

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO 5352 of 2018 (O&M)

Date of Decision: August 28, 2018

Vikalp

.....Appellant

Vs.

Neha Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL.

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Present: Mr.Ishan Singh Cooner, Advocate for the appellant.

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

Taking into consideration the fact that the husband/ appellant has been doing the job in Vivo Company in Gurgaon and had been getting salary of Rs.1 lac per month after deduction of tax, the lower Court has awarded maintenance pendente lite under Section 24 of the Hindu Marriage Act, for short 'the Act', at the rate of Rs.25000/- per month to the respondent wife. The said order passed by the Family Court, Faridabad has been questioned in appeal before this Court claiming that the appellant is, at present, unemployed and the respondent being a highly qualified lady having done MBA is earning for her comfortable survival.

We have heard counsel for the appellant who has urged that in view of the earning capacity of the respondent and the present circumstances

of the appellant, the amount of maintenance pendente lite awarded by the lower Court is unreasonable. On asking of the Court regarding the stage of the proceedings before the lower Court, it has been informed that the evidence of the applicant/ appellant in his divorce petition has already been completed and the case is at the stage of respondent's evidence. There is delay of 53 days in filing of the appeal.

We have considered all the facts and circumstances of this case. We do not deem it appropriate to enter into the disputed question of fact and decide the controversy regarding the actual income of the appellant, the earning capacity of the respondent- wife and the appropriate amount which is required to be paid as maintenance pendente lite in view of the stage of the case which is at the penultimate stage. Provisions of Section 21 B (2) of the Act provides that every petition filed under the Act is required to be tried as expeditiously as possible and an endeavour should be made to decide the same within 6 months from the service of the notice to the opposite party.

Even if it is presumed that the respondent has got an earning capacity on the basis of her educational qualification, it will not debar her to claim reasonable amount of maintenance pendente lite. The earning capacity of the appellant and his educational qualification has been taken into consideration by us and we are of the opinion that the plea that he is unemployed person is unbelievable. No document has been produced on the record that the appellant has ceased to work with the above said Company and he is not earning anything. The appellant is an able-bodied person cannot evade his liability to pay maintenance pendente lite during the proceedings under the Act. Instead of interfering in the order of interim

maintenance, we deem it appropriate to observe that in case the appellant files an application before the lower Court in context to the provisions of Section 21-B (2) of the Act for expeditious disposal of the case the trial Court shall make an endeavour to conclude the proceedings within a reasonable period expeditiously.

The appeal is dismissed at his stage.

Counsel for the appellant, at this stage, has submitted that notice be issued to the respondent for making an attempt for amiable settlement.

Such a prayer can always be made before the lower Court. In case any such request is made, the Court shall make efforts for amicable settlement taking into consideration the spirit of Section 23 (2) of the Act.

(M.M.S. BEDI)
JUDGE

August 28, 2018
sanjay

(ANUPINDER SINGH GREWAL)
JUDGE

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