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

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Judgment Reserved on: 28.04.2016

Date of Decision: 17.05.2016

Gurnam Singh

... Petitioner(s)

Versus

Paramjit Kaur

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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| 1) Whether Reporters of the local papers may be allowed to see the judgment ?. | YES |
| 2) To be referred to the Reporters or not ?. | YES |
| 3) Whether the judgment should be reported in the Digest ? | YES |

Argued by: Mr. Aakash Singla, Advocate,
for the petitioner.

Mr. Onkar Singh, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J.

Instant civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 19.04.2011 passed by learned Civil Judge (Sr. Divn.), Faridkot whereby application under Section 25 of the Hindu Adoptions and Maintenance Act, 1956 (for brevity, 'the 1956 Act') for enhancement of maintenance amount filed by the respondent-wife has been accepted.

In brief, the facts of the present petition are to the effect that

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the respondent-wife filed suit No.311 of 17.11.1998/10.07.2004 in forma pauper as an indigent person for fixation of maintenance amount @ Rs.3,000/- per month from the petitioner-husband and the then Civil Judge (Sr. Divn.), Faridkot, vide order/award and decree dated 02.08.2005, as per the terms of compromise effected between the parties, allowed maintenance to the respondent-wife to the tune of Rs.3,000/- per month from the petitioner-husband. Thereafter, marriage between the parties was dissolved by way of decree of divorce dated 20.08.2005 under Section 13-B of the Hindu Marriage Act, 1955 (for brevity, 'the 1955 Act'). After a gap of about three years from passing decree of divorce, the respondent-wife filed an application dated 22.05.2008 in the above referred civil suit for enhancement of maintenance from Rs.3,000/- to Rs.8,000/- per month. It was averred in the application that the above-said maintenance was granted in August, 2005 and thereafter prices of daily necessities have gone high; the respondent-wife has become old; is not in a position to work effectively and has also to incur expenses on purchase of medicines etc. To the said application, the petitioner-husband filed reply taking various objections including that it is not maintainable after the dissolution of marriage and only a suit can be filed for enhancement of maintenance under the provisions of the 1956 Act. Vide impugned order dated 19.04.2011, learned Civil Judge (Sr. Divn.), Faridkot after considering the material and evidence available on file allowed the application and enhanced maintenance from Rs.3,000/- to Rs.5,000/- per month from the date of filing the application. Hence, this

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civil revision.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that application for enhancement of maintenance is not maintainable in a decided suit, filed under Section 18 of the 1956 Act. He further contended that during pendency of the application, decree of divorce by mutual consent was passed on 20.08.2005. He further contended that once there is a mutual divorce between the parties, respondent being divorced wife cannot seek enhancement of maintenance under the 1956 Act. Since marriage is not subsisting between the parties, the remedy for the divorced wife is under the provisions of the 1955 Act. He further contended that application for enhancement in a decided suit for maintenance under the provisions of the 1956 Act is not at all maintainable.

Per contra, learned counsel for the respondent vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order. He contended that civil revision under Article 227 of the Constitution of India is not at all maintainable, it can only be filed under Section 115 of the Code of Civil Procedure, 1908 (for brevity, 'CPC'). The instant revision against the order of enhancement of maintenance is not maintainable in view of amended provisions of the CPC. The High Court cannot set aside the order passed by the trial Court exercising supervisory jurisdiction under Article 227 of the Constitution

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of India. In support of his contentions, learned counsel placed reliance upon ***Shri Subhas Chandra Agarwalla vs. Smt. Golabi Devi Agarwalla*** AIR 1992 Gau. 20 and ***Sandeep Singh and another vs. Baljit Singh and others*** 2014 (5) RCR (Civil) 238.

I have given my anxious thoughtful consideration to the rival contentions of learned counsel for the parties.

In the light of arguments raised by learned counsel for the parties, following questions arise for determination before this Court:

- (a) *Whether civil revision under Article 227 of the Constitution of India is maintainable on the facts of the present case?*
- (b) *Whether application in a decided suit filed under the provisions of the 1956 Act can be filed for enhancement of maintenance specifically when marriage has been dissolved by way of divorce under Section 13-B of the 1955 Act?*

In Re: Question No.(a)

The matter in hand is no more *res integra*. The Hon'ble Supreme Court of India in ***Surya Dev Rai vs. Ram Chander Rai and Ors.*** 2004 (1) R.C.R. (Civil) 147 has examined the scope of writ of certiorari in para Nos.6 to 15; further observed with regard to supervisory jurisdiction under Article 227 in para Nos.21 and 22 and further observed with regard to difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227 of the Constitution of India in para no.23 to 27 and also examined whether amendment in Section 115 CPC has any impact on jurisdiction under Articles 226 and

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227 of the Constitution of India and ultimately came to the conclusion as under:

“37. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No. 46 of 1999 with effect from 01.07.2002 in Section 115 of the Civil Procedure Code cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the Civil Procedure Code Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

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(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied; (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law; and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct

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errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

38. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 and 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of given case may make it more appropriate for the High Court to exercise self- restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases

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where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

39. *The appeal is allowed. The order of the High Court refusing to entertain the petition filed by the appellant, holding it not maintainable, is set aside. The petition shall stand restored on the file of the High Court, to be dealt with by an appropriate Bench consistently with the rules of the High Court, depending on whether the petitioner before the High Court is seeking a writ of certiorari or invoking the supervisory jurisdiction of the High Court."*

In view of the observations made by the Hon'ble Supreme Court in ***Surya Dev Rai's case (supra)***, it is held that civil revision under Article 227 of the Constitution of India is maintainable and question No. (a) is answered accordingly.

In Re: Question No.(b):

Before I answer this question, it would be appropriate to reproduce Section 18 of the 1956 Act which reads as under:

"18. Maintenance of wife- (1) *Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.*

(2) *A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,-*

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- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;*
 - (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;*
 - (c) if he is suffering from a virulent form of leprosy;*
 - (d) if he has any other wife living;*
 - (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;*
 - (f) if he has ceased to be a Hindu by conversion to another religion;*
 - (g) if there is any other cause justifying her living separately.*
- (3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.”*

The preamble of the 1956 Act suggests that it is an Act to amend and codify the law relating to adoptions and maintenance among Hindus. Section 18 of the 1956 Act, as referred above, provides that a Hindu wife can claim maintenance from her husband during the life-time when marriage is subsisting. Sub-Section (2) of Section 18 of the 1956 Act provides rights to the wife to live separately, without forfeiting her claim to maintenance, if husband is guilty of cruelty and on other grounds, as enumerated in this Section. The basic spirit of this section is sustaining and preserving the marital status. If marriage is subsisting, then wife is entitled to claim maintenance from her husband under Section 18 of the 1956 Act. In case the marriage is not subsisting, then relief can be claimed only under the provisions of the 1955 Act as a

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permanent alimony, even if the marriage is dissolved by a decree of divorce, whereas under the 1956 Act, divorced wife is not entitled to claim maintenance under Section 18 (1) of the 1956 Act. This Court is not inclined to grant relief of maintenance simpliciter in a proceeding under the 1956 Act which can otherwise be granted under the 1955 Act.

The language of Section 18 of the 1956 Act is not ambiguous. It is only in those cases where the language of a statute is found to be ambiguous that the Court must make an endeavour to find out its legislative intendment and try to discover the purpose and object of the provisions of the Act. In ***Carew And Company Ltd vs Union Of India*** AIR 1975 SC 2260, the Hon'ble Supreme Court observed as under:

“23. If the language used in a statute can be construed widely so as to salvage the remedial intendment, the Court must adopt it. Of course, if the language of the statute does not admit of the construction sought, wishful thinking is no substitute and then, not the Court but the legislature is to blame for enacting a damp squib statute. In my view, minor definitional disability, divorced from the realities of industrial economics, if stressed as the sole touchstone, is sure to prove disastrous when we handle special types of legislation like the one in this case. I admit that viewed from one standpoint the logic of Shri Gupte is flawless, but it also makes the law lifeless, since the appellant is thereby enabled neatly to nullify the whole object of Chapter III which is to inhibit concentration of economic power. To repeat for emphasis, when two interpretations are feasible, that which advances the remedy and suppresses the evil, as the legislature envisioned, must find favour with the Court. Are

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there two interpretations possible ? There are, as I have tried to show and I opt for that which gives the law its claws.”

It would also be apposite to reproduce Section 25 of the 1956 Act which reads as under:

“25. Amount of maintenance may be altered on change of circumstances-*The amount of maintenance, whether fixed by a decree of court or by agreement either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.”*

This aforesaid section provides that amount of maintenance may be altered, it does not talk that a decree in a decided suit can be amended by way of mere application for enhancement. If the amount is fixed by an agreement or compromise, it can be altered by an agreement or a decree of appropriate Court in a suit instituted by a party to the agreement. If the amount of maintenance is fixed by a decree and the decree expressly provides for future modification or amendment of decree, in those circumstances, an application for alteration/enhancement of the maintenance can be made. If there is no such stipulation in the decree and any party seeks alteration on change of circumstances with respect to the amount of maintenance, he/she is required to file a separate suit and obtain another decree superseding the earlier one.

Section 25 of the 1956 Act has codified the substantive law as it existed before its enactment. This Section provides for alteration of

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maintenance on change of circumstances. However, it does not state that a decree can be altered or amended by a mere application. In view of this, only remedy for the wife is to file a separate suit for altering the amount i.e. enhancement keeping in view the change of circumstances. Identical view has been taken by the Patna High Court in ***Binda Prasad Singh vs. Smt. Mundrika Devi and another*** AIR 1968 Patna 196 and the Calcutta High Court in *Menokabala Dasi v. Panchanan Seal*, AIR 1966 Calcutta 228.

In the case of ***Panditrao Chimaji Kalure vs. Gayabai***, AIR 2001 (Bombay) 445, the Hon'ble Bombay High Court held as under:

“23. *I have heard both the learned counsel at length, with regard to the aforesaid two substantial questions of law raised by Mr. Milind Patil, appearing on behalf of the appellant in Second Appeal No. 73/1984. The judgment of the Apex Court in the case of Chand Dhavan (supra) makes it abundantly clear that Section 18 of the Hindu Adoptions and Maintenance Act operates in a different level and the marriage has to be subsisting and in that case, the marriage was subsisting. In any event, in view of the judgment of the Apex Court in the case of Chand Dhawan (supra), there is absolutely no ambiguity. There is no question of interchangeability, the same cannot be permitted so as to destroy the distinction on the subject of maintenance. Therefore, once a wife is divorced, her remedy to seek maintenance is at the time of divorce in a matrimonial petition or subsequent thereto is only under Hindu Marriage Act, 1955 and she cannot have any recourse under Hindu*

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Adoptions and Maintenance Act, 1956, inasmuch as, the precondition for application of Hindu Adoptions and Maintenance Act, 1956, for a wife to seek maintenance is that the marriage must be subsisting. Under these circumstances, I answer the first substantial question of law to the effect that a divorced wife cannot claim any maintenance under Hindu Adoptions and Maintenance Act, 1956, and her only remedy is under Hindu Marriage Act, 1955.

24. The second substantial question of law raised by Mr. Milind Patil, learned counsel for the appellant is that even assuming that a divorced wife is entitled to claim maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, in the instant case, Gayabai had failed to establish any case under Section 18(2)(a) or (b) or (g) of Hindu Adoptions and Maintenance Act. On this issue, the lower appellate Court has gone into the entire evidence and has given a categorical finding that the said Panditrao Kalure had not ill-treated her, so as to compel her to live separately. The lower appellate Court came to the conclusion that Panditrao Kalure had not deserted Gayabai wilfully or otherwise. Gayabai has also not been able to justify any other cause for living separately. Those are the findings of the facts based on evidence arrived at by the lower appellate Court. This Court, while deciding a Second Appeal, cannot re-appreciate the said evidence, and come to a different finding which is impermissible. The scope of the Second Appeal is very limited unless the findings are based on no evidence or the findings are totally perverse or contrary to law. The lower appellate Court has given cogent reasons and has come to a conclusion that Gayabai had on her own left Panditrao Kalure and had been living

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separately. I do not find any ground whatsoever to interfere and disturb the same. I fully agree with Mr.Milind Patil that Gayabai had failed to make out any case under Section 18(2)(a)(or (b) or (g) of Hindu Adoptions and Maintenance Act.”

Another aspect in the present case is that before moving an application under Sections 18 or 25 of the 1956 Act, conditions as enumerated under Section 18 (1) of the 1956 Act are required to be fulfilled. The per-condition for filing a suit for maintenance under the 1956 Act is subsistence of marriage and a wife has to prove conditions laid down in Section 18(2) (a), (b) and (g) of the 1956 Act. In the present case, admittedly, the divorce was granted by mutual consent on 02.08.2005 whereas application for enhancement of maintenance has been filed on 22.05.2008 i.e. about three years after dissolution of marriage under Section 13-B of the 1955 Act. In view of this, application for enhancement of maintenance is not maintainable. Even if marriage would have been subsisting, then there was no condition in the decree dated 02.08.2005 whereby maintenance was awarded @ Rs.3,000/- per month, that it can be modified or altered at a later stage. If there would have been such a condition contained in the decree, then such an application could have been allowed to be moved under Section 25 of the 1956 Act. Otherwise also, the respondent-wife has failed to prove the conditions as mentioned in Sections 18(2) (a) (b) and (g) of the 1956 Act and marriage is not subsisting. Therefore, the application for enhancement of maintenance is not maintainable. The question No.(b) is

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answered accordingly.

In view of above discussion, the instant revision is allowed, the impugned order dated 19.04.2011 is set aside and application for enhancement of maintenance moved in a decided suit is dismissed being not maintainable. The provisions in different Acts for grant of maintenance to a divorced wife till she re-marries are designed to prevent vagrancy, destitution and provide for sustenance in distress. With a purpose to do complete justice, this order would operate prospectively so that she may not suffer incalculable harm. It is further clarified that enhanced maintenance, if any, paid to the respondent in pursuance of the impugned order, shall not be recoverable, nor it would be adjustable in future maintenance. The respondent-wife would be at liberty to avail other remedies available to her for enhancement of maintenance in accordance with law under other Acts.

Costs made easy.

17.05.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge