

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

Civil Revision No.8739 of 2015 (O&M)

Date of decision : 19.01.2016

Harjinder Singh

.....Petitioner

Versus

Balwinder Kaur

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Parvinder Singh, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 16.11.2015, passed by learned District Judge (Family Court), S.B.S. Nagar, whereby the application filed by respondent-wife under Section 24 of the Hindu Marriage Act, 1955 (hereinafter called the 'Act') has been allowed awarding the maintenance *pendente lite* @ Rs.10,000/- per month.

2. Petitioner Harjinder Singh has filed the divorce petition under Section 13 of the Act for grant of decree of divorce. During the

pendency of the said petition, respondent-wife filed an application under Section 24 of the Act for grant of maintenance *pendente lite* alleging therein that the petitioner is running a motorcycle agency at Banga and Behram and is earning Rs.11,00,000/- per month. He is also cultivating the agricultural land and is earning Rs.7,00,000/- per annum. Whereas, the respondent-applicant had no source of income.

3. The said application was contested by the present petitioner on the plea that respondent is having huge income from her job. Her brother along with family is residing abroad. She has also amassed huge amount from her matrimonial house. The petitioner is working with his father in the motorcycle agency. He has taken a huge loan from the bank and has to pay the interest. All other averments raised in the application were denied.

4. The learned trial court vide impugned order dated 16.11.2015 awarded the maintenance *pendente lite* @ Rs.10,000/- per month to the respondent-wife along with Rs.15,000/- as litigation expenses.

5. Aggrieved with the aforesaid order, the present civil revision under Article 227 of the Constitution of India has been filed.

6. I have heard Mr. Parvinder Singh, Advocate, learned counsel for the petitioner and have gone through the paper-book carefully.

7. Learned counsel for the petitioner contended that the respondent was already getting maintenance @ Rs.7000/- per month awarded to her in a petition under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter called the 'Cr.P.C.'). He contended that these facts were not disclosed by the respondent in her application filed under Section 24 of the Act. He further contended that it is not explained as to

what was the change of circumstances to enhance the maintenance from Rs.7000/- to Rs.10,000/- per month by the learned District Judge (Family Court). Thus, he contended that the impugned order passed by the learned District Judge (Family Court) is not tenable in law.

8. I have duly considered the aforesaid contentions.

9. In the present revision petition, the petitioner has challenged the order passed by the learned District Judge (Family Court) under Section 24 of the Act awarding the maintenance *pendente lite* to the respondent wife @ Rs.10,000/- per month.

10. The factum regarding grant of maintenance to the respondent-wife under the provisions of Section 125 Cr.P.C. was very much pleaded by the petitioner in the reply, so that fact was very much before the learned District Judge (Family Court) while passing the impugned order. Thus, it cannot be stated that the impugned order has been passed by the learned District Judge (Family Court) without having knowledge about the maintenance order passed in favour of respondent-wife under Section 125 Cr.P.C. Moreover, the maintenance *pendente lite* under Section 24 of the Act is not barred if the maintenance has been awarded under Section 125 Cr.P.C. In order to safeguard the interest of the petitioner, the learned District Judge (Family Court) has categorically mentioned in the impugned order that if the petitioner is paying or pays maintenance to Balwinder Kaur in obedience of the order of any other Court or Forum, that amount would be set off from the amount of alimony *pendente lite* awarded hereinabove. So, it is evident that if the petitioner will pay the maintenance awarded under Section 125 Cr.P.C. to the respondent-wife, he would be entitled to set

off that amount from the maintenance *pendente lite* awarded by the learned District Judge (Family Court) vide impugned order.

11. The amount of maintenance is to be determined by the Court independently in the proceedings under Section 24 of the Act. There is no legal compulsion for the Court while exercising the powers under Section 24 of the Act that it cannot award the maintenance *pendente lite* more than the maintenance allowance awarded in the proceedings under Section 125 Cr.P.C. The plea raised by learned counsel for the petitioner that there was no change of circumstances has no substance as the proceedings under Section 24 of the Act and 125 Cr.P.C. are independent and the impugned order has not been passed under Section 127 Cr.P.C. for enhancement of the maintenance allowance awarded under Section 125 Cr.P.C.

12. Thus, keeping in view my aforesaid discussion there is no illegality in the impugned order warranting the exercise of the extraordinary supervisory jurisdiction by this Court exercising the powers under Article 227 of the Constitution of India.

13. Resultantly, the present revision petition being devoid of merits, is hereby dismissed.

19.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**