

VINAY KUMAR
V/S
SUKHWINDER KAUR

Present: Mr. A.P. Kaushal, Advocate, for the appellant.

Ms. Surinder Kaur, Advocate, for the respondent.

The non-applicant/appellant-husband filed a petition for decree of divorce which was dismissed by the lower Court. Aggrieved by the same, the present appeal has been preferred by the non-applicant/appellant-husband.

During pendency of the appeal, the applicant/respondent-wife has filed an application under Section 24 of the Hindu Marriage Act claiming that she is not earning whereas the non-applicant/appellant-husband is working as Junior Technical Officer with BSNL Department at Shimla having handsome salary which is agreed as Rs.50,000/- per month by counsel for the parties.

A female child born out of the wedlock is stated to be with the non-applicant/appellant-husband with visitation rights to the applicant/respondent-wife.

In the reply filed, application has been opposed admitting that the non-applicant/appellant-husband is working as Junior Technical Officer with BSNL Department at Shimla but at the same time he has referred to his other liability i.e. to look after old aged parents besides a minor daughter who is staying with him. The non-applicant/appellant-husband has also claimed that he is fulfilling other social obligations towards his married

sisters. The applicant/respondent-wife is stated to be a graduate having been PGDCA and is computer qualified and a teacher in a private school. The averment that she is working in a school, is vague and no details of the school stand mentioned.

We have taken into consideration the facts and circumstances of the case.

Even if, it is presumed that the applicant/respondent-wife is capable of earning on the basis of her education qualification, the said factor ipso facto not absolve the non-applicant/appellant-husband of his statutory application under Section 26 of the Hindu Marriage Act. However, the income of the applicant/respondent-wife, may be a factor for granting lesser maintenance.

It has been informed that in the present case, a sum of Rs.5,000/- had been awarded by the lower Court under Section 24 of the Hindu Marriage Act.

We have reconsidered the facts and circumstances of this case.

Taking into consideration the income of the non-applicant/appellant-husband could have been granted maintenance pendente lite @ Rs.15,000/- to Rs.20,000/- but in view of the fact that the child is being maintained by the non-applicant/appellant-husband and the applicant/respondent-wife is capable of earning, we deem it appropriate, in the circumstances of this case, to grant a sum of Rs.10,000/- per month as maintenance pendente lite to the applicant/respondent-wife. The said amount will be payable with effect from the date of application i.e. September, 2017. The litigation expenses are assessed as Rs.40,000/-. A sum of Rs.20,000/- earlier paid will be deductible from the said amount.

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

For payment of entire arrears of maintenance pendente lite calculated till 31.08.2018 and balance of the litigation expenses, adjourned to 24.08.2018.

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

April 27, 2018.
harsha

**(GURVINDER SINGH GILL)
JUDGE**