

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

CR No.1234 of 2016

Date of decision :18.02.2016

Ritesh Kumar Gupta

..... Petitioner.

Versus

Deepa Singh Gupta

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.S.K.Tripathi, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present civil revision petition under Article 227 of the Constitution of India has been preferred against the order dated 31.01.2015 passed by the learned District Judge, Family Court, Gurgaon, whereby the application under Section 24 of the Hindu Marriage Act, 1955 (for short 'Act') filed by respondent-wife has been allowed and the interim maintenance at the rate of Rs.25,000/- per month from the date of filing the application has been granted.

2. Learned counsel for the petitioner contended that the Learned District Judge, Family Court, Gurgaon has awarded highly excessive amount of maintenance *pendente lite* in favour of respondent-wife. He contended that the petitioner had got purchased a flat in the joint name of respondent-wife and is paying the instalments thereof. He

further contended that respondent-wife is well qualified. She possesses degree of BCA, B.Ed, MA(English) and was working as business analyst in a private company at Gurgaon and was earning Rs. 40,000/- per month. It shows that she is able to earn the sufficient income to maintain herself. He further contended that the learned District Judge, Family Court has failed to appreciate that infact the respondent-wife has turned out the petitioner of the matrimonial home and the respondent-wife is not allowing the petitioner to enter the house. He further contended that as a result of defamatory and malicious e-mails sent by the respondent-wife to the top officials of the petitioner's company, petitioner has to loose his job and now he is facing the financial hardship. Thus, he contended that the order passed by the learned District Judge, Family Court, Gurgaon is illegal.

3. I have duly considered the aforesaid contentions.

4. This fact is not disputed that the respondent-wife is the legally wedded wife of petitioner. It is also not disputed that the parties are living separate. There is no material on record to show that the respondent-wife has sufficient income to maintain herself. The respondent-wife may be educated, but this fact is not disputed that at present, she is not having any job. Even, in para no.5 of the petition, it has been mentioned that she has left the job in the month of June, 2012. So, it is the admitted case of the petitioner-husband

that respondent-wife is no more in job after June, 2012. Mere, this fact that respondent-wife is educated one is no ground to decline the maintenance *pendente lite*. As per Section 24 of the Act, a spouse will be entitled for maintenance *pendente lite*, if, he/she has no independent income sufficient for her or his support. The potential earning capacity is not equivalent to independent income. So, it cannot be taken into consideration as the said view is beyond the scope of Section 24 of the Act. The Hon'ble Karnataka High Court in case **Navjot Kaur alias Dolly Vs. Ajeet Singh Phull 2003(1) HLR 516** has laid down as under:-

“6. Under Section 24 of the Act, if any of the spouse has no independent income sufficient for his or her support and the necessary expenses of the proceedings, the Court taking into consideration the income of either of the spouse pass an order either granting or refusing to grant maintenance. Admittedly, in the instant case the wife has no independent income of her own. Whereas, the husband is a Software Engineer earning about \$ 70,000/- per annum in USA. **If that is so, the reason given by the learned Judge that the wife is educated and she could get herself a job for her maintenance is an absurd reason for refusing the relief sought for by the wife.** From the pleadings, it is found, the wife has only passed pre-university course and she is unemployed. In these days, it is very difficult to secure a job even if a person is highly qualified.”

5. In case **Smt. Padmavathi and others Vs. C.Lakshminarayana 2003(3) R.C.R (Civil) 158**, the Hon'ble Karnataka High Court again reiterated the legal position with the following observations”-

“To decline to grant interim maintenance to the applicant, the only reason that the learned Family Court Judge assigns is that **the applicant, has studied up to SSLC and she knows typing and, therefore, by doing job typing, she can maintain herself. In my opinion, this reasoning of the learned Family Court Judge is, contrary to the settled position of law. A plain reading of Section 24 of the Act shows that the only condition precedent for the grant of interim maintenance to any of the parties to the proceedings under the Act, is that applicant has no independent income sufficient for his or her support.** It is found that the application has sufficient income for his or her support, no amount can be allowed as maintenance. The object of Section 24 of the Act primarily is to provide maintenance, litigation expenses to a party in matrimonial proceedings and to maintain herself during the pendency of the proceedings and also to have sufficient funds to participate in the proceedings effectively and not unduly suffer in the conduct of the case for want of funds. **The object of the Section would be defeated if the interim maintenance is denied during the matrimonial proceedings on the ground that the wife is capable of earning her living because of her qualification.** the condition for exercise of jurisdiction under this Section is that the applicant should not have independent income sufficient for her or his support or necessary expenses of the proceedings. If the said condition is satisfied, the Family Court should exercise its jurisdiction and pass appropriate orders directing the opposite party to pay not only monthly maintenance and also the expenses of the proceedings.”

In view of the aforesaid consistent rule of law laid down in the cases referred above, mere this fact that respondent-wife was educated is no ground to decline her the maintenance *pendente lite* as per the provisions of Section 24 of the Act.

6.

The respondent-wife has pleaded that the petitioner

is earning Rs. 24 lacs per annum. Learned counsel for the petitioner has contended that as a result of defamatory and malicious e-mails sent by the respondent-wife to the top officials of the employer of the petitioner, he has to loose the job, but the petitioner has not placed on file any evidence to show that his services have been terminated by the employer due to said e-mails. So, there is no material on record to show that the petitioner is out of job.

7. This fact is not disputed that the minor child is also living with the respondent-wife. She has added responsibility to maintain him. Thus, keeping in view the financial capacity of the petitioner-husband and requirements of the respondent-wife, the amount of maintenance *pendente lite* awarded by the learned District Judge, Family Court, Gurgaon cannot be stated to be excessive or exorbitant. Rather, the same appears to be just and reasonable.

8. Thus, keeping in view my aforesaid discussion, the impugned order dated 31.01.2015 does not suffer from any illegality.

9. Consequently, the present revision petition has no merits and the same is hereby dismissed.

18.02.2016

S.khan

(DARSHAN SINGH)
JUDGE