

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

**CR No. 1377 of 2017
DECIDED ON: FEBRUARY 27, 2017**

RAHUL SHUKLA

.....PETITIONER

VERSUS

MONA SHARMA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Kunal Dawar, Advocate
 for the petitioner.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of order dated December 15, 2016 passed by learned District Judge, Family Court, Gurgaon whereby, while disposing of an application under Section 24 of Hindu Marriage Act (for short 'Act') petitioner-husband has been directed to pay an amount of ₹30,000/- per month as maintenance pendente lite; besides ₹10,000/- as litigation expenses to the respondent-wife.

While assailing the impugned order dated December 15, 2016, it has been argued with vehemence by learned counsel for the petitioner that admittedly marriage of the petitioner was solemnized with respondent on

February 02, 2012 at Arya Samaj Mandir in accordance with Hindu rites and ceremonies and out of their wedlock one daughter namely Kirti was born on November 10, 2014. After the marriage the relations between the parties became strained. As a result thereof, parties started living separately since March 2015 and the petitioner was constrained to prefer a petition under Section 13 of the Act for the dissolution of marriage by decree of divorce. After putting her appearance respondent-wife filed an application under Section 24 of the Act seeking maintenance pendente lite and litigation expenses on the ground that she is unable to maintain herself as well her daughter and has no independent source of income, which has been disposed of by learned District Judge, Family Court, Gurgaon vide impugned order dated December 15, 2016. In fact the impugned order is not sustainable in the eyes of law and deserves to be set aside being against the evidence available on file and settled canons of law. The respondent-wife is working and earning a sum of ₹20,000/- per month, which is evident from her salary account opened by her with Bank of Baroda at Dehradun. However, petitioner was not in possession of said bank statement at the time of passing of impugned order. As such, the same could not be placed on record. Even, the amount granting maintenance pendente lite to the tune of ₹30,000/- per month in favour of respondent-wife has been without considering the income of the petitioner, which is completely based upon assumptions and as such is not sustainable. Petitioner was appointed as Senior Assistant with GMR at Indra Gandhi International Airport and was being paid salary @ ₹20,000/- per month approximately and this fact is also reflected in his income tax return for the year 2014-15. After about one year of his appointment, petitioner left the job because of matrimonial dispute and since then, he has no

permanent source of income. There is no basis for assuming income of the petitioner to the tune of ₹1,00,000/-. Not only this even, learned District Judge has failed to appreciate that there was no proof or any material to show that the petitioner was having business in the name and style of “Remote Solutions DE”.

Learned counsel for the petitioner further contended that the grant of maintenance pendente lite as well as litigation expenses vide impugned order is highly exorbitant. Moreover, such a benefit can be given to a wife who is unable to maintain herself or has no source of income. In the present case, respondent-wife is a working lady and is earning more than the petitioner. As such she is not entitled to any benefit of the provisions contained under Section 24 of the Act. While relying upon the judgments delivered in the cases of **Suseelarani vs. Marimutu; 2007(5) RCR (Civil) 83 and Rohini vs. R. Durairaj; 2005(3) RCR (Civil) 81;** it has been submitted by learned counsel for the petitioner that it has been repeatedly held that the wife having sufficient source of income is not entitled for maintenance from her husband and it is only when the wife is unable to maintain herself that she is entitled to get maintenance from her husband.

Learned counsel for the petitioner further contended that it is also pretty settled that wife is entitled to 1/5th of the total income of her husband. Such an observation was made by the Division Bench of Orissa High Court in the case of **Smt. Laxmi Oram vs. Birsa Oram; 2003(2) RCR (Civil) 134** and the said ratio has been further followed by this Court in **Smt. Parkash Kaur vs. Harbhajan Dass; 2003 (2) RCR (Civil) 423.**

While relying upon other judgment delivered by this Court in the case of **Aloka Chhabra vs. Mani Chhabra; 2013 (2) PLR 243,** it has been

contended by learned counsel for the petitioner that where both the parties are educated and well qualified and had been in employment, where the wife does not disclose her means and employment and does not give details of her employment, is not entitled for maintenance. In the present case, the factum of respondent-wife having been employed before marriage is not an undisputed fact. The respondent-wife has not disclosed the necessary facts to the Court and is guilty of concealment of material facts. On this score alone, she is not entitled to any sort of maintenance. Since the impugned order is based upon assumption and presumption without there being, anything on record to substantiate the bald averments, it is liable to be set aside by way of acceptance of instant petition.

This Court has given an anxious thought to the various submissions given by learned counsel for the petitioner and have scanned the impugned order but does not find any legal and factual force therein.

Undisputably, under Section 24 of the Act respondent-wife is only entitled to maintenance from her husband, if she is unable to maintain herself and has no independent source of income for her support. As far as the contention of learned counsel for the petitioner that wife is entitled to only 1/5th of the total income of her husband as maintenance is concerned, no straight jacket formulae can be laid and each case has to be decided on the peculiar particular facts thereof.

It is an admitted fact that respondent-wife is legally wedded wife of petitioner and she is residing separately since March 2015 with her minor daughter. Though, it has been alleged by the petitioner that respondent-wife is well qualified and has been doing a job earlier but there is no document to

substantiate the said contention. Petitioner is also unable to furnish any particulars of the said job where she is employed or is earning any amount. Whereas, on the other hand, respondent-wife has placed on record the copies of internet extract to show that the petitioner is running a business and is earning handsome amount. There is a specific stand of respondent-wife that petitioner is earning more than ₹1,00,000/- per month as he is running a business in the name and style of 'Remote Solution De' at Doon Business Park, Dehradun. He is also dealing with property and in connection of his business, he generally visits foreign countries and is leading a lavish life. Otherwise also, petitioner being an able bodied person is morally as well as legally bound to maintain his wife as well as his child. The mere fact that respondent-wife is educated and well qualified is itself no ground to decline her maintenance pendente lite, especially when she is not even *prima facie* proved to be having any source of her income to earn her livelihood.

Here it would also be pertinent to mention that provisions contained under Section 24 of the Act provides maintenance for a wife who is unable to maintain herself and its object is to prevent vegrancy and destitution. In the case in hand, it is *prima facie* established that petitioner is a man of means whereas respondent-wife has no independent source of income to maintain herself. Thus, grant of maintenance pendente lite to the tune of ₹30,000/- per month from the date of filing of application; besides ₹10,000/- as litigation expenses is neither exorbitant nor unreasonable. Rather, this Court is of the considered view that the same is legally and factually justified, which cannot be faulted with from any of the angles.

In the light of what has been discussed above the net result is that

the instant petition is without any merits and the same is dismissed whereby, the impugned order is confirmed.

No order as to costs.

FEBRUARY 27, 2017
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>