IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103+224

CM No.20434-CII of 2017,
CM No.19290-CII of 2016,
CM No.8-HMA of 2016,
CMM No.110 of 2016 and
CM No.18780-CII of 2016 in
FAO-M No.432 of 2015

Gurdarshan Singh Gill
Vs.
Harpuja Gill @ Puja Sandhu

Present: Mr. R.S. Narang, Advocate
for the non-applicant-appellant.

Ms. Alka Sarin, Advocate
for the applicant-respondent.

CM No.20434-CII of 2017

Prayer in this application is for permission to place on record documents Annexures P-7 to P-12 and for exemption from filing the certified copies thereof.

Application is allowed subject to just exceptions.

Documents Annexures P-7 to P-12 are taken on record.

Exemption from filing the certified copies of above said documents is granted.

CM No.19290-CII of 2016

Prayer in this application is for permission to place on record reply to application under Section 24 of the Hindu Marriage Act along with Annexures P-1 to P-6.

Application is allowed subject to just exceptions.

Reply to application under Section 24 of the Hindu Marriage Act along with Annexures P-1 to P-6 is taken on record.

CM No.8-HMA of 2016

Prayer in this application is for dispensing with the filing of certified copy of Annexures-A and B and permission to file true typed copies thereof.

Application is allowed subject to just exceptions.

Exemption from filing the certified copy of Annexures-A and B is granted.

True typed copy of above said documents is taken on record.

CMM No.110 of 2016 and CM No.18780-CII of 2016

1. CMM No.110 of 2016 is an application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HM Act') has been filed by the respondent-wife against whom a petition under Section 13 of the HM Act was preferred by the appellant-husband which petition stands dismissed vide order dated 12.08.2015 passed by the Additional District Judge, Panchkula, resulting in the present appeal, claiming maintenance *pendente lite* on the ground that she has meagre source of income and is unable to support herself in a matter which is befitting to a wife of an affluent businessman having movable and immovable properties, both residential and commercial and who has refused to maintain her.

2. It is the contention of the applicant-respondent that earlier she was working but since April, 2015, she is not doing any work and is unemployed as she did not get a job commensurate to her

educational/professional qualifications and experience. Out of the four premises owned by her or had some share therein, from where she was getting rental income earlier, two have been vacated by the tenants and as of now those are lying vacant. She is fully dependent upon her parents for her expenses and maintenance. Assertion has also been made that after the marriage between the parties on 28.12.2007, she was forced to leave the matrimonial home on 04.08.2009 by the appellant-husband.

3. The appellant-husband is running business and is having an agency of Mahindra & Mahindra in the name of Imperial Motors at Bathinda. He is owner of House No.433, Urban Estate, Phase-II, Bathinda and has 50% share in the agricultural land in village Singhpura, Tehsil Zirakpur, District Mohali, on which a house has been constructed and a marriage premises has been developed named Gulistan Farms measuring 2½ acres situated on National Highway in Zirakpur. That apart, the appellant has ancestral farm, 'Yasmina Farm' and house in Nabha Town. M/s Imperial Infrastructure owned by the appellant-husband holds two plots and 2 bighas and 13 biswas of land in Patti Mehna, District Bathinda. He is the Managing Director of M/s Imperial Associates Motors Private Limited, M/s Imperial Infrastructure Limited, M/s Gulistan Infrastructure Private Limited and M/s Star Vehicles Private Limited. The non-applicant/husband has filed his income-tax returns for the assessment year 2016-17 according to which his total income is ₹2,66,000/- per annum. His riches, status in life and the society where he moves around is apparent from the

membership of various prestigious clubs namely Delhi Gymkhana Club, The Kasauli Club and the Dune Club at Bathinda. He owns a fleet of cars and lives an affluent and comfortable life. She being the wife is entitled to and the appellant is legally obliged to provide her with similar lifestyle as she was accustomed and enjoyed in her matrimonial home, thus, entitling her to maintenance *pendente lite* at the rate of ₹1,50,000/- per month which she has claimed through the present application.

4. Reply to the said application has been filed by the non-applicant/appellant/husband, wherein he has stated that she is not entitled to any claim as earlier an application under Section 24 of the HM Act was filed by the applicant/respondent/wife before the trial Court which was dismissed vide order dated 31.05.2014. Revision petition preferred against the said order stands dismissed as withdrawn on 13.08.2014. His further assertion is that even a petition under Section 125 of the Cr.P.C. preferred by the respondent stands disposed of vide order dated 01.02.2015 by the Judicial Magistrate Ist Class, Panchkula, without granting any interim maintenance. It is stated that she has not placed any documentary evidence on record to show that two premises which were on rent have been vacated nor has it been disclosed as to the exact rental income which she is getting from the other premises. She is well educated and is capable of earning but still with a *mala fide* intention and with a motive to harass and extract financial benefit from the non-applicant/appellant, she has chosen not to work. She has various Fixed Deposits from where she is getting regular

income which has also not been disclosed. As per the income-tax returns submitted by her before the trial Court for the year 2013-14, her income is ₹4,20,720/- which includes the rental income of ₹2,50,600/-. It is, therefore, asserted that even if she is not employed, she is having sufficient rental income. In support of this contention, reliance has been placed upon the pleadings in the petition preferred by the applicant-respondent under Section 125 Cr.P.C. for grant of maintenance as also the reply and the order passed by the trial Court. Reference has also been made to the order passed by the trial Court under Section 24 of the HM Act.

5. That apart, the non-applicant/appellant has asserted that the applicant-respondent had walked out of the matrimonial home at Bathinda on 04.08.2009 along with all her belongings including stridhan. He states that the father of the respondent has given in writing as regard the fact that she has taken all her stridhan and nothing is left. It is also asserted that the agency Mahindra & Mahindra in the name of Imperial Motors at Bathinda stands cancelled and in support thereof, he has placed on record notice issued by the company Mahindra & Mahindra Limited Automotive Division in the newspaper. Not only this, the authorised dealership has been cancelled and the said agency as well as the premises have been taken over by the State Bank of Patiala and SARFAESI proceedings have also been initiated. The appellant is in great loss and and is under heavy debt. As regards House No.433, Urban Estate, Phase-II, Bathinda is concerned, the same has been pledged with Axis Bank with an outstanding loan amount

of approximately ₹70 lakh which were taken to run the business at Bathinda.

6. It is denied that M/s Imperial Infrastructure owns two plots in Bathinda as alleged and it has further been averred that the company has no property whatsoever in its name. The Imperial Motors Associate Private Limited has an accumulated loss to the tune ₹3 crores approximately and M/s Star Vehicles Private Limited stood shut down in the year 2008 and nil return is being filed for many years. The land at Zirakpur contains a residential house of his parents which is being used by them for residential purposes. As regards 'Yasmina Farms' in Nabha Town, the same is approximately 5 kanals and purely residential and belongs exclusively to the father of the non-applicant/appellant. In the light of the above facts and circumstances, it has been stated that the petition under Section 24 of the HM Act deserves to be dismissed.

7. Apart from that, an application under Section 151 CPC i.e. CM No.18780-CII of 2016 is preferred by the husband calling upon the applicant-respondent to place on record the facts in the shape of affidavit along with document regarding her exact income and its sources, income-tax returns along with computation sheet.

8. Reply to the said application has also been filed, wherein apart from taking an objection with regard to the fact that no specific Section of the Code of Civil Procedure has been invoked and the application has been filed under Section 151 CPC which is not maintainable. It has been stated

that she is presently not having any income from salary as she is unemployed.

9. Counsel for the parties have put forth their submissions on the basis of the pleadings referred to above, we having heard them and on going through the pleadings, have taken into consideration the relevant factors for the purpose of determination of the present application as laid down in the case of *Vini Paramvir Parmar Versus Paramvir Parmar 2011 AIR (SC) 2748,* wherein the Hon'ble Supreme Court while delving into the factors to be taken into consideration for grant of maintenance held that the own income and other property of the respondent and the income and other property of the applicant are all relevant material in addition to the conduct of the parties and other circumstances of the case for coming to a conclusion and determining the amount which is to be just for living standard. The status of the parties, the respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute would also have to be taken note of. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her mode of life she was used to live when she lived with her husband. Obviously the amount so fixed cannot be excessive having an impact upon the living condition of the other party. No fixed formula can be laid for fixing the amount of maintenance and, therefore, the relevant factors have to be taken into consideration by the Court while coming to the

amount of maintenance to be granted to the wife.

10. Applying the above principles, it is apparent that where the wife does not have enough and sufficient source of income or the same is not sufficient to enjoy a life as per the status of the parties which she was enjoying in her matrimonial home along with her husband, she would be entitled to the benefit under Section 24 of HM Act. It is correct that the status and the capacity of the spouse to pay maintenance as also the independent income of the applicant is also required to be taken into consideration but it can also not be lost sight of that husband owes a moral responsibility to support his wife. It is not disputed that the appellant-husband and his family own several valuable properties and have other sources of income, although one of the concerns namely M/s Imperial Motors Associate Private Limited has run into losses and even SARFAESI proceedings have been initiated by the bank. It is not the pleading of the husband nor is it the assertion of the counsel for the appellant-husband that he has no source of income. The responsibility to provide for a reasonable, comfortable and luxurious life commensurate at least to the one which is being enjoyed and sustained by the husband cannot be denied to the wife.

11. The educational qualification and capability of the wife to take up employment would not be relevant as far as determination of the maintenance *pendente lite* under Section 24 of HM Act is concerned because that would in itself not generate any income once the spouse starts

earning then only it can be taken into consideration. Capability and potential thus are aspects which are not relevant as far as situation prevalent at the time when the application is being considered for decision, however, in case of change in circumstances, the parties are at liberty to approach the Court again.

12. As per the admission on account of the applicant-wife, she still has income from the properties rented out i.e. two in number and it cannot be said that she will not be able to get any tenant for the other properties for all times to come. Therefore, the wife having not disclosed the specific properties which have been vacated and the income which she is earning from the other rented out properties, the Court is left with no option but to do some guess work and accordingly the same is assessed as ₹1,50,000/- per annum keeping in view the fact that she has admitted in the proceedings under Section 125 Cr.P.C. that she is receiving income at the rate of ₹40,000/- per month for four premises. It would not be out of way to mention here that both the parties have not disclosed the correct and true income from all sources.

13. The husband has not disputed the fact that he does own a share in the properties and also earning and maintaining a luxurious way of life which he was earlier enjoying. The factum about he having membership of elite clubs and continuing with them has not been denied. The averments with regard to the factum of the lifestyle and status which was being enjoyed by the applicant-respondent has also not been disputed. Therefore,

keeping in view the income of the wife, maintenance *pendente lite* is assessed at ₹40,000/- per month to be paid by the non-applicant/appellant with effect from the date of application i.e. 18.07.2016.

14. Arrears of maintenance *pendente lite* as fixed by this Court shall be paid to the applicant-respondent/wife by the non-applicant/appellant/husband within a period of two months from the date of this order. The future maintenance shall be paid on or before 10th of every month till the disposal of the present appeal.

15. The application under Section 24 of the HM Act is allowed accordingly and CM No.18780-CII of 2016 stands disposed of.

(M.M.S. BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

October 25th, 2017
Puneet