

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

**FAO-M-371-2014 (O&M)**

**Date of decision: 02.12.2017**

**Nirmal Kaur**

**...APPELLANT**

**VERSUS**

**Kirpal Singh**

**....RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE M. M.S.BEDI  
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

**Present: Mr. G.S.Bains, Advocate,  
for Mr. Vijay Sharma, Advocate,  
for the appellant.**

**Mr. A.S.Dhindsa, Advocate.**

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**AUGUSTINE GEORGE MASIH, J.**

**1.** Petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage was filed by the petitioner-husband Kirpal Singh (respondent herein) for passing a decree of divorce on the ground that the respondent-wife Nirmal Kaur(appellant herein) was a quarrelsome, rude, uncaring and cruel lady, who not only used abusive language against the petitioner, his mother and other family members but tortured the two sons who were born out of the wedlock. Cruelty was primarily pressed into service as a ground for grant of decree of divorce. After trial, petition was allowed and a decree of divorce was passed by the Additional District

Judge, Patiala on 20.01.2014. Aggrieved by the said judgment and decree, the present appeal has been preferred by the wife Nirmal Kaur.

2. During the pendency of the appeal, an application under Section 24 of the Hindu Marriage Act was filed by the appellant-wife claiming maintenance pendente-lite @ Rs. 30,000/- per month and litigation expenses of Rs. 25,000/-. On issuance of notice on the application by this Court on 03.03.2015, counsel for the respondent-husband appeared and sought time to file reply. On 07.05.2015, further time was sought by the counsel for the respondent which was granted, however, the Court directed the respondent-husband to pay a sum of Rs. 15,000/- towards litigation expenses by the next date of hearing i.e. 17.08.2015 in the shape of bank draft. On 17.08.2015, time was sought by the counsel for the respondent for filing reply and for payment of litigation expenses and the case was adjourned to 08.09.2015. On 08.09.2015, as no litigation expenses were paid nor reply was filed, the Court considered the application under Section 24 of the Hindu Marriage Act and taking the un rebutted pleadings therein to be true, granted Maintenance pendente-lite @ Rs. 20,000/- per month from the date of application to the applicant-appellant-wife to be paid by the respondent-husband minus any amount being paid in any other proceedings and further litigation expenses of Rs. 25,000/- were also granted. The appeal was adjourned to 20.10.2015 for payment of arrears of maintenance.

3. On 20.10.2015, since the respondent-husband had not complied with the order dated 08.09.2015, last opportunity was granted to him to clear the arrears of maintenance, failing which his defence would be deemed to have been struck off. On the adjourned date i.e. 07.12.2015, neither the respondent or his counsel appeared nor any affidavit was filed by him that

he has cleared arrears of maintenance, the Court struck off the defence of the respondent-husband.

4. The case was thereafter adjourned on two dates and then on 10.08.2016, at the request made by the counsel for the parties, the matter was posted before the Mediation and Conciliation Centre of this Court for an amicable settlement of the dispute. The parties were directed to appear before the Mediation and Conciliation Centre of this Court. The Mediator reported that the matter could not be settled between the parties. The case was listed for hearing on 31.05.2017 when the counsel for the respondent pleaded no instructions on behalf of the respondent and prayed that the notice be issued to the respondent for some actual date. The Court, at the request of the counsel for the respondent, issued notice to the respondent for 25.08.2017. As per the report of the Registry, the respondent-husband had been duly served but despite service, the respondent did not put in appearance personally or through a counsel. However, the Court, on the said date i.e. 25.08.2017, adjourned the case for 12.10.2017 in order to give a fair opportunity to the respondent to appear before this Court in the interest of justice.

5. In the light of the above fact that despite sufficient opportunities having been granted, maintenance pendente-lite @ Rs. 20,000 per month with adjustment/deduction of any amount having been paid in any other proceedings, from the date of application under Section 24 of the Hindu Marriage Act with further litigation expenses of Rs. 25,000/-, as ordered on 08.09.2015, having not been paid leading to the striking off the defence of the respondent-husband vide order dated 07.12.2015 and thereafter also, the case having been adjourned on various occasions,

referred to the mediation at the request of the counsel, which failed, the case having been listed in Court on 31.05.2017 when the counsel pleaded no instructions, notice having been issued where he has been served but chose not to appear, case adjourned for today still the respondent having not put in appearance in Court shows his conduct and intention of not wilfully complying with the order passed by this Court. This has resulted in depriving the appellant-wife of her right of maintaining herself dignifiedly despite he being capable of paying as it is not the stand of the respondent-husband and further as stated by Mr. A.S.Dhindsa, Advocate, who had been representing the respondent-husband, that despite he having informed and conveyed the order of maintenance, the appellant-husband has failed to do so and is not even responding to the telephonic calls of his counsel, leaves no manner of doubt that the respondent is intentionally, wilfully and deliberately not complying with the order passed by this Court despite his capability and capacity to pay.

6. It is true that under the Hindu Marriage Act, nothing has been mentioned with regard to the consequences for non-compliance of the order passed under Section 24 of the said Act. The remedy, no doubt, of filing an execution petition as provided for under Section 28-A of the Hindu Marriage Act for recovery of the dues of maintenance pendente-lite would be available which is obviously a long, cumbersome and arduous process leading to waiting period which may last years in some cases. That would frustrate the very purpose, for which an order under Section 24 of the H.M. Act has been passed i.e. for providing maintenance to the spouse for sustenance and leading a dignified life, which is the responsibility of the other who is better off. In other words, the needy/indigent spouse would

virtually have no funds to prosecute the proceedings and would be left to starve and expose itself to various unfortunate situations and vagaries of life.

7. Payment of interim maintenance and litigation expenses is ordered to a spouse, who is financially weak, so as to infuse strength, ability and confidence which will enable the indigent/financially weak spouse to protect, fight, litigate and enforce her/his rights conferred by law and that too, effectively. Delay in payment would not only be against the very intent of Section 24 of the H.M. Act but against the very spirit of this Statute i.e. H.M. Act. The urgency attached by the legislature to the proceedings under the H.M. Act is apparent, rather spelt out in Section 21-B which puts the onus on the Court to endeavour to conclude the trial within six months from the date of service of respondent by holding day to day proceedings and similarly the appeal within three months. In any case, matrimonial proceedings, by the very nature thereof, require expeditious finalization because what would a person gain if it takes years together to culminate when the prime of the age is lost as the time would not wait for anyone nor does the aging process.

8. This in mind, when the Court comes across a situation where the defaulter, despite being aware of the order of maintenance in favour of the spouse, having means and resources, adopting a grossly lackluster attitude towards the indigent spouse so as to discourage, dishearten, harass and coerce him/her, fails to pay despite being given opportunity to discharge the liability as per the order, the Court would not dance to his tune nor can it sit as a mute spectator to such an approach of the party. If the defaulter willfully neglects and/or refuses to comply with the order, there

can be no reason why the said defaulter should not be required to face the consequences. In these circumstances, merely by staying the hearing of the appeal for indefinite time will not meet the ends of justice as the sword of uncertainty, which has been hanging over the harassed and harried spouse for long, would continue to be so especially when there is no hope that the defaulter will discharge his duty by complying with the order passed by the Court. By relegating, at this stage, the aggrieved claimant for realization of the amount and the arrears as ordered under Section 24 of the H.M. Act by taking recourse to execution proceedings would be pushing the indigent spouse into another lengthy and undesirable litigation and in this process meanwhile, the matrimonial Court will find itself in a difficult, if not impossible, situation/position to decide the case expeditiously, which is the requirement of the Statute. In case it proceeds to decide the case without insisting on the compliance of the order passed under Section 24, the purpose and mandate as also the intent of the Section stands negated and frustrated resulting in denial of justice to a person who is entitled to reap the fruits of the order passed by the Court in her/his favour. This would amount to giving a premier to the defaulting spouse, encouraging him/her to violate and not comply with the order of the Court. In other words, being a party to misuse of the process of law.

**9.** Should the Court leave such a needy and indigent spouse alone to fend for self? Is the Court helpless and powerless in the light of there being no efficacious specified procedural remedy provided for under the Statute?

**10.** This can never be so nor can the Courts be at the mercy of the defaulters. The Court is neither powerless nor helpless as the remedy is

available under Section 21 of the H.M. Act, which makes Civil Procedure Code, 1908 applicable to all proceedings, as far as may be, subject to the provisions of H.M. Act and rules as the High Court may make in this behalf.

11. Since the Civil Procedure Code (hereinafter referred to as 'CPC') is applicable, in our considered view, when the H.M. Act is silent and does not provide for any remedy to the above situation, resort to Section 151 CPC for enforcement of order passed under Section 24 of the H.M. Act can be had. This Section 151 CPC empowers the Courts by conferring inherent powers which enables the Courts to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the Court.

12. The Hon'ble Supreme Court has in the case of **M/s Ram Chand and Sons Sugar Mills Pvt. Ltd. vs. Kanhaya Lal Bhargava and others**, AIR 1966 SC 1899, has held that the provisions of Section 151 of the Code of Civil Procedure can be invoked by the Court which confers inherent powers on the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court for the two above referred purposes. It has been clarified further by the Hon'ble Supreme Court in **Vareed Jacob vs. Sosamma Geevarghese and others**, 2004 (6) SCC 378 that the inherent power of the Court is in addition to and complimentary to the powers conferred under the Code of Civil Procedure expressly or by implication. This power will not be exercised if it is inconsistent with or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of the Code. Object of Section 151 CPC is to supplement and not

to override or evade other expressed provisions of CPC or other Statute (**ref. State of U.P. vs. Roshan Singh, 2008 (2) SCC 488**). However, power under Section 151 of the Code of Civil Procedure cannot be exercised or used to re-open the settled matters.

13. Subject to the above riders, it can be said that the Court can exercise the powers under Section 151 CPC to ensure and see that the orders passed by the Court under Section 24 of H.M. Act are given effect to and complied with when there is no specific effective and speedy procedure provided under the Hindu Marriage Act or the Code of Civil Procedure for ensuring compliance of such orders especially in the light of the the fact that there is no provision under the Statute forbidding or curtailing exercise of such powers which could include striking down the defence or the pleadings of the parties, provided the well recognized, accepted and consistently followed principle of natural justice of granting an opportunity of hearing is kept in mind and complied with. Thus, in contingencies, where despite opportunity/opportunities has/have been given to the erring spouse to comply with the order passed by the Court but with no result, the Court being fully empowered to invoke the provisions of Section 151 of the Code of Civil Procedure, can resort to striking out the pleadings, which can be in the form of the petition/plaint or the reply/written statement, as the case may be.

14. This Court, in similar circumstances when the orders passed by this Court under Section 24 of the Hindu Marriage Act had not been complied with, has proceeded to strike off the defence of the said erring spouse resulting in dismissal or allowing of the appeal as the case may be.

Reference in this regard can be made to the judgments passed by this Court

in **Kabul Singh vs. Baljinder Kaur**, 1995 (1) HLR 341, **Gurpreet Singh vs. Manjit Kaur**, 2011 (2) HLR 489, **Shanti Devi vs. Sham Lal**, 1994 (1) HLR 205 and **Sheela Devi vs. Gurmukh Singh**, FAO No. M-1 of 2008 decided on 23.09.2011.

15. As stated above, the orders striking out the defence of the respondent-husband having been passed by this Court on 07.12.2015 under Section 151 CPC for non-compliance of the order passed by this Court on 08.09.2015, this appeal has to be allowed.

16. In case the order under Section 24 of the H.M. Act has been passed by the High Court directing the respondent after assessment of the maintenance pendente-lite and the litigation expenses to pay the arrears etc. within a specified time or by a particular date and if such direction/order is not complied with, this Court can proceed to initiate contempt proceedings against the respondent.

17. Another provision under the H.M. Act, which will be relevant and needs to be considered by the Court, is Section 23 (1) (a), which specifically bars relief leading to denial of decree of divorce under the H.M. Act to a party taking advantage of his or her own wrongs or disability for the purpose of such relief. The Court, in exercise of such powers, can deny the relief to the erring or defaulting spouse.

18. Section 23 of the H.M. Act is of immense importance relating to the power and duty of the Court when it comes to the granting or denying the relief recognized under this Act. This perceives on the premise that the proceedings under this Act are different from ordinary suits as the standard of proof required is establishing the ground for relief beyond reasonable doubt and that too, to the satisfaction of the Court. This is irrespective of

the fact whether there is a defence projected from the other side or not. The responsibility thus, is cast upon the Court rather it is a duty that all requirements of law in the Act are fulfilled and the safeguards provided, especially in this Section, are duly observed and taken care of before passing a decree. Apart from putting certain bars, emphasis has been laid on the words connivance, condonation, collusion, unnecessary and improper delay, which are absolute bars to grant of relief where they apply to a particular ground, on which relief is being sought.

19. “Section 23 of H.M. Act reads as follows:

“23. Decree in proceedings .[\(1\)](#) In any proceeding under this Act, whether defended or not, if the court is satisfied that-

[\(a\)](#) any of the grounds for granting relief exists and the petitioner [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

[\(b\)](#) where the ground of the petition is the ground specified [\*\*\*] in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

[\[\(bb\)](#) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]

(c) [the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and

the court shall in disposing of the proceeding have due regard to the report.]

[(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]”

The language, which is used in the Section, puts fetters upon the relief, which can be granted under the H.M. Act and a decree can be denied to a petitioner who, in any way, takes advantage of his or her own wrong or disability for the purpose of such relief as claimed.

**20.** Reading of Sub-Section (1) (a) of Section 23 of the H.M. Act leads us to a conclusion that a petition must be dismissed in case the Court is satisfied, although the petitioner may have been able to establish the ground for granting the relief, but is taking advantage, in any way, of his or her own wrong or disability for the purpose of relief as envisaged therein. Thus, the conduct of the parties has to be monitored as also the disability and if that does not fall within the parameters of this provision, the decree can be denied. Therefore, it has to be the satisfaction of the Court that no advantage has been taken by the petitioner of his wrong or disability despite the ground having been established for grant of relief under the Act. The rule is based on the principle of justice that the wrong doer should not be permitted to take advantage of his or her own wrong or disability while seeking relief at the hands of the Court in any matrimonial proceedings. The word 'wrong' should be an act or misconduct by a party, which is serious enough so as to deny relief and, therefore, it cannot be given a liberal application. The term 'wrong' should and must mean an act or omission, which causes an injury to the other side, which would be of such a

nature as would fall within the ambit of Section 23 (1) (a) of the H.M. Act. Therefore, whether an act or omission would be termed as wrong under Section 23 (1) (a) of the H.M. Act would be dependent upon the facts and circumstances of each case.

21. This leads us to a question where a spouse, despite having been given opportunities to discharge the liability of payment of the arrears as per the assessed maintenance pendente-lite and/or litigation expenses by a Court under Section 24 of the H.M. Act, has chosen not to pay and/or has refused to do so. Will this act and conduct of such a spouse amount to committing a wrong within the meaning of Section 23 of H.M. Act and taking advantage thereof for the purpose of the grant of relief?

22. Similar issue cropped up in the case of **Hirachand Srinivas Managaonkar vs. Sunanda**, 2001 (4) SCC 125, wherein the Court while dealing with the language of Section 23 has held as follows:-

“12. xxx xxx xxx The very language of Section 23 shows that it governs every proceeding under the Act and a duty is cast on the Court to decree the relief sought only if the conditions mentioned in the sub-section are satisfied, and not otherwise. xxx xxx xxx”

The Court further dealt with the issue whether the appellant-husband, by refusing to pay maintenance to the wife, has committed a 'wrong' within the meaning of Section 23 and whether in seeking the relief of divorce, he is taking advantage of his own wrong. On consideration, the Court held that by refusing to pay maintenance to the wife, the appellant has failed to act as a husband thereby committed a wrong within the meaning of Section 23 of the H.M. Act. It was further held that Section 23 (1) (a) does not give a

vested right to a petitioner for getting the relief of decree of divorce against the other party merely on showing that the ground in support of the relief as sought and stated in the petition exists but the claimed relief can only be granted in case the Court is satisfied that the petitioner is not, in any way, taking advantage of his or her own wrong or disability for the purpose of such relief. The Court finally held that the husband has failed to pay the maintenance to the wife despite having an opportunity, therefore, in those circumstances, it can reasonably be said that he not only commits the matrimonial wrong in refusing to maintain his wife but further estranged the relationship creating acrimony rendering any reapproachment impossible but also tries to take advantage of the said 'wrong' for getting the relief of divorce. Such conduct in committing a default cannot be brushed aside by the Court and would be sufficient reason for disentitling him to get a decree of divorce.

23. This Court in **Subhash vs. Sheela Devi**, 2007 (1) RCR (Civil) 165 as also in **Jai Bhagwan vs. Kamlesh**, 2005 (3) RCR (Civil) 224, has, where the husband had failed to pay the maintenance pendente-lite and litigation expenses despite having been given opportunity to do so, held that such an act of the husband would amount to committing wrong under Section 23 of the H.M. Act disentitling him to the relief claimed by him under the H.M. Act.

24. In view of the above, it is held that non-payment of maintenance pendente-lite and/or litigation expenses by the spouse, as ordered or directed by the Court, despite opportunity having been given, would amount to wrong within the meaning of Section 23 of the H.M. Act leading to the conclusion that the said spouse is taking advantage of his/her

own wrong disentitling the said spouse the relief claimed under the H.M. Act.

25. Having answered the questions, we now proceed to consider the case in hand. In the present case, the orders passed by this Court having not been complied with despite various opportunities having been given to the respondent-husband and the counsel, who had appeared for him earlier, having stated that he has no instructions and requesting for issuance of notice to the respondent-husband, who, on such notice having been issued, chooses not to appear despite being served rather evade appearance before this Court with an intention to avoid payment of maintenance pendente-lite and litigation expenses, cannot be, thus, permitted to disregard the order passed by this Court. This Court is left with no option but to proceed in the matter as per the powers conferred under Section 23 (1) (a) of the H.M. Act and hold that the respondent-husband by not paying the maintenance pendente-lite and litigation expenses as well as arrears, has committed a wrong and is taking advantage of his own wrong for the purpose of claiming relief of divorce, which dis-entitles him to such decree. Thus, the appeal deserved to be allowed of the appellant-wife for this reason also.

26. In view of the above, the Court proceeds to pass a consequential order as the defence of the respondent stands struck off on 07.12.2015. The effect thereof is that the respondent-husband is not entitled to press his pleas in the petition i.e. the pleadings of the respondent-husband contained in the petition filed by him, under Section 13 of the Hindu Marriage Act have no existence in the eyes of law. Since there is no petition in the eyes of law on the record, the present appeal has to be allowed and the impugned judgment and decree dated 20.01.2014 passed by

the Additional District Judge, Patiala, are to be set aside.

- 27. Ordered accordingly.
- 28. Decree sheet be drawn.

**(M.M.S.BEDI)**  
**JUDGE**

**(AUGUSTINE GEORGE MASIH)**  
**JUDGE**

**December 02<sup>nd</sup>, 2017**  
*pj*

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|-----------------------------------|---------------|
| <b>Whether speaking/reasoned:</b> | <b>Yes/No</b> |
| <b>Whether Reportable:</b>        | <b>Yes/No</b> |