

In the High Court of Punjab and Haryana at Chandigarh

CRR-641 of 2017(O&M)

Date of Decision: 21.2.2017

Ashok Kumar

---Petitioner

versus

Pushpa

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. G.S.Brar, Advocate
for the petitioner**

Rekha Mittal, J.

The petitioner has challenged order dated 5.11.2016 passed by the Additional Sessions Judge, Fazilka whereby revision petition preferred by the respondent-wife against order dated 2.7.2015 passed by the trial court dismissing her application for grant of interim maintenance has been allowed and the petitioner has been directed to pay interim maintenance @ Rs. 5000/- per month during pendency of petition under Section 125 of the Code of Criminal Procedure (in short "Cr.P.C.").

Counsel for the petitioner has submitted that the petitioner filed a petition under Section 9 of the Hindu Marriage Act, 1955 (in short "the Act") seeking restitution of conjugal rights and the proceedings culminated in ex parte decree dated 22.10.2010. It is argued that as the respondent-wife did not join company of the petitioner despite a decree under Section 9 of the Act passed in his favour, she has disentitled herself to assert her claim for grant of maintenance in view of provisions of Section 125(4) Cr.P.C.

I have heard counsel for the petitioner, perused the paper book particularly the order dated 5.11.2016 passed by the revisional court.

On a pointed query raised by the court, counsel for the petitioner has fairly informed that the order passed in proceedings under Section 9 of the Act was ex parte and the petitioner did not file an application for execution of the said order much less having served any notice upon the respondent-wife calling upon her to join his company. The mere fact that the petitioner has obtained an ex parte decree of restitution of conjugal rights is not sufficient to deny maintenance to the respondent-wife. This apart, it is an admitted position of the case that in proceedings under Section 24 of the Act, the respondent-wife has been allowed maintenance pendente lite @ Rs. 5000/- per month. The revisional court while allowing revision has made a fair order that maintenance paid to the respondent in any other proceedings shall be liable to be adjusted out of maintenance assessed under Section 125 Cr.P.C. as an interim measure. That being so, I do not find any error much less illegality in the impugned order warranting intervention.

Dismissed.

However, nothing stated in this order shall cause prejudice to either of the parties at the time of final disposal of the case.

(Rekha Mittal)
Judge

21.2.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No