

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CMM-37-2017 &
F.A.O. No.3869 of 2014

DATE OF DECISION: SEPTEMBER 12, 2017

Kuldeep Singh

.....Appellant

VERSUS

Seema Singh

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI

Present: Mr.S.K.Garg Narwana, Sr.Advocate with
Mr. Naveen Gupta, Advocate,
for the applicant-respondent.

Mr. S. S. Momi, Advocate,
for the appellant.

AUGUSTINE GEORGE MASI, J.

CMM-37-2017

Prayer in this application under Section 24 of the Hindu Marriage Act, 1955 (for short, “the 1955 Act”) is for grant of maintenance pendente-lite to the applicant-respondent/wife (hereinafter referred to as “wife”) and her three school going minor children during the pendency of the appeal.

It has been contended by the wife that the marriage between her and non-applicant/appellant-husband (hereinafter referred to as “husband”) took place on 31.10.1998 as per Hindu rites and ceremonies, which was her first marriage and second marriage of the husband. Out of the said wedlock,

three children were born. The eldest son is studying in Class XIIth whereas the daughter, who is younger to him as well as the youngest son are in 9th Class. It is averred that she alongwith her three children were turned out of the house and are now residing separately. She is unemployed with no source of income. She is unable to sustain herself, what to say about her children. Due to harassment and tension, she is suffering from various ailments and considerable amount is also spent on the same. Children are studying in good schools and their fee and other expenses are also quite high, which she is unable to bear. The detail of the tuition fee and other related expenses have been given in the application alongwith documentary evidence to that effect. Earlier, during the pendency of the divorce petition before the Family Court at Gurgaon, she had moved an application for grant of maintenance pendente-lite, which was allowed and she was granted ₹50,000/- per month vide order dated 27.07.2012 (Annexure A-1). This order was challenged by her as well as husband by filing two separate revision petitions, which were disposed of by this Court vide order dated 22.05.2014 (Annexure A-2) by enhancing the compensation to ₹80,000/- per month. The husband thereafter challenged the said order by way of Special Leave Petition, which was ultimately dismissed by the Supreme Court on 04.07.2016 (Annexure A-3).

It has been asserted that the husband is working as an Associate Professor in National Council of Educational Research and Training (NCERT) and is presently posted in PSS Central Institute of Vocational Education, Bhopal and getting a handsome salary, which was ₹1,25,168/- per month in the year 2012 and with the revision of pay scales, it has increased many folds. Apart from that, he belongs to a very rich family and

is the only son of his parents with two sisters, who are married and well settled. The father of the husband was a successful lawyer in the District Court, Gurgaon, who unfortunately expired in the year 2008 and has left behind considerable property in Gurgaon, which is in the name of husband and his mother, Smt. Vidya Devi, which includes 25 shops, which have been rented out and has other properties as well whereas the wife is one of the seven daughters of a retired Government servant and merely a house wife without any source of livelihood to support herself as well as her three children. She is sustaining herself by taking loan from a number of relatives for the said purpose. As of now, the wife is getting no maintenance and is, therefore, finding it difficult to sustain herself and her children as they have been rendered destitute on account of negligent approach of husband. Prayer has, thus, been made for directing the husband to pay maintenance pendente-lite at the rate of ₹1,50,000/- per month to the wife and minor children.

In the reply, which has been filed, the basic facts with regard to the date of marriage, three children and the litigation between the parties have not been disputed. It has been asserted that apart from the maintenance pendente-lite as fixed by the trial Court and thereafter this Court, the husband had been paying the educational and other related expenses of the children as and when directed by this Court or by the Hon'ble Supreme Court. Referring to the orders, which have been passed by Hon'ble Supreme Court on three occasions i.e. 13.10.2014, 07.01.2015 and 13.04.2016, Annexures A-9 to A-11, ₹5 lacs, ₹3 lacs and ₹5 lacs respectively have been paid to the wife, apart from the amount which has been paid by him to wife as per the directions issued by this Court from time to time in the present

appeal as well for the purpose of expenses of the children including educational expenses. The factum with regard to the property owned by him has been denied and rather it has been asserted that the children are being harassed and maltreated by wife. In this regard, it has been stated that the eldest son had made a distress call and complaint dated 15.03.2015 to Station House Officer, Police Station Saket, New Delhi, with regard to the cruel behaviour of the wife towards him. The child was not allowed to enter the house till late night on 11.03.2015, when he made a call to the Delhi Police and on the intervention of the police, he was taken back in the house. She alongwith the family members had been beating this child and to save himself, he had to run to the house of his grand mother i.e. mother of the husband at Gurgaon and reached at 12.15 at night. The copy of the complaint dated 15.03.2015 made to SHO, Police Station Saket, Delhi, has been appended as Annexure R-10. Thereafter, the Children Welfare Committee had been dealing with the matter and the proceedings are appended as Annexures R-11 to R-14. Apart from this, other incidents have also been referred to in the reply. It has been asserted that the wife, with an intention to absolve of her responsibilities, sent the children to various boarding schools. Assertion has also been made that the wife is a qualified nurse and prior to her marriage, was working in Gujarmal Modi Hospital. She being qualified professional, can easily maintain herself.

As regards the monthly income of the husband is concerned, he, on the basis of the salary slip issued in the month of March 2017 (Annexure R-15) by PPS Central Institute of Vocational Education, Bhopal and certificate dated 04.04.2016 issued about the deductions of ₹91,838/- from the total salary of ₹1,54,424/- asserts that the net payable salary in hand of

the husband is ₹64,586/-, out of which further recovery of ₹21,000/- is being effected for the advance, which he had taken from the General Provident Fund account, leaving him with the salary of around ₹43,586/- per month. It is prayed that the present application deserves to be dismissed.

Counsel for the parties have been heard. They have submitted their respective arguments based upon the pleadings.

We have gone through the pleadings and the record and on consideration of the submissions made by counsel for the parties, two things which come out clearly are that apart from the salary, which the husband is receiving, there has been an effort by him to depict as if the litigation is primarily taking a toll on him. That may be correct but still he cannot shirk the responsibility put on him morally and by the statute. A perusal of the order dated 22.05.2014 passed by this Court in the revision petitions preferred by both the parties, challenging the order passed under Section 24 of the 1955 Act by the Family Court, Gurgaon, wherein an amount of ₹50,000/- granted to the wife was increased to ₹80,000/-, which order ultimately has been upheld by the Hon'ble Supreme Court vide order dated 04.07.2017 (Annexure A-3) by dismissing the Special Leave Petition filed by the husband.

Argument has been raised by counsel for the husband that from time to time different amounts, as mentioned above, have been paid to the wife during the pendency of the Special Leave Petition. The said amounts, which have been paid, although as per the interim orders were to be adjusted against the amount of maintenance but ultimately with the culmination of the Special Leave Petition in dismissal vide order dated 04.07.2016 (Annexure A-3), where there is no mention with regard to adjustment of the

amounts in future or the total maintenance, he cannot take any benefit thereof. These orders were passed by the Hon'ble Supreme Court, depending upon the facts and circumstances as they existed then. It would not be out of way to mention here that the interim maintenance, which has been granted to the wife by the trial Court continued till the passing of the final order by the Family Court. The interim order, which has been passed by the Hon'ble Supreme Court, cannot be taken as a shelter by the husband to adjust the said amounts in the order to be passed in the present application, which has been filed by the wife on 03.03.2017 for the simple reason that the said application has been filed by her after the dismissal of the Special Leave Petition on 04.07.2016.

Apart from that in the final order dated 04.07.2016 (Annexure A-3) passed by the Supreme Court, while dismissing the S.L.Ps, the Court has not said a word with regard to the amount paid by the husband in compliance with the interim orders passed during the pendency of these petitions. The said order reads as follows:-

“Looking at the peculiar facts of these cases, we are not inclined to entertain these petitions. The special leave petitions are accordingly dismissed.

Pending application, if any, stands disposed of.”

The effect of dismissal of the Special Leave Petition by the Supreme Court preferred by the husband is that the order dated 22.05.2014 passed by this Court in Civil Revision No.5742 of 2012 preferred by the husband and Civil Revision No.370 of 2013 preferred by the wife stood finalised between the parties. The said order dated 22.05.2014 (Annexure A-2) passed by this Court is a detailed order, which has been passed by

taking into consideration all the aspects relevant for the purpose of determining the amount of maintenance pendente-lite and we are inclined to accept the said order for the purpose of deciding the present application as well. Therefore, the amount, as determined by the said order i.e. ₹80,000/- per month as maintenance pendente-lite shall be payable to the wife by the husband on or before 06.12.2017 from the date of application i.e. 03.03.2017.

With the above observations, the application stands disposed of.

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In the light of the above order passed in CMM-37-2017, the hearing of the appeal is deferred to 06.12.2017.

In case the arrears of maintenance pendente-lite, as fixed above, are cleared by the husband on or before the next date of hearing, date for fixing the main case will be considered.

(M.M.S.BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

September 12, 2017
khurmi

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No