

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

CR No.5627 of 2016(O&M)

Date of decision:31.8.2016

Pawan Kumar

....Petitioner

VERSUS

Jyoti

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Satbir Gill, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 28.07.2016 (Annexure P-4) passed by the Additional District Judge, Sirsa whereby the respondent has been awarded maintenance *pendente lite* at the rate of Rs.4,000/- per month during pendency of proceedings initiated by the petitioner under Section 12 of the Hindu Marriage Act, 1955 (in short 'the Act') to declare the marriage null and void and in the alternative under Section 13 thereof for dissolution of marriage by a decree of divorce.

Counsel for the petitioner would contend that the respondent married with Krishan Kumar, brother of the petitioner and the said marriage was dissolved by a decree of divorce dated 04.04.2014 (Annexure P-5) passed under Section 13-B of the Act. In the said petition, there is a reference that two children i.e. one daughter Pranjal aged 3 years and son Jatin aged 8 months were born. In the application for maintenance filed by the respondent in the proceedings initiated by petitioner – Pawan Kumar,

she had gone to the extent of saying that two children are alive who are born from marriage of the petitioner and respondent.

It is argued with vehemence that as the respondent is not legally wedded wife of the petitioner, she is not entitled to get any maintenance by invoking Section 24 of the Act. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court Savitabhen Somabhai Bhatiya vs. State of Gujarat and others, 2005(2) RCR (Civil) 151. Further reference has been made to judgment of this Court Manjeet Singh vs. Parson Kaur, 1990(2) PLR 97.

I have heard counsel for the petitioner, perused the paper-book and the order impugned.

A perusal of copy of petition (Annexure P-1) filed at the instance of the petitioner would indicate that the petitioner has sought marriage to be declared null and void under Section 12 of the Act but simultaneously has prayed for dissolution of marriage by invoking Section 13 thereof. The very fact that the petitioner has prayed for dissolution of marriage under Section 13 of the Act, may be in the alternative, is sufficient to show that the petitioner himself is not sure and certain about his stand with regard to marital status of the parties. Under these circumstances, the petitioner can neither be heard to say that the respondent is not entitled to get maintenance nor he can derive any advantage to his contentions from the judgments relied upon. This apart, the petitioner has not filed a petition by invoking Section 11 of the Act dealing with void marriages and one of the grounds provided therein is

violation of clause (i) of Section 5 of the Act i.e. either party had a spouse living at the time of marriage.

No other point has been raised.

In view of what has been discussed hereinabove, the petition fails and is accordingly dismissed in *limine*.

AUGUST 31, 2016		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no