

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

R.S.A No. 59 of 2014 (O&M)

Date of decision: 21.01.2016

Ram Anchal

..... Appellant

Versus

Shashi Bala

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sonia G. Singh, Advocate
for the appellant.

Mr. Rajan Bansal, Advocate
for the respondent.

DARSHAN SINGH, J

The present appeal has been preferred against the judgment and decree dated 23.04.2013 passed by the learned Additional District Judge, Barnala, vide which the appeal preferred against the judgment and decree dated 27.09.2011, passed by the learned Addl. Civil Judge (Sr. Division), Barnala has been dismissed.

2. The plaintiff-respondent Shashi Bala has filed the suit for recovery of Rs. 1,80,000/- as arrears of maintenance for the last three years and for future maintenance at the rate of Rs.4500/- per month and also for creation of the first charge on 7/157 share of the land measuring 7K-17M, situated near Ramgaria Gurudwara, Barnala and insurance policy having maturity value of Rs. 1, 18,000/-.

3. As per the case of the plaintiff-respondent, she was married with the appellant-defendant about 18-19 years back at Rampur Phool

according to Hindu rites and ceremonies. Earlier, she was married to one Harbans Lal with whom she got divorce by way of mutual consent. Defendant was also married prior to that. However, his wife has passed away. He had two children from his previous marriage. It is further pleaded that after the marriage, the plaintiff started residing with defendant as his legally wedded wife at Barnala and gave birth to a male child namely Manoj Kumar from the wedlock. With the passage of time, the children from the previous marriage of the defendant grew up and they started instigating the defendant against the plaintiff as well as her sons. The defendant stopped giving any money to the plaintiff out of salary to meet out their domestic expenses. Ultimately, when behavior of the defendant become intolerable, the plaintiff have to leave the matrimonial house to take shelter in the house of her maternal uncle Prem Nath at Mansa. It is further pleaded that she has no source of income or movable or immovable property from which she could earn the livelihood. Whereas, defendant was employed as Lineman in the Punjab State Electricity Board and was getting the salary at the rate of Rs. 14,000/- per month. Plaintiff also remains ill. So, she has claimed the maintenance at the rate of 1/ 3rd of the salary of the defendant.

4. The appellant-defendant contested the suit on the grounds *inter alia* that plaintiff was never married with him. Rather, she is widow of Harbans Lal and under a compromise she was sent with defendant and is not his legally wedded wife. He further pleaded that so long as the plaintiff remained with him, her needs were fulfilled. The house alleged to have been purchased by the parents of the plaintiff was actually

purchased by defendant by spending money from his pocket. He also denied that he has turned away the plaintiff from the matrimonial house. Rather, it was she, who has left the company of the defendant. All other averments in the plaint were controverted with a prayer for dismissal of the suit.

5. Plaintiff also filed the replication. From the pleadings of the parties, the following issues were framed:-

1. Whether plaintiff is entitled to recovery of amount as prayed for in the plaint, as arrears of maintenance and future maintenance?
OPP
2. Whether plaintiff has no locus standi to file this suit?OPD
3. Whether plaintiff has come to the court with unclean hands?if so its effect?OPD
4. Whether suit is liable to be dismissed with special costs?OPD
5. Relief.

6. On appreciating the evidence and material brought on record, the suit filed by the plaintiff-respondent was decreed by the learned rial Court and plaintiff was held entitled to recover sum of Rs. 4500/- per month from the defendant from the date of institution of the present proceedings onwards subject to adjustment qua the amount awarded to the plaintiff in the proceedings under Section 125 Code of Criminal Procedure, 1973 (for short 'Cr.P.C). The appeal filed by the appellant-defendant was dismissed by the learned Additional District Judge, Barnala vide impugned judgment and decree dated 23.04.2013. Hence this Regular Second Appeal.

7. I have heard Ms. Sonia G. Singh, Advocate, learned counsel for the appellant, Mr. Rajan Bansal, Advocate, learned counsel for the

respondent and have meticulously gone through the paper book.

8. Initiating the arguments, learned counsel for the appellant contended that the appellant is an old man of 60-62 years of age. He has already retired from his service and is only getting Rs. 11,000/- as pension. She contended that the maintenance awarded by the learned Courts below is exorbitant. No money will be left with the appellant for his own maintenance and the maintenance of his family members. She further contended that the defendant-respondent was already getting the maintenance in the proceedings under Section 125 Cr.P.C. So, the present suit was not maintainable. She further contended that there was also no ground for enhancement of the maintenance in the present suit.

9. On the other hand, learned counsel for the plaintiff-respondent contended that the present maintenance has been awarded to the plaintiff by the learned Courts below under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'Act'). He further contended that the learned trial Court has safeguarded the interest of the appellant-defendant and the maintenance allowance awarded in the proceedings under Section 125 Cr.P.C was to be adjusted against the maintenance awarded in the present case. He contended that the appellant-defendant is a technical man. He was working as the Sr. Lineman in the Electricity Board at the time of his retirement. So, even after his retirement, he is able to earn. Thus, he contended that there is no merit in the present appeal.

10. I have duly considered the aforesaid contentions.

11. This fact is not disputed that earlier the plaintiff-respondent

was awarded the maintenance at the rate of Rs. 4000/- per month on the basis of application moved by her under Section 125 Cr.P.C. The maintenance in the present suit has been awarded to the plaintiff-respondent under Section 18 of the Act, which is an independent remedy available to the wife for her maintenance. Moreover, learned trial Court has completely safeguarded the interest of the appellant-defendant. The learned trial Court has ordered that the amount of maintenance awarded in the suit shall be subject to adjustment qua the amount awarded to the plaintiff in the proceedings under Section 125 Cr.P.C vide order dated 14.12.2005.

12. As far as, the quantum of maintenance is concerned, it is not disputed that appellant-defendant was working as a Sr. Lineman in the Punjab State Electricity Board and now has superannuated. The learned trial Court has mentioned that the plaintiff-appellant is getting pension at the rate of Rs. 11,000/- per month. The plaintiff also had a son from her wedlock with the appellant-defendant, who is residing with her. So, she has to look after her son born from this wedlock and also to maintain herself. As already mentioned appellant-defendant was a technical man and it is not expected that he will remain idle after his retirement. Thus, the maintenance allowance awarded by the learned Courts below at the rate of Rs. 4500/- per month is just and reasonable and does not call for any interference by this Court.

13. Thus, keeping in view my aforesaid discussion, I do not find any perversity in the concurrent findings arrived at by the learned Courts below.

14. Thus, no question of law, much less, the substantial question of law as claimed by the appellant arises in the present appeal.

15. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

January 21, 2016

s.khan

(DARSHAN SINGH)
JUDGE