance to an order passed under the Act, this Court in **Krishan Kumar v. Monika Grover 2011(6) RCR (Civil) 121** held that the erring spouse was disentitled to be heard on merits for disobeying the order of the court with the following observations:-

“In Rani's case (supra), this court allowed appeal filed by wife against decree of divorce after the defence of the husband was struck off on account of non-payment of maintenance as fixed under section 24 of the act. Relevant para 7 of the judgment is extracted below:-

“No doubt, wife can file a petition under Order 21 Rule 37 Civil Procedure Code for the recovery of this amount and the husband can be hauled up under the contempt of Courts also for disobedience of the aforesaid Court's order, but Section 24 of the Act empowers the matrimonial Court to make an order for maintenance pendente lite and for expenses of proceedings to a needy and indigent spouse. If this amount is not made available to the applicant, then the object and purpose of this provision stand defeated. Wife cannot be forced to take time consuming execution proceedings for realising this amount. The conduct of the respondent-husband amounts to

contumacy. Law is not that powerless as to not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to the wife, his defence can be struck out. No doubt, in this appeal he is respondent. His defence is contained in his petition filed under Section 13 of the Act. In a plethora of decisions of this Court in **Smt. Swarno Devi v. Piara Ram, 1975 HLR 15; Gurdev Kaur v. Dalip Singh, 1980 HLR 240; Smt. Surinder Kaur v. Baldev Singh, 1980 HLR 514; Sheela Devi v. Madan Lal, 1981 HLR 126 and Sumrati Devi v. Jai Parkash, 1985(1) HLR 84** it is held that when the husband fails to pay maintenance and litigation expenses to the wife, his defence is to be struck out. The consequence is that the appeal is to be allowed and his petition under Section 13 of the Act is to be dismissed.”

11. Similar view has also been expressed by this Court in **Asha Rani v. Yash Pal 1993(1) HLR 30, Kanti Devi v. Balbir Singh 1990(1) HLR 32, Gurjeet Kaur alias Guddi v. Amar Singh 1997(1) HLR 429 and Santosh v. Balwinder Kumar 1997(1) HLR 463.**

12. The appellant has failed to make the payment on account of litigation expenses as directed by this Court and, therefore, his defence has to be struck off. In other words, the non-payment of maintenance or

litigation expenses under Section 24 of the Act, disentitles the appellant for hearing of the appeal on merits. Consequently, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 19, 2015
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(SNEH PRASHAR)
JUDGE