

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

(1) FAO-M-90-2017 (O&M)
Decided on:-May 22, 2018.

Dr. Sheetal Garg.

.....Appellant.

Versus

Dr. Harkirat Gill.

.....Respondent.

(2) CR No.5463 of 2017 (O&M)

Dr. Harkirat Gill.

.....Petitioner.

Versus

Dr. Sheetal Garg.

.....Respondent.

***CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA***

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. H.P.S. Sandhu, Advocate for the appellant.

Mr. Namit Gautam, Advocate
for the respondent.

HARI PAL VERMA, J.

By way of this common judgment, the aforementioned two cases
i.e. ***FAO-M-90 of 2017*** titled as ***Dr. Sheetal Garg Versus Dr. Harkirat Gill***
and ***CR No.5463 of 2017*** titled as ***Dr. Harkirat Gill Versus Dr. Sheetal Garg***
are being decided as the same have arisen from a common order dated
03.03.2017 passed by learned Additional District Judge, Ludhiana, whereby
the petition under Section 24 of the Hindu Marriage Act, 1955 (for short, the
Act) filed by Dr. Harkirat Gill for grant of maintenance *pendente lite* and

litigation expenses was allowed.

However, for convenience and clarity, the detailed order is being passed in ***FAO-M-90 of 2017*** titled as ***Dr. Sheetal Garg Versus Dr. Harkirat Gill***.

Vide impugned order dated 03.03.2017, learned Additional District Judge, Ludhaina held the respondent-wife Dr. Harkirat Gill (for short, the wife) entitled for maintenance *pendente lite* at the rate of Rs.1,00,000/- per month including maintenance for her children. The appellant-husband Dr. Sheetal Garg (for short, the husband) was further directed to pay Rs.20,000/- as litigation expenses.

Aggrieved against the impugned order dated 03.03.2017 passed by the Family Court, the husband has filed the present appeal under Section 28 of the Act. Similarly, the wife has also filed civil revision claiming maintenance *pendente lite* at the rate of Rs.4,00,000/- per month along with an amount of Rs.1,10,000/- as litigation expenses under Section 24 of the Act.

It is in these circumstances, both the parties have filed their respective appeal/revision petition and, therefore, the same have been taken up together for decision, having been arisen from the common judgment dated 03.03.2017.

Briefly stated, the husband had filed a petition under Section 13 of the Act, seeking dissolution of marriage by way of a decree of divorce. The parties are doctors by profession and marriage between them was solemnised on 29.08.1999 as per the Hindu rites and ceremonies and on 30.08.1999 at Chandigarh according to Sikh rites by way of Anand Karaj. Out of this

wedlock, two children i.e. a daughter namely Mehreen was born on 04.11.2000, whereas a son namely Arnav was born on 21.09.2006. The children are minors and are living under the care and custody of the wife, who is a PCMS doctor posted on deputation as Medical Officer in ESI Hospital, Ludhiana. Her salary including all allowances comes to Rs.52,327/- per month. The daughter Mehreen is a student of 10th class. Her annual tuition fee is Rs.33,440/- and in addition thereto, she requires Rs.5,000/- per month for books and stationery and Rs.5,000/- per month for clothes, shoes, uniform and other allied expenditure. Besides this, her monthly tuition fee is Rs.6,000/-. She goes to school by school bus for which she has to pay Rs.2,100/- per month as transportation fee. The minor son Arnav, who is about 9 years of age, is a student 4th standard in DAV Public School, Ludhiana and for him, a sum of Rs.2,500/- per month has to be paid as school tuition fee, Rs.3,000/- per month for books and stationery and Rs.5,000/- for clothes, shoes and uniform. He is also using school conveyance for which monthly charges are Rs.2,100/-. Since the wife required a conveyance so as to commute to and from her work place i.e. ESI Hospital, Ludhiana, she had to buy a vehicle i.e. Duster (petrol) car in December, 2014. After getting it financed from HDFC Bank, she is paying a monthly instalment of Rs.15,000/- out of her salary. She has further claimed that her husband is a Senior Consultant and HOD-Cardiac Anesthesia with Fortis Hospital, Ludhiana and is drawing a monthly salary of Rs.5,00,000/- besides other benefits. He has also made substantial investment in share market, mutual funds and FDRs etc. and as such, his total monthly income comes to Rs.10,00,000/-. The husband is not contributing any amount

towards the welfare of the wife and the children and in order to meet the requirements of the wife and children, the wife requires Rs.4,00,000/- per month as maintenance *pendente lite* which is bare minimum requirement of the wife to meet the day to day expenditure. In addition thereto, she requires a further sum of Rs.1,10,000/- in order to incur on the litigation expenses.

The husband while filing reply to this petition filed under Section 24 of the Act, had taken preliminary objections controverting the averments made in the petition. It has been contended that she (wife) is guilty of approaching the Court with unclean hands and is not entitled to the relief claimed in the petition, as she has suppressed true and material facts. The marriage between the parties was admitted. It was also admitted that the wife is working as a PCMS Medical Officer, though her salary is more than Rs.65,000/- per month. She is due to clear her probation and after completion of her probation, her salary would be Rs.1,00,000/- per month. Apart from this, she also has savings of Rs.7-8 lacs in her Pension Fund Account. The husband had filed the petition for divorce against the wife on the ground of extreme cruelty, both mental and physical which is continuing. She has not only harassed and humiliated the husband, but is also guilty of leading an adulterous life, which disentitles her to claim any maintenance from the husband. She is also in possession of a house owned by the husband and is utilizing all the facilities and amenities attached to it and all the expenditure on the maintenance and upkeep of the house including electricity bills, water, sewerage bills, kitchen expenses etc. are being met by the husband. The wife is a member of one of the prestigious clubs of Ludhiana, where the

membership amount is more than Rs.5,00,000/- for public. She is a regular visitor to kitty parties, Malls and keeps changing her membership of health club/gym. Therefore, she is not entitled to claim any maintenance, as her financial conditions are sound enough.

Considering the respective contentions of the parties and the fact that the petitioner is a legally wedded wife having two minor children studying in 10th and 4th class respectively and the respondent being husband of the petitioner and father of the children is legally bound to maintain them, learned trial Court allowed the application under Section 24 of the Act filed by the wife. While awarding maintenance *pendente lite*, the trial Court has held as under:

“15. *Therefore, I am of the view that may be petitioner is drawing a salary of Rs.52,327/- per month by working as a Medical officer in the ESI Hospital, Bharat Nagar Chowk, Ludhiana, but petitioner alleged that the income of her husband is Rs.5 Lac per month by doing a job as a Sr. Consultant and Head of Department of Cardiac Anesthesia with Fortis Hospital, Chandigarh Road, Ludhiana and in this regard, petitioner has also moved one application directing the respondent to produce his latest salary certificate, but he did not produce. So, it shall be assumed that respondent has been drawing monthly salary of Rs.5 Lac per month as has been claimed by petitioner. Therefore, the petitioner and her children would have been enjoying better facility and living standards before petitioner was separated from the respondent. Since, the petitioner and children are entitled to enjoy the same life style and standard of life, therefore, keeping in view the big gap in the earnings of wife and husband as well as the expenses of the minor children studying in Top schools at Ludhiana and is residing in home of respondent so, petitioner is*

entitled to maintenance at least @ Rs.1 Lac per month that would include the maintenance of the children as no separate maintenance has been sought by the petitioner on their behalf. So, this petition u/s 24 HMA moved by the petitioner is allowed and respondent is directed to pay Rs.1 Lac per month to his wife from the date of petition u/s 24 HMA till the main petition u/s 13 HMA is finally disposed of. In addition to it, respondent is directed to pay Rs.20,000/- as litigation expenses.”

Mr. Akshay Bhan, learned senior counsel for the husband has argued that the trial Court has failed to correctly assess the expenses claimed by the wife, the income of the husband and the allegation of adultery against the wife. The object and intent of Section 24 of the Act is to enable the husband or the wife, who has no independent source of income for his or her support by granting maintenance expenses *pendente lite*, so that the proceedings may be continued without any financial hardship. The object of this provision is not to equalise the income of the parties. The wife has an independent source of income as she is financially well placed and is working as Medical Officer in ESI Hospital, Ludhiana. Her income is not less than Rs.1,00,000/- per month. No proof has been produced by the wife to prove the income of the husband. A mere bald exaggerated statement about the income of husband has totally been misconstrued by the learned Court below while fixing the maintenance *pendente lite*. He has referred to income tax returns of the husband for the year 2016-17 showing his gross total income as Rs.26,10,948/-, for the year 2015-16 the income was Rs.23,59,079/-, whereas and for the year 2014-15 it was Rs.9,93,520/-. Thus, for the income of the year 2016-17, for a gross total income of Rs.26,10,948/-, the husband had

paid a net tax of Rs.5,95,689/-. In addition thereof, he is paying the monthly instalment approximately of Rs.35,000/- of the house in which the wife is currently living. The husband is staying in a rented house for which he is paying additionally Rs.22,000/- per month as rent. The expenses claimed by the wife to prove her inability to maintain from the income earned by her, is totally misconceived, unrealistic and exaggerated. She is repeatedly making frivolous complaints against the husband to his employer for his removal from the job.

On the other hand, Mr. Namit Gautam, learned counsel appearing for the wife has argued that the wife has filed a separate revision petition under Article 227 of the Constitution of India seeking modification of order dated 03.03.2017 claiming maintenance *pendente lite* at the rate of Rs.4,00,000/- per month and Rs.1,10,000/- as litigation expenses under Section 24 of the Act. He has further argued that the learned trial Court has passed an extremely perverse, one sided and biased order which is liable to be modified. The Court below has not referred to any document filed by the wife and the circumstances and status of the parties while deciding the application. The husband is a Senior Consultant and is working as Head of the Department, Cardiac Anaesthesia with Fortis Hospital, Ludhiana. The service agreement was entered between the husband and Fortis Hospital, whereby with effect from 14.04.2014, the monthly lump sum service fee of Rs.4,50,000/- was agreed upon and now almost after more than 3 years, the salary of the husband has increased approximately to Rs.6,00,000/- per month, but the husband has not disclosed his true income. Even otherwise, on

27.05.2015, the retainership fee was increased to Rs.4,89,151/- per month from the initial retainership of Rs.4,50,000/- per month. Thereafter, with the intervening period of 2 years, the income of the husband must not be less than Rs.6,00,000/- per month. In a criminal case registered against the husband, while seeking anticipatory bail, the husband has admitted that he is earning around Rs.60,00,000/- per year. Therefore, this is sufficient admission of his income of the husband i.e. Rs.5,00,000/- per month. The Court below has not dealt with all the assets of the husband in the shape of FDRs and bank accounts and has not dealt with this aspect. The Court below has gone wrong while awarding the litigation expenses to the tune of Rs.20,000/- only.

We have heard learned counsel for the parties and perused the record.

The marriage between the parties and the children out of this wedlock are not a matter of dispute. There are two children out of the wedlock. The daughter, namely, Mehreen was born on 04.11.2000 and son Arnav was born on 29.01.2006 and both the children are minors and at present in the care and custody of the wife. They are studying in good schools which are quite costly. The medical service agreement dated 12.04.2014 as entered between the husband and Fortis Hospital, Ludhiana does provide that in consideration of the consultancy rendered by the husband, he shall be fetching a consolidated lump sum fee of Rs.4,50,000/- per month and the service agreement has been extended from time to time for a subsequent year i.e. 27.05.2015, the retainership agreement was revised with effect from April 01, 2015 and the Fortis Hospital, Ludhiana agreed to pay a consolidated

retainership fee of Rs.4,89,151/- per month.

Section 24 of the Act makes a provision of maintenance *pendente lite* and expenses of the proceedings. It reads as under:

“24. ***Maintenance pendente lite and expenses of proceedings.*** —Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.”

In the case of ***Smt. Jasbir Kaur Sehgal Versus The District Judge, Dehradun 1997(4) RCR (Civil) 65***, the Apex Court has held that while fixing maintenance *pendente lite* under Section 24 of the Act, there cannot be any hard and fast formula and the Court has to consider the status of the parties, their respective needs, capacity of husband to pay having regard to reasonable expenses for his own maintenance. The maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she lived with her husband. She should not feel handicapped in prosecution of her case.

In the case in hand, no doubt, the wife is a Medical Officer

working with ESI Hospital, Ludhiana. She is drawing salary of Rs.52,327/- per month, but at the same time, it has come on record that the husband is well placed and is working as Senior Consultant and HOD-Cardiac Anesthesia with Fortis Hospital, Ludhiana. In the year 2014, when the service agreement was entered between the husband and the Fortis Hospital, Ludhiana, Rs.4,50,000/- were fixed as monthly lump sum service fee and for subsequent year i.e. 2015, the said amount was increased to Rs.4,89,151/-.

Though learned counsel for the appellant has tried to persuade this Court that thereafter, the salary of the husband has decreased, but this argument cannot be accepted as the same is not part of the record. However, at the same time, no material has been brought on record that for what reason, the salary of the husband was decreased by Fortis Hospital. The wife is entitled to live in dignity and status commensurate with the status of her husband with whom she was otherwise residing before start of litigation between them. Therefore, the amount of maintenance for wife should be at such rate where she can live in reasonable comfort considering her status and the mode of life which she was otherwise used to live when she lived with the husband. At the same time, it has also to be observed that the amount so fixed cannot be excessive or extortionate.

It is settled law that the award of maintenance *pendente lite* under Section 24 of the Hindu Marriage Act 1955 has to be exercised on sound legal principles.

The principles to be followed in granting maintenance are well settled in **Bharat Hedge v. Saroj Hedge 140 (2007) DLT 16**, wherein it is

held as under:-

"While considering a claim for interim maintenance, the court has to keep in mind the status of the parties, reasonable wants of the applicant, the income and property of the applicant. Conversely, requirements of the non applicant, the income and property of the non applicant and additionally the other family members to be maintained by the non applicant have to be taken into all. Whilst it is important to insure that the maintenance awarded to the applicant is sufficient to enable the applicant to live in somewhat the same degree of comfort as in the matrimonial home, but it should not be so exorbitant that the non applicant is unable to pay."

Hon'ble the Supreme Court in the case of ***Neeta Rakesh Jain Vs. Rakesh Jeetmal Jain 2010(3) RCR (Civil) 775*** has held that while granting interim maintenance under Section 24 of the Act during the pendency of divorce petition, the Court is required to look into various factors like social status, the background of the parties and their economic dependence. In the case in hand, the husband is a doctor in super-speciality and as per the service agreement dated 12.04.2014, as entered between the husband and the Fortis Hospital, Ludhiana, his monthly lumpsum service fee was fixed as Rs.4,50,000/-, which was subsequently increased to Rs.4,89,151/- per month, whereas, the wife has been drawing salary of Rs.77,000/- per month and maintaining two grown up children. Since the petition under Section 24 of the Act is aimed at granting interim maintenance, elaborate exercise by the Court may not be necessary, but at the same time, the Court has to take all the relevant factors into account and arrive at a

proper amount having regard to the factors which are mentioned in the statute. Section 24 of the Act provides that in any proceeding under the Act, the spouses who has no independent income sufficient for her or his support, may apply to the Court to direct the respondent to pay the monthly maintenance, as the Court may think reasonable, regard being had to the petitioner's own income and the income of the respondent. The language in which this Section is couched, indicates that wide discretion has to be conferred on the Court in the matter of an order for interim maintenance, but at the same time, this Section provides guidelines, inasmuch as while fixing interim maintenance, the Court has to give due regard to the income of the respondent-husband and the petitioner-wife's own income.

In the case in hand, the husband, who is a well qualified doctor and specialist of the field, was admittedly drawing service fee of Rs.4,89,151/- per month in the year 2015, whereas the wife has admitted her salary income to the extent of Rs.77,000/- per month. Even if she is staying in the house owned by the husband and drawing salary of Rs.77,000/- per month, these factors alone cannot be a ground to disentitle her from claiming maintenance *pendente lite*.

Therefore, in order to maintain an equitable balance between the parties, while taking into consideration the income of the respective parties i.e. the income of the respondent-husband to the extent of Rs.4,89,151/- per month and that of the appellant-wife to the extent of Rs.77,000/- per month and the totality of circumstances, the appellant-wife is entitled for a sum of Rs.75,000/- per month, as maintenance *pendente lite* from the date of the

application instead of Rs.1,00,000/- per month, as awarded by the Court below, but at the same time, the litigation expenses of Rs.20,000/-, as awarded by the lower Court are increased to Rs.1,10,000/-.

In this manner, the appeal filed by the husband is disposed of and taking into consideration the totality of the circumstances, a sum of Rs.75,000/- per month is assessed as maintenance *pendente lite* payable to the wife from the date of application. Similarly, the revision petition filed by the wife is also disposed of and the litigation expenses are enhanced and fixed at Rs.1,10,000/-.

Since the order has been passed on the basis of material available on record, the wife shall be at liberty to seek enhancement, if so advised, in case she procures other documents, showing income of the husband more than the evidence, as referred in the paragraphs above. It is also made clear that this order will not in any manner prejudice the right of maintenance of the minor children born out of the wedlock of parties.

Photocopy of this order be placed on the file of other connected case.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

May 22, 2018

Yag Dutt/AK

Whether speaking/reasoned: Yes

Whether Reportable: No