

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 7231 of 2016(O&M)

Date of Decision:3.10.2017

Santokh Singh Locham

---Petitioner

vs.

Amarjit Kaur

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Ruchi Sekhri, Advocate
for the petitioner

Mr. Amrik Singh, Advocate
for the respondent

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 14.9.2015 (Annexure P-7) whereby application filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 (in short “HMA”) for grant of maintenance pendente lite has been allowed and interim maintenance to the tune of Rs. 30,000/- per month and litigation expenses of Rs. 5,000/- has been awarded.

Counsel for the petitioner has assailed the impugned order primarily on two counts. The first submission made by counsel is that the petition under Section 13 HMA filed by the petitioner seeking decree of divorce against the respondent was withdrawn on 14.9.2015, therefore, the court below has seriously erred by granting maintenance pendente lite as well as litigation expenses. It is argued with vehemence that in view of the

above, application filed by the respondent was liable to be dismissed as the main petition under Section 13 HMA was dismissed being withdrawn. For this purpose, she has placed reliance upon Division Bench judgment of this Court **Jawahar Lal vs. Chand Dhawan 1992 (1) HLR 347**. Reference has also been made to judgment of Hon'ble the Supreme Court of India **Chand Dhawan vs. Jawaharlal Dhawan 1993 (4) JT 22** whereby the judgment passed by this Court in **Jawahar Lal's case (supra)** was affirmed.

Another submission made by counsel is that in the year 2009, the respondent and two children born out of the wedlock filed civil suit under Section 18 of the Hindu Adoption and Maintenance Act for grant of maintenance. In the said suit, interim maintenance was awarded in favour of the plaintiffs therein but eventually the suit culminated in judgment and decree dated 7.8.2015 (Annexure P-4) whereby the respondent has been awarded maintenance to the tune of Rs. 60,000/- per month. In the appeal preferred by the petitioner against the aforesaid judgment and decree, maintenance has been reduced to Rs. 40,000/- per month but the regular second appeal filed before this Court is pending. According to counsel, as the respondent has been awarded maintenance in other proceedings pending since 2009, she otherwise is not entitled to get maintenance from 19.3.2014 till 14.9.2015. In this context, reference has been made to judgment of the Gujarat High Court, **Hemlataben Hirenkumar Bhaidasna vs. Hiren Manilal Bhaidasna 2009(56) RCR (Civil) 410**.

To refute contention of counsel for the petitioner with regard to maintainability of the application under Section 24 HMA despite the main petition under Section 13 HMA having been dismissed as withdrawn,

counsel has relied upon another Division Bench judgment of this Court

Sohan Lal vs. Smt. Kamlesh 1985(1) HLR 465. It has further been argued that the trial court has rightly awarded maintenance pendente lite and litigation expenses.

I have heard counsel for the parties, perused the paper book and the judgments cited at Bar.

The controversy raised by the petitioner with regard to non-maintainability of application for maintenance pendente lite after the petition under Section 13 HMA was withdrawn by the petitioner is squarely covered by judgment of the Division Bench in **Sohan Lal's case (supra)**. The judgment relied upon by counsel for the petitioner has got no bearing on the facts of the case in hand and is distinguishable. In **Jawahar Lal's case (supra)**, Chand Dhawan filed an application under Section 25 HMA for permanent alimony and also moved an application under Section 24 HMA for maintenance pendente lite after the petition under Section 13-B HMA seeking divorce by way of mutual consent was dismissed as withdrawn. The issue before the Court was whether application under Section 25 HMA is maintainable in the given scenario. The Court held that application under Section 25 was not maintainable as question of grant of permanent alimony to the wife would have arisen had the court passed a decree for restitution of conjugal rights or judicial separation or nullity or divorce under either of Sections 9,10, 11 and 13 HMA. It has further been held that after divorce petition has been dismissed on merits, plea of the wife for grant of permanent alimony is not maintainable and even the question of grant of maintenance under Section 24 HMA does not arise. In

the case at hand, the application under Section 24 HMA was pending since 19.3.2014 but the petition for divorce was withdrawn by the petitioner on 14.9.2015. That being so, the instant case is fully covered by the Division Bench judgment in **Sohan Lal's case (supra)** wherein it has been held that right to maintenance pendente lite or litigation expenses cannot be defeated by allowing time to elapse and pendency of the proceedings to end. In this view of the matter, contention raised by counsel for the petitioner raising legal objection with regard to non-maintainability of application under Section 24 HMA is misconceived and liable to be rejected.

The respondent has been awarded maintenance pendente lite at the rate of Rs. 30,000/- per month. In the civil suit filed by the respondent and children born out of the wedlock, they have been awarded maintenance @ Rs. 60,000/- per month till attaining of majority by the children born in 1993 and 1995 and thereafter respondent being entitled to maintenance @ Rs. 60,000/- per month. Counsel for the petitioner has submitted that in appeal preferred by the petitioner, maintenance has been reduced to Rs. 40,000/- per month. In the civil suit, maintenance has been determined on the basis of evidence adduced by the parties. In the face of adjudication by the civil court, I find it difficult to accept contention of the petitioner that maintenance pendente lite @ Rs. 30,000/- per month allowed in the proceedings under HMA is on higher side or liable to be reduced. However, maintenance assessed under Section 24 HMA shall be liable to adjustment out of maintenance paid/payable in any other proceedings between the parties.

With the aforesaid observations, the petition stands disposed of.

(**Rekha Mittal**)
Judge

3.10.2017
paramjit

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