**AMIT KUMAR**
Versus
**SANGEETA**

Present: Mr. N.S. Sekhawat, Advocate
for the non-applicant/appellant.

Mr. O.P. Goyal, Senior Advocate with
Mr. Piyush Aggarwal, Advocate
for the applicant-respondent.

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**CM No.16125-CII-2015**

Prayer in this application is for exemption from filing certified copy of Annexures R-1 and R-2 and for permission to place the said annexures on record.

For the reasons mentioned in the application, prayer for exemption from filing certified copy of Annexures R-1 and R-2 is accepted and the same are taken on record, subject to all just exceptions.

Misc. application stands allowed.

**CMM-136-2015**

This application has been filed by the respondent-wife under Section 24 read with Section 26 of the Hindu Marriage Act (hereinafter referred to as 'the Act') claiming maintenance *pendente lite* for herself and nine year old son Krish, who is studying in 4$^{th}$ class, and for litigation expenses, which she had incurred in this Court during the pendency of this appeal preferred by the non-applicant/husband.

It has been stated in the application that the marriage between the applicant and the non-applicant was solemnized on 26.01.2006 at Narnaul. Out of this wedlock, a son namely Krish was born on 02.12.2016.

She alongwith the son is living with her parents since April, 2007 with no source of livelihood to maintain herself and the son. Their son Krish is studying in class 4th in Saraswati Senior Secondary School, Narnaul, where monthly fee and bus fair have to be paid apart from the annual charges and expenses on the dress etc. Minimum expenses for the child is about ₹ 6500/- per month. She has no source of income and is fully dependent upon her parents, who are unable to bear her burden. Although she is educated being B.A. and B.Ed. qualified but could not get any job. Even private tuition she could not give as the children/students prefer to go to their own class teachers. She being without work is at the mercy of her parents, who are in old age and unable to bear her and her son's expenses. She needs at least an amount of ₹ 10,000/- per month for her survival and maintenance. She, therefore, asserts that ₹ 16,500/- per month from the date of application i.e. 04.08.2015 should be granted to her and her son as maintenance *pendente lite*. She has further claimed litigation expenses of ₹ 50,000/-, out of which, an amount of ₹ 25,000/- already stands paid to her by way of interim measure.

It has been asserted that the husband is the elder son of his family. The family owns two shops, one of electronics, which is 20ft. X 10ft. in size and another of furniture measuring 40ft X 20ft. A huge investment has been made in these shops, which would be between ₹ 60 lacs to ₹ 80 lacs. The appellant-husband being the elder son is running the electronics shop and is doing business and also operates the bank accounts. The younger brother of the appellant-husband is looking after and running the furniture shop. The family of the husband is joint and living together. The parents of the appellant-husband are old and the business is being run single handed by the appellant. As far as the electronics shop is concerned, as he is a post-graduate in commerce (M.Com), his income is not less than ₹ 2 lacs per month from both shops and business and therefore, can easily and comfortably pay a sum of ₹ 16,500/- per month for the applicant/wife and their son.

Reply to the application has been filed, wherein, the assertions made by the applicant/wife have been denied. It has been asserted that the applicant/wife is working as a teacher in a private school at Narnaul and also gives tuition to the students and therefore, is earning sufficiently. It is further asserted that the non-applicant/husband has been disowned by his family and is, therefore, living alone. It has been clarified that the family of the appellant owns only one shop and also a godown which has been referred to as the second shop. The appellant has no concern with the business rather he was given a fixed amount of salary. As of present, for the last few days, he has been employed by M/s Narnaul Sales Agency, Pul Bazaar Narnaul, at a meager salary of ₹ 8,000/- per month. Therefore, a prayer has been made for dismissal of the application under Section 24 of the Hindu Marriage Act.

Replication to the reply has been filed by the applicant-wife, wherein, she has asserted that as a matter of fact, the appellant is dealing at the shop run in the name and style of M/s Aggarwal Trading Company and sells goods and issues bills. In support of this assertion, reliance has been placed upon two bills dated 02.03.2011 (Annexure R-3) and dated 14.10.2015 (Annexure R-4). It has been specifically denied that the appellant-husband is working with M/s Narnaul Sales Agency, Pul Bazaar, Narnaul. It has also been denied that the non-applicant/husband is disowned by the family and is not operating the bank accounts. Denial has also been made with regard to the assertion that she is working as a teacher in a private school at Narnaul and giving tuition classes.

At the time of hearing of the application, counsel for the non-applicant/appellant has brought to the notice of the Court that the trial Court, on an application moved by the applicant-wife, had granted her ad interim maintenance at the rate of ₹ 2500/- per month. It has also not been denied that on a petition moved under Section 125 of the Code of Criminal Procedure, the Judicial Magistrate Ist Class, Narnaul, on 03.12.2016, had granted maintenance to the son of the parties Krish at the rate of ₹ 3000/- per month, whereas, no maintenance was granted to the applicant-wife. Applicant preferred an appeal against the said order which was dismissed by the Appellate Court and a revision petition has been preferred before this Court, which is pending.

Counsel for the non-applicant/appellant, with reference to order dated 03.12.2016 passed by the Judicial Magistrate First Class, Narnaul, copy of which has been produced in Court, further asserts that while denying maintenance to the applicant-wife under Section 125 of the Cr.P.C., the Court has given a finding that she had refused to live with her husband without any sufficient cause and is, therefore, not entitled to any claim or maintenance from him.

Although counsel for the parties have reiterated the factual assertions as referred to above. We have heard the counsel for the parties and with their able assistance have gone through the pleadings.

It is not in dispute that as of now, the applicant-respondent alongwith her minor son Krish is living with her parents. Merely because she is educated being B.A. and B.Ed. and therefore, capable of employment would not lead to a presumption that she is earning something especially when it has been asserted by the applicant-wife that she is unemployed and is unable to get any child/student for private tuition. That apart, a bald assertion has been made by the non-applicant/husband that she is employed in a private school at Narnaul. Neither the name of the school has been mentioned nor any document has been placed on record to substantiate such an assertion. In these circumstances, we are of the view that the applicant-wife is unemployed and therefore, without any source of income being fully dependent upon her parents as she is residing with her parents alongwith the minor son Krish, who is nine years of age and studying in 4$^{th}$ class, expenses of whom, admittedly, are not being borne by the non-applicant/husband but are being borne by the parents of the applicant-respondent as she is residing with them. Therefore, in these circumstances, it can safely be said that she and her minor son are fully dependent upon her parents even for their day to day expenses, what to say of schooling and transportation charges etc. of her minor son. It is a settled preposition of law that husband, who is an able bodied person, is mandated to maintain her wife and child. Further, the maintenance is required to be given to the wife according to the status and the income of the husband apart from the resources at his disposal.

Now coming to the income of the non-applicant/husband. It has not been denied that M/s Aggarwal Trading Company's business is being run by the family of the non-applicant/husband. It has been rather admitted in the reply which has been filed by the non-applicant/husband that one shop is owned by the family and the another shop which is there is being used as a godown. What has been asserted by him is that he has no concern with the family business rather he was working there on a fixed amount of salary which was being paid to him. No documentary evidence has been brought on record showing that he had been paid a fixed salary. It has also not been specified that how much amount of salary was being paid to him per month. Very clever mode has been adopted by the non-applicant/husband by stating that he is working with another employer i.e. M/s Narnaul Sales Agency, Pul Bazaar Narnaul, for the last few days and is earning a sum of ₹ 8,000/- per month, which assertion cannot be believed nor has any documentary evidence been placed on record to support his assertion.

As regards the assertion of the non-applicant/husband that he has been disowned by his family, the same does not appear to be plausible as he is residing with his parents. It is observed as is apparent from this case that to run away from the responsibility as statutorily imposed upon the husband, all false pleas are being taken to defeat the claim of the wife and the child, which are without any basis. We, therefore, are unable to accept the assertions of the non-applicant/husband.

Keeping in view the size of the shop and the godown, as asserted by the husband, the location thereof, the nature of business and investment made, it can safely be said that the husband would be earning more than ₹ 25,000/- per month for himself from the family business.

Since the applicant-wife had been granted ₹ 2500/- per month by the trial Court some years back and further, keeping in view the income of the appellant, as assessed above, maintenance *pendente lite* of the applicant/wife is fixed at ₹ 5,000/- per month from the date of the application. Maintenance *pendente lite* of the son is also fixed at ₹ 4,000/- per month from the date of application without prejudice to his individual right of enhancement as also the revision pending. It is added here that the amount of maintenance as granted under Section 125 of the Cr.P.C., which has been actually paid, shall be adjusted in the arrears. The litigation expenses are fixed at ₹ 45,000/- and the amount of ₹ 25,000/- as already paid shall be adjustable.

Misc. application is allowed accordingly.

Let the arrears of maintenance *pendente lite* calculated upto 30.10.2017 and the litigation expenses be paid to the applicant/wife by way of bank draft on 13.11.2017, the date already fixed in the main appeal.

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

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

**September 12, 2017**
*Harish*