

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-363 of 2016 (O & M)

Date of Decision: 21.11.2018

Kulwinder Kaur

.Appellant

Vs.

Pardeep Singh

. Respondent

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL**

Present: - Mr. Vishal Goel, Advocate for the appellant.

Mr. Karan Singla, Advocate for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has been filed by the wife against the judgment and decree dated 03.05.2016 by which the petition filed under Section 11 of the Hindu Marriage Act, 1955 ('Act' – for short) by her husband for declaring the marriage as null and void has been allowed.

During the pendency of this appeal, CMM No.133 of 2018 had been filed by the appellant-wife under Section 24 of the Act for maintenance pendente lite and litigation expenses. The said application was allowed by this Court on 26.07.2018 and the appellant-wife was held entitled to maintenance pendente lite at the rate of ₹ 7,000/-, per month payable from April, 2018 and also a sum of ₹30,000/- as litigation expenses, out of which ₹20,000/-, already been paid by the respondent-husband has

been ordered to be adjusted. The amount of arrears was ordered to be paid on or before the next date of hearing. However, on the next date of hearing, respondent had prayed for time to pay the arrears of maintenance, which was calculated upto 31.10.2018 and litigation expenses. The case was thus adjourned to 12.11.2018 but on that day, the respondent-husband did not pay the arrears of maintenance pendente lite and litigation expenses. Rather the statement was made by learned counsel for the respondent that the respondent is not in a position to pay the arrears of maintenance pendente lite and litigation expenses. In view thereof, the defence of the respondent was struck off.

The case was adjourned for today. Learned counsel for the respondent has again submitted before this Court that the respondent is unable to pay the amount adjudged by this Court towards maintenance pendente lite and litigation expenses.

In view of the aforesaid situation, learned counsel for the appellant-wife cites the judgment of this Court in the case of **Nirmal Kaur versus Kirpal Singh**, 2018 (1) RCR (Civil) 263 and contends that in such a situation where the husband is willfully not complying with the order of this Court for the payment of maintenance pendente lite and litigation expenses, the decree passed by the trial Court has to be set aside.

Learned counsel for the respondent could not cite any judgment to the contrary.

We have heard learned counsel for the parties.

In view of the facts narrated above, we are of the considered opinion that the respondent - husband cannot take advantage of his own

the appellant-wife would apply.

Consequently, the present appeal is allowed. The judgment and decree passed by the learned trial Court is hereby set aside.

Decree-sheet be prepared accordingly.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

21.11.2018
A.Kaundal

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No