

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3606-2017 (O&M)

Date of Decision: 23.5.2017

Nachattar Singh

....Appellant.

Versus

Harjit Kaur

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Ms. Anupam Bhanot, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the appellant against the judgment and decree dated 1.3.2017 passed by the District Judge, Family Court, Barnala vide which the suit under Order 33 Rules 1 and 2 of the Code of Civil Procedure (in short “the Code”) in forma pauperis for recovery of maintenance and permanent injunction filed by the respondent was partly decreed.

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized about 26 years ago by way of Anand Karaj ceremonies. They lived together as husband and wife and cohabited as such in village Wazid Ke Kalan, Barnala. From the said wedlock, two children, namely, Baldev Singh and Pardeep Singh were born and now they have attained majority. The appellant was addicted to intoxicants and was not providing any maintenance to the respondent or to her sons. He used to demand cash amount from the respondent and even ousted her from the house after giving beatings. The respondent used to rehabilitate in her matrimonial home with the help of her parents and respectables. The behaviour of the appellant

remained cordial towards the respondent for some time and again he started harassing her. In the year 2008, the appellant separated from the respondent and her minor son Pardeep Singh without making any arrangement for their maintenance. The respondent-plaintiff filed pauper application No. 42 dated 30.10.2008 in which an application under Order 39 Rules 1 and 2 read with Section 151 of the Code was filed for interim prayer. The appellant-defendant was directed to maintain status quo with regard to the suit property vide order dated 23.1.2009. During the pendency of the said application, the respondent along with her minor son kept her residence in the one room of the house of the defendant-appellant. However, the appellant in March, 2012 effected a compromise and rehabilitated the respondent along with the minor son with him. As a result thereof, the respondent did not appear before the Court and the suit was got dismissed as withdrawn vide order dated 6.4.2012. After some time, the appellant forcibly turned out the respondent from the house after giving beatings to her. She made several efforts to settle with the appellant but he flatly refused to do so. The appellant was owner in possession of the suit property and was cultivating the same. Besides this, he was also cultivating the land measuring 10 killas on lease. He wanted to alienate his share over the suit property. The respondent requested the appellant to maintain her and not to dispose of the suit property but to no effect. Accordingly, the respondent filed a suit under Order 33 Rules 1 and 2 of the Code in forma pauperis for recovery of maintenance and for permanent injunction. Notice of the said suit was issued to the defendant after according permission vide order dated 9.3.2015 to the respondent to sue him in her capacity of indigent person.

The appellant filed a written statement raising various preliminary

objections. It was pleaded therein that the respondent was living with him in his house in village Wazid Ke Kalan, Barnala and had unnecessarily filed the suit. On 20.8.2014, the appellant suffered serious disease of urination and had to get his treatment done from Sood Nursing Home, Barnala for some days and got admitted in Rajindera Hospital, Patiala on 26.8.2014 where he was operated on 29.8.2014 and was discharged on 12.9.2014. The respondent instead of looking after the appellant, filed the suit in question. According to the appellant, since he was suffering from serious ailment and was not in a position to do any work and was unable to walk, the respondent was not entitled to any maintenance. The other averments made in the suit were denied and a prayer for dismissal of the same was made. The respondent filed replication controverting the averments made in the written statement and reiterating that of the averments made in the suit. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for maintenance by creating the charge on the property of the defendant? OPP
2. Whether the plaintiff is entitled for permanent injunction? OPP
3. Whether the plaintiff has not come to the court with clean hands against the defendant? OPD
4. Whether the plaintiff has concealed the material facts from the court for filing the present suit? OPD
5. Relief.

3. In support of her case, the respondent herself appeared as PW1 and examined PW2 Gurbachan Singh and PW3 Saudagar Singh. On the

other hand, the appellant examined DW1 Dr. Rajvansh Sood and himself as DW2.

4. The trial Court on appreciation of the evidence led by the parties, vide order dated 1.3.2017 partly decreed the suit of the respondent by allowing her the maintenance at the rate of ₹ 6000/- per month instead of ₹ 10,000/- per month as claimed by the respondent by creating charge over suit property of the appellant. Further, the trial Court restrained the appellant from disposing the suit property in any manner for protecting the right of recovery of maintenance allowance of the respondent. Hence, the present appeal by the appellant.

5. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

6. Admittedly, the suit was filed by the respondent under Order 33 Rules 1 and 2 of the Code in forma pauperis against the appellant on 29.8.2014. The appellant did not appear despite his service through munadi and affixation, as a result thereof, he was proceeded against exparte vide order dated 21.11.2014. The respondent also moved an application under Order 39 Rules 1 and 2 of the Code along with the said suit. In the said application, the parties were directed to maintain status quo with regard to the property in dispute. Thereafter, the case was adjourned for exparte evidence. The respondent on concluding her exparte evidence with regard to the application for permission to sue the appellant in her capacity of an indigent person was allowed to proceed against the defendant by the trial Court vide order dated 9.3.2015. Then notice was issued to the appellant who appeared and also filed written statement to the suit. The trial Court had recorded that the right to claim interim maintenance in suit is

substantive right under Section 18 of the Hindu Adoption and Maintenance Act. The wife can also claim separate residence and maintenance as she had been living alone and all the children had been brought up by her without any assistance and help from the husband and there was clear case of desertion. On the basis of the evidence led by the parties, the trial Court on the issue of maintenance by creating charge over the suit property of the appellant had granted maintenance @ ₹ 6000/- per month which seems to be quite reasonable and justified. Further, the appellant was rightly restrained by the trial Court from alienating the suit property in any manner for protecting the right of recovery of maintenance allowance of the respondent from the appellant.

7. Learned counsel for the appellant has not been able to show any illegality or perversity in the finding recorded by the trial Court which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

8. There is a delay of 38 days in filing the appeal. CM-11699-CII-2017 has been filed under Section 5 of the Limitation Act, 1963 for condonation of 43 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is left open.

(AJAY KUMAR MITTAL)
JUDGE

May 23, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes