

**104+218 CM-411-CII-2018 in/and
FAO-M-239-2016 with CMM-90-2016**

**RAJNI
V/S
RAJBIR SINGH**

Present: Mr. Saurabh Dalal, Advocate, for the appellant.

Mr. S.S. Salar, Advocate, for the respondent.

CM-411-CII-2018

The miscellaneous application is allowed.

Reply to application under Section 24 of the Hindu Marriage Act and salary slip as Annexure R-1, are permitted to be taken on record.

CMM-90-2016

Respondent-husband had obtained a decree of divorce on 26.02.2016 from the Court of Additional District Judge, Panchkula which order is subject matter of the present appeal filed by the appellant-wife.

During pendency of the appeal, an application under Section 24 of the Hindu Marriage Act has been filed by the appellant-wife claiming that the respondent-husband is required to pay maintenance pendente lite @ Rs.15,000/- per month being obliged under the law to maintain the minor child.

Application has been opposed by counsel for the respondent-husband on the ground that both the parties are having independent income as the respondent-husband is working in Air Force whereas the appellant-wife is a teacher in a Govt. school.

On asking of the Court, it has been informed that the respondent-husband had been required to pay a sum of Rs.6,000/- per month to enable the appellant-wife to look after the minor child born out of the wedlock, who at present, is staying with the appellant-wife.

We have considered the application in context to the above said circumstances and are of the opinion that since both husband and wife are educated and earning independently, the appellant-wife would not be entitled to any amount under Section 24 of the Hindu Marriage Act towards the maintenance pendente lite for herself but the fact that she is undertaking the welfare of the female minor child who is residing with the appellant-wife, as such, she is entitled to some amount for shouldering the said responsibility which is the joint responsibility of husband and wife. On account of said service being rendered as mother to the child born out of the wedlock, she would be entitled to a contribution towards the maintenance of the child which is otherwise the obligation of the respondent besides, it being a statutory duty.

For assessing the amount payable to the appellant-wife, we proceed with the presumption that the liability of both the parents for looking after the minor child, is to the extent of Rs.10,000/- each.

Since the appellant-wife is contributing by performing the said responsibility alone, the respondent-husband is required to pay at least a sum of Rs.10,000/- per month for maintenance of the child as he has got income of more than Rs.32,000/- as his gross entitlement was Rs.53,392/- as per the pay slip of August, 2017. We have also taken into consideration his carry home salary is Rs.32,262/-.

In view of above said circumstances, application under Section 24 of the Hindu Marriage Act is allowed to the extent that the appellant-wife will be entitled to maintenance pendente lite @ Rs.10,000/- per month

with effect from the date of application i.e. May, 2016 for the welfare of the minor child. In case, any amount has already been paid towards the maintenance pendente lite under the orders passed by the lower Court or any amount paid towards the maintenance in proceedings under Section 125 Cr.P.C or in proceedings under the Protection of Women from Domestic Violence Act, the said amount will be adjustable. The appellant-wife will also be entitled to litigation expenses to the extent of Rs.50,000/-. A sum of Rs.10,000/- earlier paid will be deductible from the said amount.

FAO-M-239-2016

A sum of Rs.40,000/- in the shape of two bank drafts have been handed over to the counsel for the appellant-wife towards the previous arrears, in the Court today.

For payment of entire arrears of maintenance calculated till 31.05.2018 and balance of litigation expenses, adjourned to 22.05.2018.

In case, the parties arrive at any settlement for parting company on payment of lump sum of Rs.13 to 15 lacs, they can file a miscellaneous application for converting the proceedings in Section 13-B of the Hindu Marriage Act, at any time.

**(M.M.S. BEDI)
JUDGE**

January 17, 2018.
harsha

**(GURVINDER SINGH GILL)
JUDGE**