

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 01.08.2016

+ **MAT. APP. (FC) 101/2016, C.M. APPL.27190-27192/2016**

AKASH CHADHA

.....Petitioner

Through: Sh. Sudhir Naagar, Sh. Ashish Chauhan and Sh.
Kushagra Bansal, Advocates.

Versus

PREETI KHANNA

....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. This appeal against an order of maintenance *pendente lite* is premised on the narrow ground that with cessation of the impugned matrimonial proceedings – in this case under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, a maintenance order could not have been made. Learned counsel relies upon *Chitra Lekha v. Ranjit Rai* AIR 1977 Delhi 176, in support of his contention. We notice that the said decision was rendered by a learned Single Judge. A contrary view was adopted by the Punjab and Haryana High Court in *Amrik Singh v. Smt. Narinder Kaur* AIR 1979 P&H 211 and *Sohan Lal v. Kamlesh* AIR 1984 P&H 332 and the Mysore High Court in *N. Subramanyam v. M.G. Saraswathi* AIR 1964 Mysore 38. The judgment in *Sohan Lal (supra)* in fact notices the judgment cited by the appellant, i.e. *Chitra Lekha (supra)* and holds as follows:

“10. In *Smt. Chitra Lekha's case* (AIR 1977 Delhi 176) (*supra*) the petition was filed by the husband under [Section 10\(1\)\(b\)](#) of the Hindu Marriage Act for judicial separation. The wife made an application under [Section 24](#) for grant of interim alimony and litigation expenses. Before disposal of the application under [Section 24](#), the husband's petition was dismissed for default. Consequently, the application under [Section 24](#) was also dismissed. An appeal against the order under [Section 24](#) was dismissed observing that no interim alimony and litigation expenses can be granted after termination of the proceedings. The same view was taken in *Rita Mago's case* (1982 Hindu LR 201) (Delhi) (*supra*). With great respect to the learned Judges, we have not been able to persuade ourselves to accept that view.

11. The second question that arises for determination is that if the application under [Section 24](#) continues after dismissal of the main petition, whether the applicant is entitled to the maintenance till the date of decision of the main petition or the disposal of the application under [Section 24](#). [Section 24](#) has already been reproduced above. The word "proceeding" in the section appears at three places and it connotes the main proceedings, that is, proceedings other than proceedings under [Section 24](#). The words "monthly during the proceedings such sum" are very important. These words show the intention of the legislature that it intended to give maintenance to the indigent spouse till disposal of the main petition. If the application under [Section 24](#) is taken to be included in the word "proceeding", anomalous results would follow. Therefore, we are of the opinion that if the application under [Section 24](#) continues after dismissal of the main petition, the applicant is entitled to the maintenance till the date of the decision of the main petition. In *Sudarshan Kumar Khurana's case* (AIR 1981 Punj & Har 305) (*supra*), a different view has been expressed by the learned single Judge wherein it was observed that there was no justification for not awarding maintenance pendente lite to the wife even beyond the conclusion of the main petition till proceedings under Ss. 24 and 26 of the Act were finalised. With

great respect to the learned Judge, we do not agree with the above observations. Consequently, we overrule the said case to this extent only, However, it may be reiterated that we have approved the other observations of the learned Judge in this case, as mentioned above.”

2. As is evident, the view taken in *Chitra Lekha (supra)* was favored in *Sudershan Kumar Khurana v. Deepak* AIR 1981 P&H 305. The Division Bench in *Sohan Lal (supra)*, for reasons which we entirely concur with, overruled the reasoning which is the underlying basis for *Chitra Lekha (supra)*.
3. This Court is also of the opinion that if the reasoning in *Chitra Lekha (supra)* is allowed to stand, unanticipated hardship could ensue frequently to those moving the Court under Section 24. For instance, in the event a substantive claim for matrimonial relief is made by the husband and the wife's application under Section 24 is pending for an unduly long period, of say one or two years, the exercise of choice by the husband to withdraw the petition for reasons best known to him – and the application of the rule that no maintenance would be granted even for the limited duration, would cause untold hardship. Situations could well arise where in such event, husband, for tactical reasons, withdraws the substantive proceeding despite knowledge that his wife is deprived of sources of income or livelihood.
4. The other reason which persuades us to accept the view in *Sohan Lal (supra)* is that Section 24 itself provides the clue to holding that it has an independent life apart from the main proceeding – (although for a limited period apart from the main proceedings) because it constitutes a “proceeding” by itself. Thus, while the matrimonial court might be constrained not to grant relief under Section 24 beyond the date when the

main proceeding has ceased, nothing prevents it from doing so for the limitation duration from the filing of such application and the cessation of proceedings.

5. In view of the above, we find no merit in the appeal. Learned counsel for the appellant seeks liberty to approach the Family Court for appropriate modification of the impugned order since income particulars were not disclosed at the relevant time. It is open to the appellant to move such an application in accordance with law. The appeal is accordingly dismissed, but with liberty as claimed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

AUGUST 01, 2016

