

CMM-46-2017 in FAO-M-176-2015

Rajesh Bharti Vs. Bimla Devi

Present: Mr. Vishva Nath Sharma, Advocate for the appellant.

Mr. Sandeep Verma, Advocate for the respondent.

This order will dispose of an application under Section 24 of the Hindu Marriage Act, 1955 filed by the respondent-wife claiming that she does not have any source of income, whereas the non-applicant/appellant husband is employed in Indian Railways and earning a sum of ₹ 45,000/- per month.

The non-applicant/appellant has contested the application on the ground that during pendency of the present appeal, the matter was referred to the Mediation and Conciliation Center of Punjab and Haryana High Court, Chandigarh, where both the parties entered into a settlement dated 28.4.2015 on payment of sum of ₹ 11.5 lacs as permanent alimony. The non-applicant/appellant husband claims that he has already paid a sum of ₹ 1 lac to the applicant/respondent-wife pursuant to the aforesaid compromise. After payment of ₹ 1 lac, the applicant/respondent wife has become greedy and dishonest and denied to receive balance sum of ₹ 10.5 lacs. The principle of estoppel has been put forth as a defence that the applicant/respondent wife is not permitted to back out at this stage after receiving sum of ₹ 1 lac, especially when the appellant-husband is ready to pay the balance amount for divorce by mutual consent. He has also argued that another sum of ₹ 5,000/- per month is being paid to the applicant/respondent-wife in proceedings under the Protection of Women from Domestic Violence Act, 2005.

We have heard counsel for the parties and considered the contentions. It is an admitted fact that while deciding an application under Section 24 of the Hindu Marriage Act, 1955, the lower Court had granted a sum of ₹ 5,000/- per month in October 2017. The income of the appellant-husband being ₹ 45,000/- per month is not denied, as no document indicating the income of appellant-husband is placed on record but on the basis of presumption it can be presumed that being an employee of Indian Railways, the appellant/husband might be earning a sum of ₹ 45,000/- per month. Presuming that he is spending money on his parents and his own upkeep, there is reasonable ground for granting maintenance *pendente lite* @ ₹ 10,000/- per month to the respondent-wife. It is made clear that a sum of ₹ 5,000/- per month, if any, paid pursuant to the order passed by the Court of competent jurisdiction under Protection of Women from Domestic Violence Act, 2005 would be adjustable against the amount of ₹ 10,000/- per month. The said amount will be payable with effect from March 2017, the date of application. The litigation expenses are assessed as ₹ 40,000/-. The amount already paid towards the interim litigation expenses will be deductible from the amount of ₹ 40,000/-. So far as the amount of ₹ 1 lac is concerned, it will always be open to the appellant-husband to seek the recovery by way of restitution.

Any amount paid in proceedings under Section 125 Cr.P.C. for overlapping the period for which the application under Section 24 of the Hindu Marriage Act has been considered, would also be adjustable against sum of ₹ 10,000/- per month.

We have also considered the contention of counsel for the respondent-husband regarding the applicability of principle of estoppel. The

respondent-wife, present in the Court, has been asked as to how and under what circumstances she had agreed for divorce. She has submitted that the said settlement was unnecessarily imposed upon her. She has admitted to have received a sum of ₹ 1 lac and expressed inability to return the same, on account of her poverty and illness, at this moment. Since, the appellant-husband has been granted the right to recover the sum of ₹ 1 lac, it is ordered that the said amount will not be claimed as setup against the amount payable to the respondent-wife.

The application is allowed in above terms.

For payment of arrears of maintenance *pendente lite* and litigation expenses, to come up on 1.5.2018.

(M.M.S. Bedi)
Judge

26.2.2018
pankaj

(Gurvinder Singh Gill)
Judge