

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2211 of 2017 (O&M)

Date of decision : February 17, 2018

Amanpreet Kaur

..... Petitioner

Versus

Kanwalvir Singh Kang and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Petitioner in person alongwith
Ms. Tarun Preet Kaur, Advocate.

Respondent in person along with
Mr. Anand Chhiber, Sr. Advocate with
Mr. Gaurav Chopra, Advocate.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 29.11.2016 (Annexure P-12) passed by learned Addl. District Judge, Chandigarh, whereby the application filed by the wife-petitioner under Section 24 of the Hindu Marriage Act, 1955 was dismissed.

Brief facts of the case are that a petition filed under Section 13 of the Hindu Marriage Act, 1955 by husband-respondent No.1 Kanwalvir Singh Kang for dissolution of marriage by a decree of divorce on the ground of cruelty and adultery is pending before the trial court. During the pendency of the said petition, the present application under Section 24 of the Hindu Marriage Act, 1955 was filed for grant of maintenance pendente lite.

It is stated in the application that respondent No.1-husband is a leading Lawyer and is practicing in the Punjab and Haryana High Court at Chandigarh. He was earlier practicing in Delhi High Court from the year 2007 and now, he is practicing in this Court since September, 2010. He is occupying a room No.26 and having a complete staff including junior lawyers, Clerk and Stenographer. He is also practicing at Patiala Courts on Saturdays and other days fixed by the Courts. He has also employed two Drivers, one at Chandigarh and another at Patiala. He is Standing Counsel for Canadian Embassy and Y.P.S. School and his minimum income from the legal profession is ₹1,00,000/- per month. It is stated that respondent No.1-husband is also having triple storied house in Patiala, named “Kanwalvir Cottage”. First and second floors of which have been rented out to various tenants. Respondent No.1-husband and his mother are also having a triple storied commercial building. One portion of which is occupied by the Oriental Bank of Commerce, one portion is being occupied by an Educational Institute and another portion is occupied by Pearl Groups. They have also shops, which are rented out. Respondent No.1-husband and his mother own agriculture land at Village Khamano, District Fatehgarh Sahib. They have numerous bank accounts in the nature of FDRs. The petitioner-wife states that she is living with the financial assistance of her old age mother, who is retired bank employee and fetching just ₹1,680/- per month as family pension and a small half yearly income of ₹35,000/- from agriculture land inherited by her Late father S. Avtar Singh. S. Avtar Singh, Advocate, father of the petitioner-wife died on 10.11.2013. He had a fixed deposit of ₹6,27,000/-, which had been pledged to obtain a loan of

₹4,00,000/-, which was got encashed on 07.01.2016 for spending on the litigation expenses and day to day expenses. The mother of the petitioner-wife took a huge loan in January, 2015 to meet the expenditure including litigation expenses. The petitioner-wife also owned 3.5 acres of agriculture land at Village Bassi Pathana, District Fatehgarh Sahib, which has been inherited from her father, in which she is co-sharer with her mother and sister. The said property is under litigation since September, 2013. From the said property, the petitioner-wife is getting 1/3rd share i.e. ₹35,000/- per year. The father of the petitioner-wife had taken a farmer loan limit of ₹3,00,000/- as concessional interest. The loan is being repaid. The share of the petitioner-wife towards the loan comes to ₹1,12,487/-, which has been paid by her mother by encashing the FDRs in her name. The remaining amount of ₹16,299/- plus interest is still due. The petitioner-wife had to pay ₹6,000/- as her share out of the total penalty of ₹18,000/- imposed by the Electricity Board against her father. It is further stated that other civil and criminal litigations are pending between the parties at Patiala, Chandigarh and Delhi Courts. Though, the petitioner-wife is well educated but due to paucity of job avenues and due to numerous litigations, she is unable to get a suitable job at this stage.

The petitioner-wife had previously filed a similar application, in which prayer was made for grant of litigation expenses only. The trial court granted ₹5,000/- per month as litigation expenses, which was challenged by her before this Court by way of filing CR No.4867 of 2013, in which respondent No.1-husband made statement that he is ready to pay ₹25,000/- per month, but he has not even paid ₹5,000/- granted by the trial

court. Therefore, the prayer was made for grant of maintenance pendente lite @ ₹1,00,000/- per month.

In the reply, respondent No.1-husband took the plea that the petitioner-wife is a qualified professional having B.Sc. (I.T.). She worked on various positions in India and Australia. Her educational qualification and the date of work experiences have been enumerated in the reply. It is stated that from the last two years i.e. 20.05.2014/date of separation, she has not tried even once to get employed in the private/public sector. Respondent No.1-husband stated that the petitioner-wife is self sufficient and the application is filed only to harass him. During the divorce proceedings, an application was filed only to claim litigation expenses and not maintenance pendente lite . The petitioner-wife has agriculture land and getting ₹35,000/- per year. The details of the agriculture land situated at Village Bassi Pathana, District Fatehgarh Sahib has been mentioned. It is also stated that she has also getting rental income from the property mentioned in the reply.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Admittedly, the petitioner-wife had previously filed an application claiming the litigation expenses only. The trial court has allowed the litigation expenses to the tune of ₹5,000/- per month. The said order was challenged before this Court by way of filing CR No.4867 of 2013, which was decided by this Court on 09.09.2016, in which respondent No.1-husband was ordered to pay Rs.15,000/- per month, subject to adjustment in the final outcome of the decision to be taken by the trial court. This was done, while setting aside the order passed by the trial court. It was

noticed by this Court that on 01.08.2016, learned counsel for respondent No.1-husband stated that respondent No.1-husband is ready and willing to pay ₹25,000/- towards litigation expenses. In any case, while noticing that earlier an application was filed for grant of litigation expenses. Now, the present application is for grant of maintenance pendente lite.

Admittedly, respondent No.1-husband is a practicing Advocate in this Court and his plea that he is having very meager income, is not acceptable. Respondent No.1-husband has placed on file his Income Tax Returns to show that he was having the gross annual income of little more than ₹5,00,000/- for the assessment year 2013-14, the amount of ₹5,40,000/- for the assessment year 2014-15, ₹4,97,643/- for the assessment year 2015-16 and ₹3,77,147/- for the assessment year 2016-17.

I am of the view that the Income Tax Returns may not reflect the true income. Therefore, it has to be assessed that the minimum income of respondent No.1-husband cannot be less than ₹1,00,000/- per month.

Admittedly, in this case, the petitioner-wife is highly qualified. She was previously working in Australia. She came back to India and married with respondent No.1-husband. Unluckily, after few months of the marriage, a controversy broke out and the litigation started, which multiplied and now legal battle is going on between the parties at different fronts.

From the interim orders placed on file, it comes out that even the lengthy evidence is being recorded and this Court has intervened to make the decision of the divorce petition date bound. Though, the petitioner-wife is highly qualified, but there is nothing on file to show that

she is doing any job. On account of litigation at Chandigarh, Patiala and Delhi Courts, she has to take rounds of one or the other court.

Admittedly, the mental peace of both the parties is also disturbed due to ongoing litigation. So far as properties of the petitioner-wife is concerned, respondent No.1-husband alleged some income but keeping in view the status of both the parties, particularly, the status of respondent No.1-husband, who is a practicing Advocate in this Court, the petitioner-wife is supposed to live with the same standard. The income from the agriculture land may not satisfy such standard. Therefore, I am of the view that the petitioner-wife is entitled to get maintenance pendente lite till she get a job in the public/private sector.

Accordingly, the impugned order dated 29.11.2016 (Annexure P-12) passed by learned Addl. District Judge, Chandigarh, disallowing any maintenance pendente lite is set aside. As such, the present revision petition is allowed. Respondent No.1-husband is ordered to pay ₹25,000/- per month as maintenance pendente lite to the petitioner-wife from the date of filing of the application until she is shown to have got a job in private/public sector or till the decision of the divorce petition, whichever is earlier.

As such, present revision petition is allowed.

(KULDIP SINGH)
JUDGE

February 17, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No