

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

CR No.7671 of 2017 (O&M)

Date of decision: 07.11.2017

Ajmer Singh

...Petitioner

Versus

Manjot Kaur

...Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. H.S. Dhandi, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 04.09.2017 (Annexure P3) passed by the Additional Civil Judge (Sr. Div.), Samrala whereby interim maintenance @ Rs.5000/- per month in a petition filed by Manjot Kaur and Damanpreet Kaur, minor under the Hindu Adoptions and Maintenance Act, 1956 has been allowed.

Counsel for the petitioner has challenged the impugned order primarily on three counts. The first submission made by counsel is that respondent has filed an application under Order 33 Rule 1 of the Code of Civil Procedure (in short 'the CPC') seeking permission to sue as an indigent person and the said application is still pending adjudication, therefore, the Court was not competent to pass an interim order allowing maintenance to the respondent and minor child. The second submission made by counsel is that the petitioner in reply has raised a categorical plea that marriage between the petitioner and respondent is void as she was

suffering from schizophrenia prior to marriage between the parties, therefore, incompetent to give her consent for the marriage. According to counsel, as the petitioner has raised the plea of marriage being void to be established by way of evidence, the respondent cannot claim interim maintenance on the plea that she is the legally wedded wife of the petitioner. In support of his contention, he has referred to judgment of Andhra Pradesh High Court **Abbayolla M. Subba Reddy Vs. Padmamma, 1998(5) ALD 465**. Further reference has been made to judgment of this Court **Satyavir Vashist Vs. Smt. Asha Gambhir, AIR 2007 P & H 8**. The last submission made by counsel is that the petitioner is owner of a small piece of land, therefore, interim maintenance assessed by the Court below is on higher side and liable to be reduced. In the alternative, it is submitted that the order for interim maintenance may be made effective from the date of order in place of from the date of application.

I have heard counsel for the petitioner, perused the paper book particularly various documents annexed with the petition.

The plea of the petitioner that application for interim maintenance could not be allowed by the trial Court till the decision of plea of the respondent for permission to sue as an indigent person is decided is not meritorious and has rightly been rejected by the Court by relying upon judgment of this Court **Major Singh Vs. Mohinder Kaur and others, 2009(1) RCR (Civil) 907**. This Court has relied upon the judgments of

Delhi High Court **Smt. Gyan Devi Vs. Shri Amar Nath Aggarwal etc., ILR 1975(1) Delhi 811** and Kerala High Court **Sivankutty Vs. Komalakumari and others, AIR 1989 Kerala 124** to say that interim maintenance can be allowed pending decision of an application for permission to sue forma pauperis. Counsel for the petitioner has failed to cite any contrary precedent.

This brings the Court to the plea with regard to stand of the petitioner that the marriage between the parties is void. Counsel for the petitioner would fairly inform that there is no material available on record much less documentary to prima facie prove contention of the petitioner that Manjot Kaur respondent was suffering from schizophrenia prior to marriage to attract the provisions of Section 5 of the Hindu Marriage Act, 1955. The judgments relied upon by counsel for the petitioner on the issue of void marriage deal with the cases where there was allegation that one of the parties to the marriage had a living spouse at the time of performance of their marriage. Under the circumstances, the petitioner can neither derive advantage to his contentions from the referred authorities nor can escape his liability to pay maintenance by raising a wild allegation that the respondent wife was suffering from mental illness rendering her incapacitated to give consent for marriage.

The Court below has awarded interim maintenance @ Rs.5,000/- per month for the respondent-wife and minor child born out of the wedlock. The petitioner is owner of land measuring 46 kanals 17 ½

marlas in Village Sehajumajra, Tehsil Samrala. Contention of the petitioner that he owns a small piece of land is incorrect as he is owner of 6 acres of land. Keeping in view the sky rocketing prices of daily necessities of life, interim maintenance allowed by the Court below may not suffice to meet day to day needs of the two what to talk of providing them with comforts and luxuries. Examined from any angle, I do not find any patent error much less illegality in the impugned order warranting intervention in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

No order as to costs.

07.11.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No