

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-24 of 2009

DATE OF DECISION: MARCH 16, 2016

SANJAY KUMAR

...APPELLANT

VERSUS

SHIKHA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes/No

PRESENT: MR. VINOD SHARMA, ADVOCATE FOR THE APPELLANT.
MR. SAMRAT MALIK, ADVOCATE FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. The following order was passed by the trial Court in the petition filed by the appellant seeking dissolution of marriage under Section 13 of the Hindu Marriage Act:-

“20. Keeping in view my findings on the aforesaid issues, the petition of the petitioner partly succeeded and is partly accepted to the extent that a decree for divorce is hereby granted in favour of the petitioner and against the respondent subject to the condition that the concerned Army authorities would deduct 40% of the salary of the petitioner as a maintenance to the respondent and her son and would send the same to them directly and regularly as ordered above. Accordingly, the marriage in question is hereby dissolved by way of decree of divorce. The parties are left to bear their own

costs. Decree sheet be drawn accordingly. File be consigned to the record room.”

2. The appellant in fact filed a petition under Section 13 of the Hindu Marriage Act, 1955 seeking dissolution of marriage. The trial Court granted the relief of dissolution of marriage as sought for by the appellant, however, subject to the condition that the concerned Army Authorities deduct 40% of the salary of the appellant towards maintenance payable to the respondent and her son. The above conditional order is put to challenge by the appellant despite the fact that he was granted decree of divorce.

3. We heard the submissions made on either side.

4. Section 25(1) of the Hindu Marriage Act, 1955 reads as follows:-

“25. Permanent alimony and maintenance.- (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary,

by a charge on the immovable property of the respondent.”

5. On a bare perusal of the above provision of law, it is found that that the trial Court is, of course, competent to determine the maintenance to be paid by the spouse concerned while passing any decree exercising jurisdiction under the above Act. But such an exercise can be invoked by the trial Court only based on an application made to it for the aforesaid purpose.

6. In the instant case, it appears that the respondent never asked the trial Court to fix the maintenance to be paid to her. Nor was any separate application filed by the respondent before the trial Court to fix permanent alimony under Section 25 of the Act while passing a decree for divorce. It is found that the trial Court passed the above conditional order for dissolution of marriage subject to the deduction of 40% of salary of the appellant by the Army Authorities without affording an opportunity to both the parties to address such an issue.

7. Therefore, we have no hesitation to hold that the trial Court has passed the above conditional order against the spirit of Section 25 of the Hindu Marriage Act, 1955.

8. The fact remains that the respondent has not challenged the conditional order of dissolution of marriage passed by the trial Court. In fact, it was submitted by the counsel appearing on either side that both the parties are in fact satisfied with the decree of divorce granted by the trial Court.

9. In view of the above facts and circumstances, the finding

recorded by the trial Court under Issue No.2 alone stands set aside and the matter is remanded to the trial Court to determine the permanent alimony payable by the appellant to the respondent, only on moving of a necessary application under Section 25 of the Hindu Marriage Act, 1955 by the respondent, after affording an opportunity to the appellant to file reply to the said application. The present appeal stands disposed of accordingly.

10. Both the parties shall appear before the trial Court on 12.4.2016.

**(M. JEYAPPAUL)
JUDGE**

March 16, 2016
Gulati

**(RAJ MOHAN SINGH)
JUDGE**