

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 6586 of 2013
Date of Decision: 7.1.2016**

Rajpati

---Petitioner

versus

Satnarayan

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Jai Singh Yadav, Advocate
for the petitioner**

**Mr. A.K.Gahlawat, Advocate
for the respondent**

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

Rekha Mittal, J.

The present petition under Article 227 of the Constitution of India lays challenge to order dated 27.8.2013 (Annexure P-5) passed by the Additional District Judge, Rewari whereby application filed by the petitioner under Section 24 of the Hindu Marriage Act, 1955 (for short “the Act”) in the petition filed under Section 13 of the Act for dissolution of marriage of the parties by the respondent-husband has been dismissed.

Counsel for the petitioner contends that marriage of the parties was performed on 18.7.1983 and three children, two daughters and one son

were born out of the wedlock in the years 1983, 1993 and 1988 respectively. The elder daughter of the parties is married, the son has attained the age of majority and is earning hand but one daughter is unmarried and the petitioner has the responsibility to maintain her. The petitioner was allowed maintenance at the rate of ₹1500/- per month in proceedings filed under Section 125 of the Code of Criminal Procedure (for short "Cr.P.C.") in the year 2006. It is argued that the respondent-husband was working as Nehri Patwari at a gross salary of ₹30,430/-, retired from service on 31.10.2012 and is a pensioner. The respondent got pensionary benefits including GPF at his credit more than ₹20,00,000/-. The daughter of the parties namely Jyoti is dependent, for her maintenance, upon her mother. In view of prices of daily necessities of life coupled with the other needs of the petitioner and her daughter, she is entitled to maintenance in accordance with the resources of the respondent in order to enable her to enjoy the same amenities of life as she would have enjoyed had she continued staying in the matrimonial home.

Counsel for the respondent, on the other hand, would contend that as the petitioner has been allowed maintenance in the proceedings under Section 125 Cr.P.C., she is not entitled to get any maintenance under Section 24 of the Act.

I have heard counsel for the parties and perused the records.

Admittedly, maintenance at the rate of ₹1500/- per month in the petition filed under Section 125 Cr.P.C. was granted in the year 2006. The petitioner is entitled to seek enhancement of maintenance by taking recourse to Section 127 Cr.P.C. but the mere fact that the petitioner can

invoke the provisions of Section 127 Cr.P.C. or she has already filed a petition seeking enhancement of maintenance would not debar her from claiming maintenance under Section 24 of the Act keeping in view income of the respondent and needs of the petitioner and daughter of the parties.

The question now arises for consideration is as to what amount of maintenance is payable by the respondent to the petitioner in the circumstances of the present case. The respondent retired from Irrigation Department of Haryana on 31.10.2012. He was drawing gross salary at ₹ 30430/- per month at the time of retirement and his job is pensionable. Though there is no document on record in regard to the exact pension being paid to him but the respondent must be getting pension to the extent of 50% of his gross salary. The respondent has not disclosed the amount of pensionary benefits received by him. Counsel for the respondent has not contested the claim of the petitioner that the respondent has received pensionary benefits more than ₹20,00,000/-. There is nothing on record to suggest that the respondent has any other obligation except to provide for maintenance of the petitioner, the unmarried daughter of the parties and for himself. Keeping in view the pensionary benefits received by the respondent and the monthly pension being received by him coupled with prices of daily necessities of life, the petitioner is entitled to maintenance pendente lite at the rate of ₹5000/- per month minus the amount of maintenance being paid in any other proceedings.

In view of what has been discussed hereinabove, the petition is allowed, the impugned order is set aside and the petitioner is held entitled to get maintenance pendente lite at the rate of ₹5000/- per month minus the

amount of maintenance paid in any other proceedings from the date of application under Section 24 of the Act.

(Rekha Mittal)
Judge

7.1.2016

PARAMJIT