IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.1912 of 2017 (O&M)
Date of decision:- March 17, 2017

VIJAY KUMAR **....PETITIONER..**

VERSUS

SUDHA DEVI **....RESPONDENT..**

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Prateek Pandit, Advocate,
for the petitioner.

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JASPAL SINGH, J.

Challenge in the instant revision petition preferred under Article 227 of the constitution of India is to the order dated 05.07.2016 (Annexure P-1) passed by Additional District Judge, Kapurthala whereby respondent-wife has been awarded maintenance *pendente lite* @ ₹5000/- per month under Section 24 of the Hindu Marriage Act, 1956 (for short, "Act").

2. While assailing the impugned order, it has been argued by learned counsel for the petitioner-husband that petitioner has already preferred a petition under Section 11 of the Hindu Marriage Act (as amended up-to date) for annulment of his marriage with respondent-Sudha Devi. However, during the pendency of aforesaid petition, respondent-wife Sudha Devi moved an application under Section 24 of the Act and while disposing of the same, petitioner has been directed to pay maintenance allowance @ ₹5000/- per month, which is exorbitant and on higher side. In

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fact, the respondent-wife does not deserve the maintenance allowance. The impugned order is absolutely against the facts and law. The fact of the matter is that the petitioner is working as a Technician and earn ₹5500/- per month. He is also paying installments in the Central Bank of India qua the housing loan taken by him. At present, respondent-wife is residing in the house owned by the petitioner whereas the petitioner is living in a rented accommodation. Thus, in the given circumstances, grant of maintenance allowance @ ₹5000/- per month is highly excessive and exorbitant, especially, in the circumstances that respondent-wife is also hale and hearty and is in a position to earn a handsome amount. Moreover, respondent-Sudha Devi has performed her marriage with petitioner during the subsistence of her previous marriage with Sanjay Saw. On coming to know about the aforesaid fact, the petitioner has preferred a petition for annulment of his marriage with respondent-Sudha Devi. Since, the income of the petitioner is only to the tune of ₹5500/- per month, it is impossible for him to pay a sum of ₹5000/- per month to the respondent-wife. As such, the impugned order deserves to be set aside or modified.

3. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner but find the same to be without any legal weight.

4. Undisputably, the petitioner has preferred a petition under Section 11 of the Act for annulment of his marriage with respondent-Sudha Devi on the ground that she has performed her marriage with him during the subsistence of her earlier marriage with Sanjay Saw and it has also emerged on record that the whereabouts of her previous husband are not known which casts a cloud with regard to the legality and validity of the marriage

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of petitioner with respondent. However by now, it is pretty settled that a wife should not live a life of destitute. The respondent-wife cannot be declined the maintenance *pendente lite*. It is the natural and fundamental duty of the petitioner-husband to maintain his wife, children as well as parents so long as they are unable to maintain themselves. Such an observation was made by the Hon'ble Apex Court in case captioned as ***"Savitaben Somabhari Bhatia vs. State of Gujrat, 2005(1) Crimes (1)***. Similarly, in another case captioned as ***"Sau Ranjana Shivaji Rakhpasare vs. Shivaji Bapu Rakhpasare, 2004 Crl.J 145(150) (Bom)***, the Hon'ble Bombay High Court has observed that after marriage, it is the duty of the husband to provide shelter and maintenance to his wife. In the instant case, there is nothing on the record to suggest that the respondent-wife is doing any job or has own independent source of income to earn her livelihood. In case, a person is deemed to be a casual labourer, he can earn a handsome amount to the extent of ₹9000/- per month, as has also been concluded by the ld. trial court. Thus, the grant of maintenance *pendente lite* @ ₹5000/- per month can neither be termed to be exorbitant or on higher side, rather, it is difficult for a lady even to meet the daily needs in an amount of ₹5000/- per month for her survival.

5. So taking into consideration the case of the petitioner from either of the angles, this Court does not find any illegality, infirmity or impropriety in the impugned order dated 05.07.2016, rather the same is absolutely legally and factually justified and is in consonance with the legal proposition applicable to the facts and circumstances of the case and does not call for any interference by this Court.

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6. In the light of what has been discussed above, the instant

petition being devoid of merits is dismissed.

7. No order as to costs.

March 17, 2017 **(JASPAL SINGH)**
sonika/avin **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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