

GURDEEP SINGH V/S KULWINDER KAUR

Present: Mr. Vipin Mahajan, Advocate for the appellant.

Mr. Uday Jain, Advocate for Mr. V.K. Shukla, Advocate for the respondent.

Aggrieved by the dismissal of his petition for divorce vide judgment and decree dated 29.03.2016, appellant-husband has filed an appeal, which has been admitted for hearing.

During pendency of the appeal, an application under Section 24 of the Hindu Marriage Act, 1955 has been filed by the respondent-wife claiming that she has got no source of income and she has to maintain herself and a minor son born out of the wedlock. The appellant/husband is working as Supervisor in Star Paper Mills, Saharanpur and earning a sum of ₹ 50,000/- per month.

The allegations have been denied by non-applicant-appellant/husband, claiming that his salary is only ₹ 24,898/- per month. It has also been brought to our notice that he is paying a sum of ₹ 2500/- to the applicant-respondent/wife, ₹ 2,000/- to the minor child, besides paying a sum of ₹2,000/- per month towards the residential expenses, under the directions in proceedings under the Prevention of Women from Domestic Violence Act. In view of ₹6,500/- being already paid, pursuant to the orders passed by the Judicial Magistrate in the proceedings as mentioned hereinbefore, it is claimed that the application deserves to be dismissed.

We have considered the facts and circumstances of the case. The gross income of the non-applicant-appellant/husband is around ₹27,000/- per month whereas the respondent-wife is not shown to be earning anything. However, it is averred that she is earning a sum of ₹10,000/- per month.

We have considered the rival contentions of counsel for both the parties and are of the opinion that even if it is presumed that the applicant-wife is compelled to take up the job of a Teacher in a private school, in peculiar circumstances, she cannot be denied the maintenance pendente lite. Counsel for the applicant-wife has submitted that at present, she is not in any job and has got no source of income. Since the applicant-respondent/wife is shouldering the responsibility of looking after the minor child born out of the wedlock, alone, which is the obligation of both the parents, she is entitled to some compensation for that also. Even if, it is presumed that she had been working for some period, her right to claim maintenance pendente lite, cannot be jeopardized. However, she can be granted lesser amount of maintenance. In the present case, taking into consideration, the totality of circumstances, we are of the opinion that a sum of ₹ 9,000/- which is approximately $1/3^{\text{rd}}$ of the income of the non-applicant/appellant-husband, would be sufficient enough to prevent the applicant-wife and her son from starving in the present situation of hiking prices. Accordingly, the maintenance pendente lite is fixed as ₹ 9,000/- per month payable from the date of application i.e. December, 2017. It is made clear that sum of ₹6500/- being paid, pursuant to the orders passed

by the Judicial Magistrate in proceedings under the Prevention of Women from Domestic Violence Act, would be deductible from this amount. A sum of ₹ 30,000/- is awarded as litigation expenses. ₹20,000/- which has earlier been paid by the appellant-husband to the respondent-wife towards interim litigation expenses would be deductible from ₹ 30,000/- assessed today.

The application (**CMM-209-2017**) under Section 24 of the Hindu Marriage Act is allowed in the above said terms.

At this stage, counsel for the appellant-husband has submitted that on account of differences, which have erupted between the parties on account of long separation, he is ready to even part with a house for maintenance of the respondent-wife. The bona fide of the statement is doubted by the counsel for the respondent-wife. He seeks time to get instructions from his client by the next date of hearing.

For payment of the arrears of maintenance pendente lite, now to come up on 30.11.2018 without prejudice to the rights of the parties to enter into any settlement.

Counsel for the appellant-husband may arrange a residential house for her in the meanwhile.

(M.M.S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

14.09.2018.
SwarnjitS