

**NEERAJ BHARDWAJ
V/S
SAVITA BHARDWAJ**

Present: Mr. Sanjay Vij, Advocate, for the appellant.

Mr. Sanjay Verma, Advocate, for the respondent.

CMM-137-2017

Aspiring to get a decree of divorce from his wife, the appellant-husband preferred a petition under Section 13 of the Hindu Marriage Act which has been dismissed by the District Judge, Family Court, Gurgaon. Aggrieved by the said order, the appellant-husband has preferred this appeal.

During pendency of the appeal, the respondent-wife has filed an application under Section 24 of the Hindu Marriage Act claiming that she is unable to earn whereas the appellant-husband is serving as Implement Engineer in Kutons Company, Gurgaon and had been getting salary of Rs.28,000/- per month. He also owns a house in Chandigarh in the name of his mother and a three storey house having basement in Gurgaon. He is alleged to have rental income of Rs. 1 lac per month. It is averred that his father is a Govt. employee posted as Section Officer in Army HQ Railway, New Delhi. As such, the respondent-wife claims maintenance pendente lite @ Rs.25,000/- besides litigation expenses.

Application has been opposed by the appellant-husband by filing a detailed reply to the effect that he is at present unemployed and that he is paying a sum of Rs.10,000/- to the respondent-wife as well as daughter in proceedings under Section 125 Cr.P.C. It has also been alleged that a

sum of Rs.7000/- per month has been ordered as financial help in proceedings under the Protection of Women from Domestic Violence Act.

Vide order dated 22.08.2017, a sum of Rs.7000/- has been ordered to be paid as financial help by the Magistrate and a sum of Rs.10,000/- for the wife and the minor daughter (Rs.5,000/- each) has been awarded by the learned Magistrate in proceedings under Section 125 Cr.P.C.

It has been informed that a sum of Rs.7,000/- awarded by the Court under the Protection of Women from Domestic Violence Act, is not being paid and that the appeal is also pending for enhancement of the said amount. It is also a fact that a sum of Rs.10,000/- per month i.e. Rs.5,000/- for the wife and Rs.5,000/- for the minor daughter stand awarded in proceedings under Section 125 Cr.P.C.

On asking of the Court, it has been informed that a sum of Rs.10,000/- per month is regularly paid as determined in proceedings under Section 125 Cr.P.C. A sum of Rs.7,000/- as ordered towards the maintenance as determined by the Court under the Protection of Women from Domestic Violence Act, is not being paid.

Considering the totality of the circumstances, we are of the opinion that it is bounden duty of the appellant-husband to ensure the maintenance of the wife during pendency of the proceedings under the Hindu Marriage Act in order to sustain herself. In the present case, the minor daughter is also staying with the respondent. She is bearing the responsibility of both the parties by maintaining her as such she is entitled to be compensated in the shape of maintenance for herself and for the minor daughter.

We have considered the contention of learned counsel for the appellant that the Company for which the appellant-husband was working stands wound up and he is jobless.

It is not disputed that the appellant-husband is an engineer and is a technocrat. Being a technical expert with technical education to his credit, he is expected to earn at least sum of Rs.25,000/- to Rs.30,000/- per month.

Presuming that being an able bodied technical expert person, the appellant is capable of earning bare minimum of Rs.30,000/-, we deem it appropriate, in the interest of justice, to grant maintenance pendente lite @ Rs.18,000/- per month to the respondent-wife. It is made clear that a sum of Rs.10,000/- awarded in proceedings under Section 125 Cr.P.C is liable to be adjusted against the amount awarded by this Court.

In case amount of Rs.7,000/- per month as assessed by the Court under the Protection of Women from Domestic Violence Act, stands already paid, it will be adjustable and would not be required to be paid.

The amount of maintenance will be paid with effect from the date of application i.e. September, 2017.

Besides assessing the maintenance pendente lite @ Rs.18,000/- per month as mentioned hereinabove, a sum of Rs.25,000/- is assessed as litigation expenses. A sum of Rs.20,000/- already paid towards interim litigation expenses will be deductible from the amount assessed.

Application under Section 24 of the Hindu Marriage Act is allowed, in above manner.

For payment of entire arrears of maintenance calculated upto 31.03.2018 and balance of litigation expenses, to come up on 20.03.2018.

Record of lower Court has been received.

Appeal will be fixed for final hearing after clearance of entire arrears of maintenance and balance of litigation expenses.

(M.M.S. BEDI)
JUDGE

December 21, 2017.
harsha

(AUGUSTINE GEORGE MASIH)
JUDGE