

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4863 of 2015

Date of Decision: 21.01.2016

Sanjeev Kumar

... Petitioner(s)

Versus

Geeta

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Ravinder Malik, Advocate
for the petitioner.

Mr. Sukhdeep Parmar, Advocate
for the respondent.

Shekher Dhawan, J.

Present petition is challenge to the order dated 27.4.2015 passed by learned Additional District Judge, Panipat whereby application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") was accepted and present petitioner was directed to make payment of maintenance allowance at the rate of ₹ 3,000/- per month for his daughter, namely Kashish from the date of filing of the application and ₹ 2,000/- as litigation expenses.

Taking the case from undisputed facts that present petitioner was married to respondent-Geeta on 23.6.2002. A female

child, namely Kashish was born out of this wedlock. Respondent-wife was posted at Dharangadhra, Gujarat and she started living at that place along with her daughter. No payment of maintenance allowance was being made to the wife or minor daughter. Both the parents are gainfully employed. However, Geeta (wife) took the plea that present petitioner was legally bound to maintain his daughter and claimed maintenance allowance at the rate of ₹ 5,000/- per month and ₹ 22,000/- as litigation expenses.

The said application was contested on the ground that respondent-Geeta herself was earning more than ₹ 40,000/- from her government service and as such she was not entitled to get any maintenance allowance.

Learned trial Judge passed the order dated 27.4.2015 thereby directing the present petitioner to make payment of maintenance allowance at the rate of ₹ 3,000/- per month and litigation expenses to the tune of ₹ 2,000/- and present petition is challenge to that.

Learned counsel for the petitioner submitted that application is not maintainable under Section 24 of the Act. Rather the same could be filed under Section 26 of the Act.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that most of the facts are not disputed that parties to the litigation performed marriage as per the provisions of the Act. A female child was born out of this wedlock and maintenance allowance and litigation expenses have

been ordered in her favour through mother, who is respondent in this case. Petitioner, being father of minor child, is under legal and moral obligation to earn and maintain his minor child. Though mother herself is earning and on that ground father cannot escape from his liability to make payment of maintenance allowance.

As regard to the amount of maintenance allowance and litigation expenses ordered by the Court below, the same cannot be said to be on the higher side or unreasonable in any way. As regard to plea taken by learned counsel for the petitioner that petition should have been filed under Section 24 of the Act, law on this point is settled that mere mentioning of wrong provision of law does not operate as a bar to claim any relief and the Court cannot be stopped from granting relief merely because of mentioning of incorrect provisions of law. The Courts are to go for substantial justice to be done and in the case in hand, the Court below has rightly decided the controversy thereby ordering the present petitioner to make payment of maintenance allowance at the rate of ₹ 3,000/- per month and the litigation expenses to the tune of ₹ 2,000/-. There are no grounds for interference in the said order by way of present petition and resultantly, present petition stands dismissed.

(Shekher Dhawan)
Judge

January 21, 2016

"DK"