

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-804-2016 (O&M)

Date of decision: 05.09.2016

Tarun Karha

..... Appellant

Vs.

Vandana Karha

..... Respondent

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

Present: Mr. Virendra S. Chaudhary, Advocate
for the appellant.

Mr. Amit Jhanji, Advocate
for the respondent.

M. JEYAPPAUL,J.(ORAL)

CM Nos. 9597, 10169 and 10620-CII-2016

Heard both the sides.

For the reasons set out therein, these applications are allowed.

CM No. 17129-CII-2016

Heard.

Affidavit of the respondent is taken on record.

CM stands disposed of accordingly.

FAO-804-2016

During the pendency of the petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act'), respondent herein chose to file an application under Section 24 of the Act praying for grant of maintenance pendente lite. The trial Court having adverted to the pleas and counter pleas of the parties concerned chose to direct the husband (appellant herein) to pay ₹35,000/- per month as maintenance pendente lite from 19.08.2015, the date on which the application was filed by the respondent, taking note of the fact that the appellant had disposed of his property in

Delhi for a sum of ₹29.05 lacs and inherited ₹14 lac on the death of his mother. Learned trial Court also took note of the fact that respondent was not currently employed though she was previously earning a moderate salary.

Learned counsel appearing for the appellant referring to affidavit filed in CM No. 17129-CII-2016 submitted that in the month of August 2015 when respondent filed an application under Section 24 of the Act, she was employed with pay package of ₹1,25,000/-. It is his further submission based on the above affidavit that respondent has started earning a sum of ₹1, 70,000/- from the month of December 2015 onwards.

Counsel for the respondent vehemently submitted that respondent never stated in the petition filed by her under Section 24 of the Act that she was not in the employment. When petition under Section 24 of the Act was pending before the learned trial Court for disposal, the respondent was out of employment during most of the months. The appellant who is a property dealer is leading a very lavish life, therefore, he is liable to pay the maintenance pendente lite to the respondent. It is his submission that the learned trial Court has rightly ordered maintenance from the month of August 2015.

As per Section 24 of the Act, either of the spouse can move an application praying for maintenance pendente lite before the Court on showing that the spouse concerned has no independent income sufficient to maintain himself or herself.

As rightly pointed out by learned counsel appearing for the appellant, the affidavit sworn to by the respondent categorically discloses that in the month of March 2015 to October 2015, the respondent had been

in employment receiving moderate salary of ₹1, 25,000/- per month. That apart, the additional affidavit would demonstrate that the respondent again got employed from the month of December 2015 and continues to be in such employment, earning ₹1,70, 000/- per month.

Firstly, the respondent, in all fairness, should have disclosed in the application filed under section 24 of the Act before the trial Court that she was in fact earning a sum of ₹1,25,000/- from the month of March to August 2015. Affidavit filed by the respondent would demonstrate that she has financial capacity to sustain herself. Had the respondent brought to the notice of the trial Court that she had been earning in the month of August 2015, the trial Court would not have passed the impugned order directing the appellant-husband to pay ₹35,000/-per month from the month of August 2015. Further, as the respondent has again been employed from the month of December 2015, we are of the view that respondent-wife, who is having financial capacity to maintain herself, is not entitled to maintenance pendente lite.

In view thereof, the impugned order is hereby set aside and the appeal is allowed. It is made clear that the observations made herein above will not have a bearing on the merits of the case pending before the trial Court for disposal.

(M. JEYAPPAUL)
JUDGE

05.09.2016
smriti

(SNEH PRASHAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No