

CMM-43-2017
IN FAO-3868-2014

MAHENDER V/S SUNITA AND ORS

Present: Mr. Abhishek Sanghi, Advocate,
and Mr. Rohit Nagpal, Advocate,
for the applicant/respondent No. 1.

Mr. Gurinder Singh, Advocate,
for the non-applicant/appellant.

The applicant-respondent No. 1-wife has filed this application under Section 24 of the Hindu Marriage Act praying for grant of maintenance pendente-lite from the non-applicant-appellant-husband, who had preferred a petition for divorce under Section 13 of the Hindu Marriage Act, which has been dismissed by the District Judge, Bhiwani on 26.02.2014, which is under challenge in this appeal.

Applicant-wife has asserted that she has no source of income to survive and has a son out of the wedlock, who is also residing with her and is studying. She and her son are at the mercy of her relatives and are fully dependent upon them for their basic necessities of life. The non-applicant-appellant-husband has retired from the Army and is receiving pension between Rs. 15,000/- to Rs. 20,000/- per month. He, at the time of his retirement, received more than Rs. 15 lacs and also owns and possesses immovable properties in the village and city. He has a monthly income of Rs. 50,000/- from all sources and has no liability as his parents are living with his brother. Claim has, thus, been made for an amount of Rs. 25,000/- per month as maintenance pendente-lite for herself and her minor son apart from the litigation expenses.

In the reply, which has been filed by the non-applicant-appellant-husband, it has been asserted that the applicant-wife is living a very comfortable life as she is earning through teaching job and tuition classes as she is well qualified being M.A. J.B.T. She is residing in the house, which was got constructed by him and stands transferred in her name. He asserts that he does not dispute the fact that he has retired from the Army but has asserted that he is getting pension amounting to Rs. 10,140/-, out of which his basic pension is Rs. 7,800/- and Rs. 2,340/- is disability pension. He has appended the Pension Payment Order Sheet as Annexure R-1. It is also stated that he is having an agricultural income of Rs. 6,000/- per annum. He is residing with his 90 years old ailing mother. The appellant is himself a disabled person and suffering from tuberculosis, finding it very difficult to cope up with ever increasing medical expenses. Assertion has also been made that the applicant-respondent No. 1 is living an adulterous life.

Having considered the pleadings of the parties and the arguments, as raised by the counsel for respondent No. 1, what comes out, as a matter of fact, is that the non-applicant-appellant, admittedly, has income of about Rs. 12,000/- per month with liability of looking after himself and his ailing mother, who is 90 years old. The factum that he has received an amount of more than Rs. 15 lacs at the time of his retirement, has not been disputed nor has it been disputed that there is a male child residing with the applicant-wife. Merely because the wife is well qualified and is capable of earning, in the absence of any proof, the assertion that she is earning through teaching job and tuition classes cannot be accepted.

In the totality of the facts and circumstances of the present case, we are of the considered view that the applicant-respondent No. 1-wife is entitled to a sum of Rs.3,000/- per month as maintenance pendente-lite under Section 24 of the Hindu Marriage Act with effect from the date of the application. Litigation expenses are assessed as Rs. 30,000/-. A sum of Rs. 15,000/- already paid will be deducted.

For payment of the entire arrears of maintenance pendente-lite and litigation expenses, to come up on 16.02.2018.

Cost of Rs. 5,000/-, as ordered on 04.09.2017, has been offered in cash by the counsel for the non-applicant/appellant. The said amount may be included in the arrears and paid to the applicant-wife. Any balance arising out of the directions issued vide order dated 29.03.2017 would also be cleared along with arrears by the next date of hearing.

(M.M.S.BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

November 24, 2017
pj