

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.8137 of 2016

Date of decision:30.5.2017

Jaspreet Kaur @ Seema

...Petitioner

Versus

Gurpreet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Manish K. Singla, Advocate for the petitioner.
Mr.S.K.Bokolia, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 20.9.2016 passed by the learned matrimonial court, dismissing her application under Section 24 of the Hindu Marriage Act, 1955 ('the Act' for short), during the pendency of the divorce petition, filed by the respondent-husband, petitioner-wife has approached this Court by way of present civil revision petition filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare perusal of the impugned order would show that the learned matrimonial court did not advert to the merits of the case and dismissed the application of the petitioner-wife only on the ground that she did not deny the allegation of adultery levelled against her by her husband. Learned counsel for the petitioner submits that petitioner has specifically denied this allegation in her written statement filed to the divorce petition.

He has been found justified in contending that petitioner-wife was not expected to take any averments about the said allegation of adultery in her application under Section 24 of the Act.

It is also pertinent to note here that the learned matrimonial court itself has recorded in the impugned order that the petitioner was legally wedded wife of the respondent. In such a situation, the learned matrimonial court ought to have decided the application moved by the petitioner-wife under Section 24 of the Act, on its merits by passing an appropriate order, in accordance with law. Having said that, this Court feels no hesitation to conclude that since the impugned order has not been passed on merits, it cannot be sustained.

Once the learned matrimonial court itself has recorded that the petitioner-wife was legally wedded wife, her claim for maintenance *pendente lite* ought to have been decided on merits and not on the allegation of adultery against her. Further, it is only an allegation against the petitioner which is yet to be proved by the respondent by leading cogent and convincing evidence. In such a situation, the learned matrimonial court was expected to decide the application on merits by passing an appropriate order, therefore, the impugned order cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained and accordingly, impugned order dated 20.9.2016 is hereby set aside. Matter is remanded to the learned

matrimonial court with a direction to reconsider the application moved by the petitioner-wife under Section 24 of the Act and decide the same on merits, by passing an appropriate order, in accordance with law. Let the application of the petitioner be decided at an early date.

Resultantly, with the above-said observations made and directions issued, the present civil revision petition stands allowed, however, with no order as to costs.

30.5.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No