

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

CR No.346 of 2016

Date of decision :20.01.2016

Gaurav Mantrao

..... Petitioner.

Versus

Lilly Khullar

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Nand Lal Sammi, 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 23.12.2015 passed by the learned Additional District Judge, Chandigarh, 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.10,000/- per month and one time litigation expenses of Rs.10,000/- have been granted.

2. Respondent-wife has filed an application under Section 24 of the Act for grant of maintenance on the grounds *inter alia* that she is legally wedded wife of the petitioner, who had deserted her without any reasonable cause. He has no source of income. She also does not have any movable or

immovable property and is unable to maintain herself. The petitioner-husband is doing job in Multinational Company and is getting Rs. 8 lacs per annum. Thus, she has claimed the maintenance *pendente lite* to the tune of Rs. 25,000/- per month and Rs. 50,000/- towards litigation expenses.

3. The petitioner-husband contented the application on the plea that the respondent-wife is well educated and qualified as MBA. She is serving in ICICI Bank and is getting Rs. 25,000/- per month as salary. She is in a position to maintain herself and also to meet out the litigation expenses. Various other grounds were taken in the reply to oppose the application.

4. The learned Additional District Judge, allowed the application filed by the respondent-wife and award the interim maintenance at the rate of Rs.10,000/- per month and one time litigation expenses amounting to Rs.10,000/- from the date of the application.

5. I have heard Mr. N.L.Sammi, Advocate, learned counsel for the petitioner-husband and have meticulously gone through the paper book.

6. Initiating the arguments, learned counsel for the petitioner-husband contended that the respondent-wife has stayed only for a week in the matrimonial house. He contended that the respondent-wife has played a fraud and concealed the factum with respect to her mental sickness and

disorder. He further contended that respondent-wife is an educated lady. She is MBA in finance and was employed with ICICI Bank and was getting salary at the rate of Rs. 25,000/- per month. He further contended that the copy of the income tax returns of the respondent-wife for the assessment year 2010-2011 and 2011-2012 show that she has sufficient income to maintain herself.

7. He further contended that as the respondent-wife is highly educated having a degree of MBA in finance, she is capable of earning her livelihood but she has intentionally left the job only to harass the petitioner-husband. As, she is capable of having independent income by getting the employment, she cannot claim the interim maintenance from the petitioner-husband. To support his contentions he has relied upon cases **Sanjay Bhardwaj & Ors. Vs. The State & Anr, Cri.M.C No.491/2009, decided on 27th, August, 2010 (Delhi High Court), Smt. Mamta Jaiswal Vs. Rajesh Jaiswal, 2000(4) MPHT 457.**

8. I have duly considered the aforesaid contentions.

9. The impugned order shows that earlier respondent-wife was working, but now she was no more in service. Petitioner-husband has not placed on record any document to show that respondent-wife was still in job with ICICI Bank and was getting the salary at the rate of Rs.25,000/- per month as alleged in the reply.

10. The plea that respondent-wife is an educated lady and can earn by getting employment is no reason to decline the maintenance *pendente lite* as at present, she is not having the sufficient income to maintain herself.

11. I have carefully gone through the cases cited at bar by learned counsel for the petitioner-husband. With due respect, I am unable to agree with the observations therein. 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.”

12. 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.

13. Learned counsel for the petitioner has drawn my attention to the copy of the income tax returns for the assessment year 2010-2011 and 2011-2012 to contend that the respondent-wife was having sufficient income. The petitioner has not given any reference of these income tax returns in reply filed by him nor this issue was raised before the learned trial Court. These income tax returns have been filed in the office of the Income Tax Officer, Mandi Gobindgarh. The name of the Assessee has been shown as Lily Khullar c/o S.C.Khullar & Co. There is no supporting document to connect the respondent-wife with these income tax returns. Moreover, at the most, these income tax returns shows that respondent-wife had some income from other source. The question to be determined is as to whether the said income is sufficient to maintain the respondent. It is settled principle of law that wife is also entitled to the same living standard as the husband is enjoying. The petitioner in this case is stated to be doing job in Multinational Company. His income tax returns for the assessment year 2014-2015 shows his income as Rs.6,34,400/-, which shows that the petitioner-husband is highly paid and must be enjoying the high living standard. The respondent-wife will not be able to

live and enjoy the same living standard and comforts with the income shown in the income tax returns placed on record by the petitioner-husband. Thus, I do not find any fault in the discretion exercised by the learned trial Court to award the maintenance *pendente lite* to respondent-wife at the rate of Rs.10,000/- per month.

14. Learned counsel for the petitioner has also contended that the respondent-wife has already been awarded the interim maintenance at the rate of Rs. 5000/- per month in the proceedings under Section 125 Cr.P.C. It is made clear that the amount paid by the petitioner-husband in the proceedings under Section 125 Cr.P.C shall be liable to be adjusted towards the maintenance *pendente lite* awarded in the present case.

15. Thus, keeping in view my aforesaid discussion, the order dated 23.12.2015 allowing the application under Section 24 of the Act filed by respondent-wife does not suffer from any illegality.

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

20.01.2016

S.khan

**(DARSHAN SINGH)
JUDGE**