

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

(216)

FAO-M-429-2015 (O&M)

Decided on: February 06, 2018.

Pritesh Bhushan

....Appellant

Versus

Amrapali Panthi

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present: Mr. D.S. Rawat, Advocate, for the appellant.

Mr. K.L. Kohli, Advocate, for the respondent.

M.M.S. BEDI, J (ORAL)

CM-23121-CII-2015

The miscellaneous application is allowed.

Delay of 32 days in filing the appeal is condoned.

FAO-M-429-2015 (O&M)

An application under Section 37 (2) of the Special Marriage Act, 1954 filed by the appellant-husband for modifying order dated 20.10.2008 granting maintenance pendente lite @ Rs.20,000/- per month to the wife from the date of filing of petition throughout her life or till she is remarried, has been dismissed by the Additional District Judge, Chandigarh, vide impugned order dated 29.04.2015.

The grievance of the appellant-husband is that he has paid the amount of maintenance at the above said rate till 15.01.2008 when the respondent-wife was appointed as Assistant Commandant with the C.R.P.F. with usual grade and subsequently having remarried.

The reasoning given by Sh. Najar Singh, Additional District Judge, Chandigarh is that the Court was not competent to decide the

application and that the appellant has got every right to raise plea before the executing Court. The opinion of the learned Additional District Judge is apparently illegal and unreasonable in view of the provisions of Section 37 (2) of the Special Marriage Act which reads as follows:

*“37. **Permanent alimony and maintenance.**__ (1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a terms not exceeding her life, as, having regard to her own property, if any, her husband's property and ability [the conduct of the parties and other circumstances of the case], it may seem to the court to be just.*

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has re-married or is not leading a chaste life, [it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just].

Perusal of the above said provisions clearly indicates that it is the District Court who can arrive at a conclusion that there are changed circumstances of either party at any time after an order is made under sub-section (1) of the Special Marriage Act and to modify or rescind any order in such manner as it may seem to the court to be just.

In case of re-marriage having been established, the order passed under Section 37 (1) deserves to be modified or rescinded. In ignorance of the statutory right of a party, the learned Addl. District Judge has wrongly dismissed the application. The said approach is illegal, arbitrary and contrary to the statutory provisions and is apparently an evasive approach to take up the adjudication of controversy required to be adopted by the Judge.

The appeal, in aforesaid circumstances, is allowed. Order dated 29.04.2015 is hereby set aside and it is ordered that the parties will appear before the successor Court of Sh. Nazar Singh, Addl. District Judge, Chandigarh/Family Court on 17.03.2018. The said Court will adjudicate the matter in accordance with law.

Execution, if any, pending will be subject to the adjudication of the controversy under Section 37 (2) of the Special Marriage Act, 1954.

It is directed that application under Section 37 (2) of the Special Marriage Act, 1954 will be decided within a period of six months after giving fair opportunity to the parties in accordance with law.

(M.M.S. BEDI)
JUDGE

February 06, 2018.
harsha

(GURVINDER SINGH GILL)
JUDGE

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