

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-M-184-2015(O&M)

DATE OF DECISION:02.08.2016

Bejinder Kumar

...Petitioner

Versus

Ekta

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL.
HON'BLE MR. JUSTICE SNEH PRASHAR.**

Present: Mr. Pankaj Maini, Advocate for the appellant.

Mr. S.K.Bawa, Advocate for

Mr. J.S.Dadwal, Advocate for the respondent.

M.JEYAPPAUL, J.(ORAL)

Appellant-Bejinder Kumar filed a petition under Section 13 (ia) and (iii) of the Hindu Marriage Act, 1955 seeking a decree of divorce by way of dissolution of marriage between the parties on the ground of cruelty.

During the course of hearing before the trial Court, the appellant failed to pay the maintenance *pendente lite* as determined under Section 24 of the Hindu Marriage Act, 1955.

The petition praying for divorce on the ground of cruelty filed by the appellant-Bejinder Kumar was dismissed for non-payment of maintenance *pendente lite* as determined under Section 24 of the Hindu Marriage Act.

On the very first day of the appeal proceedings, having found that the petition filed by the appellant was dismissed only on the ground that he failed to pay the arrears of maintenance, we directed the appellant to clear the maintenance *pendente lite*. He was ready to make the payment of arrears of maintenance, but the respondent was not present to receive the amount of maintenance tendered by the appellant.

Learned counsel appearing for the appellant referring to a DDR got registered by the father of the respondent informed the Court that the respondent has in fact gone missing and as a result of which the appellant could not pay the amount of

maintenance to the respondent.

Learned counsel for the respondent also informs the Court that he could not contact the respondent.

In the above facts and circumstances considering the readiness of the appellant to pay the arrears of maintenance as ordered by the trial Court at least at the appellate stage, in the interest of justice, we set aside the impugned judgment passed by the trial Court purely on the question of non-payment of arrears of maintenance, allow the appeal and remand the matter to the trial Court to afford an opportunity to both the parties to plead and contest the case through respective counsel and thereafter decide it on merits.

Both the parties shall appear before the trial Court on 23.08.2016. The appellant shall pay the entire arrears of maintenance as ordered by the trial Court, the moment the respondent appears before the trial Court.

(M. JEYAPPAUL)
JUDGE

(SNEH PRASHAR)
JUDGE

02.08.2016
Sunil Devi

Whether speaking/reasoned : Yes

Whether reportable : No