

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.6780 of 2017
Date of Decision : 16.08.2018

Bharti Sharma

...Petitioner

Versus

Deepak Sharma

...Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. M.S. Yadav, Advocate for the petitioner.

Mr. Manish Mehta, Advocate for the respondent.

B.S.WALIA, J.

1. Prayer is for modification of order dated 04.08.2017 (Annexure P-3), passed by the learned District Judge, Narnaul, under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), granting ₹3,000/- as maintenance *pendente lite* to the petitioner and her two minor children along with ₹5,000/- as litigation expenses.

2. Before the learned District Judge, stand of the petitioner was that she and her two minor children namely Jatin aged 8 years and Kashish aged 5 years were beaten up by the respondent and turned out from the matrimonial home where after they were staying in a rented accommodation at Mohindergarh. It was claimed that the petitioner was having a monthly expenditure of ₹5400/- on the education and other expenses of the children besides was paying ₹4500/- as house rent.

Respondent was claimed to be a registered contractor and owning a Maruti Zen car, earning ₹60,000/- per month. Claim was for order granting maintenance of ₹40,000/- per month to the petitioner and her two minor children besides litigation expenses of ₹25,000/-.

3. In reply, the respondent-husband's stand was that the petitioner is M.Com and teaching in a private school in Mohindergarh on monthly salary of ₹25,000/- besides she was also taking tuitions. However, respondent admitted owning a car and earning ₹6,000/- to Rs.7,000/- per month from said car. It was also pleaded that father of the respondent having died, he had to maintain his widowed mother also.

4. Admittedly neither of the parties led any evidence before the learned District Judge, Narnaul, on the application under Section 24 of the Act. Further there is no dispute that the parties to the ligation have two children aged 8 years and 5 years respectively and that the parties are staying separately. There is also no denial that the respondent is owning a car and is earning ₹6,000/- to Rs.7,000/- per month. The learned District Judge, Narnaul, by taking into account that even a casual labourer is not expected to earn less than ₹10,000/- per month, awarded a sum of ₹3,000/- per month to the petitioner and her two minor children besides ₹5,000/- as litigation expenses.

5. Learned counsel reiterated respective stand of parties before the learned District Judge. While the learned counsel claimed enhancement, learned counsel for the respondent claimed that the maintenance awarded was proper and did not warrant any enhancement.

6. I have heard learned counsel for the parties. Admittedly, the respondent-husband owns a 10 years old Maruti Zen car and claims to be earning ₹6,000/- to ₹7,000/- per month from said vehicle. However, the respondent has not mentioned as to how he is earning ₹6,000/- to ₹7,000/- from the vehicle in question nor is it the stand of the respondent that he holds a licence to ply the Maruti Zen car as a taxi. In the circumstances, it has to be presumed that the respondent is maintaining the car for his personal use.

7. The learned District Judge, Narnaul treated the income of the respondent as not less than that of a casual labourer i.e. approximately ₹10,000/- per month and awarded ₹3,000/- as maintenance *pendente lite* to the petitioner and her two minor children along with ₹5,000/- as litigation expenses. However, it is beyond comprehension as to how a person who claims to have no means of subsistence is maintaining a car even though it might be 10 years old. A person who does not earn reasonably well cannot maintain a car. A person cannot maintain a car until and unless he has the means to ply the vehicle. Running of vehicle nowadays with prices of petrol touching close to ₹74/- per litre, goes to show that the respondent is a man of adequate means and is earning well. In any case, it cannot be presumed that a person who is maintaining a car and would obviously be spending some money for running it, would not be earning less than approximately ₹15,000/- per month. Since, the petitioner is residing along with her two minor children having been turned out from the matrimonial home by the respondent, therefore, it would be in the fitness of things if the

maintenance awarded to the petitioner and her two minor children is enhanced from ₹3,000 to ₹6,000/- per month.

8. In the light of the position as noted above, the impugned order is modified and the interim maintenance payable to the petitioner and her two minor children is enhanced from ₹3,000/- to ₹6,000/- per month w.e.f. the date of application.

9. Revision petition is allowed and impugned order is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

16.08.2018

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No