

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

CR No. 8191 of 2014 (O&M)

Date of decision: 03.02.2016

Vikas ... Petitioner
versus
Jyoti @ Kamal Respondent

2. CR No. 8109 of 2014 (O&M)

Jyoti ... Petitioner
versus
Vikas Malhotra Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Dinesh Arora, Advocate for the petitioner.

Mr. Om Pal Sharma, Advocate for the respondent.

K.Kannan, J. (ORAL)

Both the revisions are against the interim order of maintenance granted under Section 24 of the Hindu Marriage Act, 1955 in the petition filed by the husband for annulment of the marriage. The trial Court has granted Rs. 2,000/- as interim maintenance to the wife and the husband is in the revision CR No. 8191 of 2014 denying her entitlement and the wife is in revision CR No. 8109 of 2014 seeking for enhancement.

The entitlement is denied by the husband by pointing out the fact that the defendant had actually admitted that she had been

married to other persons but she had obtained Panchayati divorce from her earlier husbands and as such the matrimonial relationships had been broken between the respondent and earlier husbands. The defence, however, was that annulment cannot be sought by merely referring to the wife's previous marriages since they were not subsisting at the time when her own marriage to the petitioner was solemnized. Counsel for the husband would argue that it was not a case of wife denying that she had not been married already to some other person but it was a case of a plea of panchayati divorce which could not be accepted.

There is adequate case law to the effect that the Court has power under Section 24 to grant interim maintenance not merely in cases of one of the spouses seeking for dissolution of marriage by divorce under Section 13 but they could be claimed also in petitions for avoiding the marriage on any other grounds under Sections 11 & 12. The idea, at all times, is to ensure that parties at trial are at par and they shall be brought to scales of justice with due empowerment by resource-fulfillment so that one party does not lose out in the litigation by mere inability to sustain himself or herself to stand the rigours of trial. If all the serious maladies, a prospect of vagrancy and destitution are the serious handicaps that the wife could suffer. In a matrimonial relationship, in a typical Indian social condition, it is the man that supports the wife and if wife must be deprived of maintenance during the pendency of the proceedings, the trial would only become farcical. Access to justice is a constitutional precept and the empowerment is a

cherished State Policy by introduction of Article 39-A by the 42nd Amendment that assures equal justice and free legal aid only to ensure that justice is not denied to any citizen by reason of economic or other disabilities.

In a proceeding, if one of the parties pleads for legitimacy of matrimonial relationship and seeks for adjudication for holding the matrimonial bond to subsist, the Court will not enter into an adjudication of whether such a defence is correct or not and put that decision as a pre-condition for claiming maintenance. So long as the matrimonial proceeding is pending, a need to address the claim to maintenance under Section 24 shall be restricted only to examining what is relevant under the said Section. The Court will examine that a spouse who is claiming interim maintenance has no independent income for her and seeks for support and the necessary expenses of proceedings. The Court shall order maintenance as well as the expenses of the proceedings. It shall not clutter its own adjudication by examining the claim made by one party and the denial by the other party of matrimonial relationship as true or not. Prima facie, a subsisting relationship must be presumed to exist, for otherwise, a resort to annulment through a Court decree itself would not be claimed.

There have been instances when Courts have provided for interim maintenance in pending proceedings for annulment and I may not reproduce them because the counsel for the petitioner-husband himself admits to such a proposition but tried to qualify the

observations made in several such judgments to be confined to situations where the spouse was denying any earlier marriage. In this case, according to him, the earlier marriage is admitted and, therefore, this case must obtain a different treatment. I reject this argument, for, there is no such distinction that the wife who has admitted a previous marriage and a person who denies it to be of relevance. The admission must always be treated as a whole and cannot be truncated. If the defendant has pleaded in this case that her marriages had been dissolved by panchayati divorces, that would require to be examined only at the trial. Section 29 (2) of the Hindu Marriage Act reserves any right recognized by custom or conferred by any special enactment to obtain the dissolution of marriage which was solemnized after or before the enactment of the Act. The trial Court is bound to examine a plea made by the defendant that there had been a dissolution of marriage through panchayat, which is another way of saying that the Court would examine whether any custom existed to allow for such dissolution. That cannot be prejudged at the time of entertaining an application for interim maintenance. It is not as if the Court can simply ride a roughshod over a defence for there is no documentary proof of such dissolution. Custom, in the very nature of things, is an established practice and an important source of law. A practice that has gained social approbation to qualify to the status of law would require strong proof but cannot be taken as non-existent even before such an adjudication is undertaken.

If the claim to interim maintenance, therefore, be sustained on the basis of reasoning above, the only issue would be the quantum of maintenance that could be awarded. He was said to be working in a factory earning Rs. 20,000/-. The wife had asserted that the husband has a bank account where he has banked his earnings. The husband did not have the courage to produce the documents and I will not, therefore, look for any more proof than the wife's assertions as to what the husband is earning. If the husband is earning Rs. 20,000/-, he can set apart $\frac{1}{4}$ amount of his earnings without any hassle towards maintenance to the wife. The maintenance shall be Rs. 4,000/- . This shall be the amount that the husband is directed to pay as interim maintenance and it will operate from the date of the filing of the petition before the Court below.

I am informed that the petition for divorce itself has been dismissed in default and if there would be any application for restoration, the Court is directed to ensure that the husband pays the interim arrears before he would have the liberty to have his case restored and for being taken up for disposal on merits. The revision petition filed under CR No. 8191 of 2014 by the husband is dismissed and CR No. 8109 of 2014 by the wife is allowed on the above terms.

(K.KANNAN)
JUDGE

03.02.2016

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