

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

CR No.7666 of 2016

Date of decision: 16.02.2017

Amit Sharma

..Petitioner

Versus

Meenakshi

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Vikas Sharma, Advocate for
Mr. K.S. Malik, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 09.10.2015 (Annexure P-5) passed by Additional District Judge, Panipat, whereby, the application filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') has been allowed and the petitioner was directed to pay maintenance @ ₹10,000/- per month besides litigation expenses to the respondent.

Briefly, the facts of the case as made out in the present revision petition are that the marriage of the petitioner was solemnized with respondent as per Hindu rites and ceremonies on 03.02.2013 at Samalkha. Out of said wedlock, one male child was also born on 31.07.2014. Some differences arose between the parties. The petitioner-husband filed a divorce petition under Section 13 of the Act, 1955, which was contested by the respondent by way of filing written statement. Along with written statement,

the respondent-wife also filed an application for grant of maintenance pendente-lite and litigation expenses for herself and her minor son. Petitioner filed reply to the application and the respondent-wife was awarded maintenance @ ₹10,000/- per month vide order dated 09.10.2015 passed by the Additional District Judge, Panipat.

Aggrieved by said order of award of maintenance, the petitioner-husband has approached this Court by way of filing the present revision petition.

Learned counsel for the petitioner submits that the amount of maintenance is on the higher side whereas there was no evidence to prove that the petitioner was having income from rent. Learned counsel further submits that the mother of the petitioner is widow, old aged lady and is suffering from various ailments. Not only she needs financial support but care also by considering her old age as there is no other family member to look after her. Learned counsel also submits that the respondent-wife is well educated and possessing degree of M.A. B.Ed. and is also earning handsome amount by way of giving tuitions to the students at home but this aspect has not been considered. The respondent-wife has also filed an application for grant of maintenance under Section 125 Cr.P.C. before the Court at Delhi, which is still pending. At the end, learned counsel for the petitioner submits that the petitioner is not earning any amount and as such, the maintenance be reduced to some reasonable amount.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

The facts relating to marriage between the parties, birth of child out of said wedlock, filing of divorce petition by the petitioner-husband and filing of application for maintenance by the respondent-wife are not disputed.

While filing written statement by the respondent-wife, an application for grant of maintenance pendente-lite and litigation expenses was also moved for herself and her minor son and both were allowed maintenance @ ₹10,000/- per month. Order of granting maintenance has been challenged on the ground that the same is on the excessive side as the petitioner is not having any source of income and has to support his old mother also.

It has been mentioned in the impugned order dated 09.10.2015 that the respondent-wife has placed on record certain photographs of the properties of petitioner-husband but those documents could not be taken into consideration as documentary proof of income of the parties but by considering that the husband being able bodied and young person can earn sufficient income, respondent-wife was held entitled to ₹5000/- for herself and ₹5000/- for her minor son per month as maintenance from the date of filing of application. The petitioner-husband was also held liable to pay ₹3000/- as one time litigation expenses to the respondent-wife.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner is ready to settle the dispute with the respondent-wife but when he was asked to deposit some amount as litigation expenses or for summoning the respondent-wife in the Court to explore the possibility of compromise/settlement, he on getting instructions

from the petitioner, showed his inability to pay the amount.

For grant of maintenance, the Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those, he is obliged under the law and statute. The amount of maintenance fixed for the wife should be as much which is sufficient for her to lead comfortable life so that she may not feel handicapped to meet out the expenses for her bread and butter.

Section 24 of the Act makes a provision for maintenance pendent lite and expenses of proceedings. It reads thus:-

“S.24.- Maintenance pendent lite and expenses of proceedings.- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly, during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be

disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

Section 24 thus provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may apply to the court to direct the respondent to pay the monthly maintenance as the court may think reasonable, regard being had to the petitioner's own income and the income of the respondent. The very language in which Section is couched indicates that wide discretion has been conferred on the court in the matter of an order for interim maintenance. Although the discretion conferred on the court is wide, the Section provides guideline inasmuch as while fixing the interim maintenance the court has to give due regard to the income of the respondent and the petitioner's own income. In other words, in the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute.

The object behind Section 24 of the Act, 1955 is to provide for maintenance, pendente-lite, to a spouse in matrimonial proceedings so that

during the pendency of the proceedings the spouse can maintain herself/himself and also have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds.

A spouse unable to maintain himself/herself is entitled to maintenance on the principle of equi-status and respect that the spouse would have enjoyed if he/she continued to live with other spouse.

The provisions of Section 24 are beneficent in nature and the power is exercised by the Court not only out of compassion but also by way of judicial duty so that the indigent spouse may not suffer at the instance of the affluent spouse. The legislature, in its discretion, has not fixed any guideline regarding ceiling limit of maintenance, pendente-lite, as in the case of Divorce Act or Parsi Marriage Act. The word 'support' in Section 24 is not to be narrowly interpreted. It does not mean bare existence. It means that the claimant spouse should have the same comfort as the other. Of course, the Section is not intended to bring about arithmetical equality between the two.

The Court while considering the merits of an application for grant of an interim maintenance under Section 24 has to necessarily arrive at prima- facie determination about the earning capacity of the rival claimants. The determination cannot be made with exactitude; it is essentially interim in nature. The Court is called upon to make a summary consideration of amount which the applicant is to be awarded by way of maintenance pendente-lite and litigation expenses in accordance with the financial resources of the parties. The capacity of the other party to earn cannot be

taken into consideration. It is only the actual earning of the opposite party on the basis of which relief can be granted. Permanent income and not casual income is relevant. For example if a husband brings on record that the non- applicant wife earns some amount by taking coaching classes for children, this cannot be termed as her permanent income or that the wife has independent permanent source of income. The proceedings being summary, the matter has to be decided on the basis of pleadings supported by affidavits and the documents that may be filed by the parties in support of their case.

Where there was sufficient means in the family of the husband on the strength of which the husband got married he has to share the burden to support his wife during the course of annulment of such marriage.

Where the parties do not come forward with exact income they have, the Court would have no alternative but to apply its guess-work. In the decision reported as ***140 (2007) DLT 16 Sh.Bharat Hegde Vs. Smt.Saroj Hegde*** it was held that under noted eleven factors have to be taken into account: -

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non applicant has to maintain.
5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical

attendance and treatment etc. of the applicant.

8. Payment capacity of the non applicant.

9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.

10. The non applicant to defray the cost of litigation.

11. The amount awarded u/s 125 Cr.P.C. is adjustable against the amount awarded u/ 24 of the Act.

It is also well settled that it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

In this context, I may profitably quote a passage from the judgment rendered by the High Court of Delhi in ***Chander Prakash Bodhraj vs. Shila Rani Chander Prakash***, AIR 1968 Delhi 174 wherein it has been opined thus:-

"An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such ablebodies person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his

legal obligation of maintaining his wife and child.

When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

From the aforesaid enunciation of law it is implied that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny.

In ***Shamima Farooqui vs. Shahid Khan, 2015(2) RCR (Criminal) 526***, it has been held by Hon'ble the Supreme Court that plea of husband that he is not doing job and has no means to pay, cannot be accepted to deny the maintenance as these are only bald excuses. In case the husband is healthy, able bodied and is in a position to support himself, he is under legal obligation to support his wife as well. Hon'ble the Supreme Court has gone to the extent in saying that it is the obligation of the husband to maintain his wife and he cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

In the present case, the respondent-wife has been granted maintenance to the tune of ₹5000/- for herself and ₹5000/- for her minor

son. Although respondent-wife had brought on record certain documents or photographs but the same could not be considered and by considering the facts and circumstances of the case, an amount of ₹5000/- each has been awarded as maintenance.

It is unbelievable that an able bodied person is not in a position to earn anything. There is nothing on record to show that the respondent-wife is having any independent source of income. In today's time for meeting out the day-to-day expenses and to look after the minor child, an amount of ₹10,000/- cannot be said on the higher side.

In view of the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and no interference is required in the impugned order. Accordingly, the present revision petition being devoid of any merit is hereby dismissed.

16.02.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No