

RAJEEV KAPOOR
V/S
RASHMI KAPOOR

Present: Mr. Rajesh Kumar, Advocate, for the appellant.

Mr. K.S. Rana, Advocate, for the respondent.

Both the parties are present in the Court.

We have heard both of them.

It appears that on account of lack of compatibility, it is not feasible for both the parties to stay together. However, the respondent-wife submits that in case the welfare of the child, born out of the wedlock, is taken care of, she is ready to get the appeal converted into a petition under Section 13-B of the Hindu Marriage Act.

In response of said submission, the appellant-husband has shown reluctance to pay any amount submitting that he can pay only a sum of Rs.3 lakh and that too, to his son.

The application under Section 24 of the Hindu Marriage Act, has accordingly been taken up for hearing.

The applicant/respondent-wife has prayed for grant of maintenance pendente lite at the rate of Rs.17,000/- per month claiming that a child Paranshu Kapoor was born out of the wedlock on 01.09.2000. He was student of St. Joseph Senior Secondary School, Sector 44-D, Chandigarh. Monthly expenses of his study were Rs.6300/- per month which included sum of Rs.5000/- as tuition fee and other stationery expenditure. It is averred in the application that the non-applicant/appellant-husband is commerce graduate and working in a

company, Kara Wipe in Sales department as Sales Officer and also earns by working part time. His income is more than Rs.35,000/- per month from all the sources but he is not paying any money. The non-applicant/appellant-husband has got no other liability. She claims maintenance pendente lite at the rate of Rs.7000/- per month for her and Rs.10,000/- per month for her minor son.

In the reply filed, it is mentioned that the applicant/respondent-wife herself is employed as Liberian in Govt. Medical College and Hospital Sector 32, Chandigarh and getting monthly salary and that the non-applicant/appellant-husband has been paying monthly maintenance of Rs.2000/- to the minor son as fixed by the trial Court and that till June, 2015 the maintenance amount has been paid. It is also clarified that the non-applicant/appellant-husband is working as Sale Representative with M/s Singal Enterprises, Sector 29, Iron Market, Chandigarh. The non-applicant/appellant-husband has claimed that his salary is Rs.8000/- per month and not Rs.35,000/- per month.

We have considered the averments in the application.

No document has been placed on record by the appellant-husband indicative of the income of the non-applicant/appellant-husband to be Rs.8000/- per month but taking into consideration the education qualification of the non-applicant/appellant-husband and the status of the company for which he is working, it is unbelievable that he is getting only a sum of Rs.8000/- per month.

It is not disputed that the applicant/respondent-wife is working. Counsel for the applicant/respondent-wife has submitted that she is earning only Rs.22,000/- per month.

Taking into consideration the totality of the above circumstances, we find that the non-applicant/appellant-husband would not be earning less than Rs.20,000/- per month. Even if, it is presumed that the applicant/respondent-wife is also earning and has got earning capacity of the similar nature, still it cannot be ignored that it is the joint responsibility of both the parents to look after the minor child.

It has been informed by counsel for both the parties that a sum of Rs.2000/- per month was ordered to be paid in the year 2012 in application under Section 24 of the Hindu Marriage Act.

It has been informed that though this application has been filed in the year 2015 but after the matter had been sent in the year 2016 for mediation, it remained untraced for some period.

It is also an admitted fact that after the year 2015, no amount has been paid to the applicant/respondent-wife for the education expenses of the son who is being brought up by the applicant/respondent-wife by meeting the expenses single handed.

Counsel for the non-applicant/appellant-husband has placed reliance on **Ram Lal Vs. Smt. Surinder Kaur 1995 (1) P.L.R. 527 (P&H)**, in support of his contention that in proceedings under Section 24 and 25 of the Hindu Marriage Act, no maintenance allowance is payable to the child.

We have considered the contention of learned counsel for the non-applicant/appellant-husband and are of the opinion that the said judgment does not lay down an absolute law that in all the circumstances, welfare of the child can be ignored.

In this case, as discussed above, the joint responsibility to bring up the child, is being shouldered only by the applicant/respondent-wife for

which she is certainly entitled to be compensated even if she is an earning hand. A sum of Rs.2000/- which was awarded in the year 2012 in proceedings under Section 24 of the Hindu Marriage Act, deserves to be enhanced taking the judicial notice of the enhancement of the prices in the last few years. The said amount is deserved to be enhanced to a sum of Rs.5000/- per month in order to enable the applicant/respondent-wife to bring up the child who is stated to be undertaking the medical subject studies at this stage. A sum of Rs.5000/- per month is assessed as maintenance pendente lite payable to the applicant/respondent-wife for the above said reasons. The said amount is payable with effect from the date of application i.e. December, 2015. Litigation expenses are assessed as Rs.25,000/-. A sum of Rs.15,000/-, earlier paid, will be deductible from the amount of Rs.25,000/-.

Application under Section 24 of the Hindu Marriage Act is allowed in above manner.

For payment of the maintenance pendente lite calculated upto 30.09.2018 and balance of litigation expenses, adjourned to 06.09.2018.

(M.M.S. BEDI)
JUDGE

August 06, 2018
harsha

(ANUPINDER SINGH GREWAL)
JUDGE