

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

FAO-M-10 of 2018.

Decided on:-May 17, 2018.

Ganesh Dass Arora.

.....Appellant.

Versus

Kajal Arora and another

.....Respondents.

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

Present:- Mr. P.S. Dhaliwal, Advocate for
 Mr. S.S. Bedi, Advocate for the appellant.

Mr. Gagan Oberoi, Advocate
for respondent No.1.

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

Pursuant to order dated 21.02.2018 passed by this Court, a sum of Rs.1,59,000/- in the shape of bank draft in the name of respondent No.1-wife has been brought by the appellant-husband.

Notice of the appeal to respondent No.1-wife. Mr. Gagan Oberoi, Advocate is present along with respondent No.1 in person to accept notice. Notice has been accepted. Power of attorney on behalf of respondent No.1 filed in the Court is taken on record.

The order dated 20.02.2017 passed by Additional District Judge, Ludhiana, challenged by the appellant-husband, reads as follows:

“Today, it was last opportunity granted to the petitioner to pay the entire payment of maintenance along-with litigation expenses. As per the order dated 17.9.16, respondent was awarded maintenance @ Rs.12000/- PM from the date of

application. The application was filed on 11.12.15. It means, from the last two years the maintenance is due towards petitioner, which will be approximately more than Rs.3 lacs. However, today, he has simply paid Rs.10,000/- towards maintenance knowing that it was last opportunity provided to him. Since petitioner is not willing to make the payment, so, for non payment of maintenance, his petition is dismissed. File be consigned to the record room.

Announced: 20.2.2017

*Sd/-
Sarbjit Singh Dhaliwal,
Addl. Distict Judge,
Ludhiana.”*

A perusal of the abovesaid order indicates that on account of non-payment of maintenance *pendente lite* at the rate of Rs.12,000/- per month from 11.12.2015, the divorce petition of the appellant had been dismissed.

Counsel for the appellant has come forward with a number of excuses for non-payment of the amount of interim maintenance.

We are not satisfied with any of the grounds and are of the opinion that in order to get a fair opportunity for adjudication of his petition for divorce on merits, he would be required to pay the amount determined under Section 24 of the Hindu Marriage Act sought by the respondent and ordered by the Court below.

When the appeal was taken up for preliminary hearing on 21.02.2018 with an objective to test the bonafide of the appellant, a direction was issued that the entire arrears at half the rate i.e. Rs.6,000/- per month with effect from December, 2015 (after deducting the amount already paid) be brought in the Court in the shape of a bank draft in the name of the respondent. Today a bank draft in the sum of Rs.1,59,000/- in the name of

respondent No.1-wife has been brought by the appellant, which is handed over to the respondent No.1.

Counsel for respondent No.1 has made a statement that in case the appellant pays the entire arrears of maintenance *pendente lite* as ordered by the lower Court, the impugned order may be set aside.

We find this offer a fair one. Though the order passed by the lower Court is perfectly legal order for having dismissed the petition for non-payment of arrears of maintenance *pendente lite*, but in the interest of justice, to fairly determine the matrimonial status of the parties on adjudication of the petition under Section 13 of the Hindu Marriage Act on merits, we deem it appropriate to set aside the impugned order 20.02.2017 passed by the lower Court subject to following conditions:

- (i) The entire arrears of maintenance *pendente lite* calculated till February, 2017 under Section 24 of the Hindu Marriage Act at the rate of Rs.12,000/- per month will be paid by the appellant in the lower Court by appearing before the said Court on 21.07.2018 after deducting a sum of Rs.1,59,000/-, paid today in the Court, without prejudice to the right of the respondent to claim the arrears of maintenance subsequent to 20.02.2017; and
- (ii) The appellant shall pay the costs of Rs.5,000/- to the respondent.

The appeal is disposed of in the above terms. The order dated 20.02.2017 passed by the lower Court having been set aside subject to abovesaid conditions, the parties are directed to appear before the Court of

Additional District Judge, Ludhiana (who passed the impugned order or any other successor Court) on 21.07.2018. The appellant shall pay the amount as mentioned hereinabove on the said date. The petition for divorce will be taken up for hearing with effect from the date i.e. 20.02.2017 without prejudice to the rights of the respondent to claim the maintenance/ interim maintenance as per law.

(M.M.S. BEDI)
JUDGE

May 17, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No