

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 115

CR-4405-2018

Date of decision : 13.07.2018

Harpreet Singh

..... Petitioner

VERSUS

Neetinder Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Anupam Singla, Advocate, for the petitioner.

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DEEPAK SIBAL, J. (ORAL)

Through the present petition, challenge is made to the order dated 31.05.2018, passed by the District Judge, Bathinda, through which warrants of attachment of 1/3rd of the petitioner's salary have been issued till the time he clears his legal dues.

The admitted facts are that on 05.04.2016 the petitioner filed a petition under Section 13 of the Hindu Marriage Act, 1956 (for short, the Act) seeking therein divorce from the respondent. During the pendency of such petition, the respondent filed an application under Section 24 of the Act, seeking interim maintenance. Such application, after notice to the petitioner, was allowed on 14.02.2017 and the respondent was awarded monthly interim maintenance @ ₹15,000/-. In addition thereto ₹10,000/- as litigation expenses were also granted. The petitioner failed to comply with the order as he only paid ₹10,000/- out of the awarded maintenance. The divorce petition was dismissed on 22.09.2017 but since the petitioner was in arrears of maintenance from the date of its award till the date of dismissal of

the divorce petition, an application was filed by the respondent seeking recovery of such amount alongwith litigation expenses. Upon notice, out of ₹2,00,000/- which was due, the petitioner paid ₹30,000/-. On the refusal of the petitioner to deposit the balance dues, through the order impugned in the present petition, the District Judge, Bathinda ordered for the attachment of 1/3rd of the petitioner's salary to be paid to the respondent till the entire amount of ₹1,70,000/- which was due towards the petitioner was realised. It is this order which is the subject matter of challenge in the present petition.

Mr. Anupam Singla, who appeared on behalf of the petitioner submitted that the District Judge, Bathinda erred in passing the impugned order on an application filed under Section 24 of the Act as no such application under that section was maintainable after the dismissal of the divorce petition; all interim orders passed in the divorce petition would be deemed to have merged in its final order and after its dismissal, would be inexecutable and that the divorce petition filed by the petitioner having been dismissed on the ground of non-payment of maintenance, the petitioner could not have been punished twice for the same wrong.

No merit is found in the above submissions.

It is not disputed that during the pendency of the divorce petition an order was passed by the Trial Court directing the petitioner to pay interim maintenance @ ₹15,000/- per month from the date of filing of the application under Section 24 of the Act and that the petitioner every month failed to comply with the order by not depositing the awarded maintenance. Such conduct of the petitioner continued till the passing of

the order dated 22.09.2017, dismissing his divorce petition. It is true that on 22.09.2017 the petitioner's divorce petition was dismissed and thereafter he would not be liable to pay maintenance under Section 24 of the Act. However, till the time such petition was pending the petitioner was bound to comply with the order passed by the Trial Court for payment of monthly maintenance. For every month between 12.08.2016 till 22.09.2017 the petitioner was in contempt of the order passed by the Trial Court directing him to pay monthly maintenance to his wife. That being so, only because on a later date the divorce petition has been dismissed, he cannot be permitted to wriggle out of the amount due towards him. Till the time the interim order directing the petitioner to pay the maintenance to the respondent was in operation, the petitioner was bound to comply with the same.

It is not disputed that during the proceedings which ensued after the filing of the application, the petitioner paid ₹30,000/- to the respondent. After having made part payment, for the balance amount, it would not lie in the petitioner's mouth to say that the proceedings were without jurisdiction.

A perusal of the application filed by the respondent shows that though in its head note reference is made to Section 24 of the Act in the prayer clause issuance of conditional warrants for recovery of arrears of maintenance have been prayed for. Thus, only a reference to Section 24 of the Act in the head note would not make the application not maintainable. The application is to be decided on the basis of its contents and the prayer made therein.

Further, a perusal of the order dated 22.09.2017 shows that the divorce petition filed by the petitioner was not only dismissed on the lone ground that he had failed to pay the entire maintenance as the petition was dismissed for his or his counsel's non appearance; for having not concluded his evidence instead of last and final opportunity granted to him as also for non-compliance of the order passed by the Trial Court with regard to award of interim maintenance to the respondent. It does not lie in the mouth of the petitioner to say that on the dismissal of his divorce petition on the ground for non-payment of interim maintenance, he could not be punished again for the same wrong by ordering him to pay the pending arrears of maintenance.

Even otherwise, the conduct of the petitioner for having repeatedly and with impunity not complied with a judicial order passed for over a year does not entitle him to any relief whatsoever. It virtually disentitles him to be even heard on merits. He cannot be allowed to be let off from complying with judicial orders.

In view of the above, no merit is found in the present petition.

Dismissed.

13.07.2018

shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No