

233 **FAO-M-162-2017 with
CM-14363-CII-2017 & CMM-89-2017**

**KIRTI KHANNA
V/S
DEEPAK VERMA**

Present: Mr. Anil Chawla, Advocate, for the appellant.

Mr. Sourabh Goel, Advocate, for the respondent.

Respondent-husband had obtained a decree for nullity of marriage under Sections 11 and 12 of the Hindu Marriage Act on the claim that the appellant was already married at the time of marriage on 09.06.2010. Aggrieved against the judgment and decree, the appellant-wife has preferred the appeal.

During pendency of the appeal, the appellant-wife has filed an application under Section 24 of the Hindu Marriage Act. It is averred in the application that the appellant-wife has got no source of income whereas the respondent-husband is man of means and doing the business of goldsmith in his own showroom at Amritsar and earning more than Rs.1 lac per month. Besides this, he is owner of other moveable and immovable properties, as such she claims maintenance pendente lite at the rate of Rs.50,000/- per month.

On notice having been issued to the respondent-husband, he has contested the application. Respondent-husband, present in person, has submitted that no doubt he was earlier working as a goldsmith and doing business with his father but now he has left the said business and at present he is residing in the dera of Radha Swami at Beas for the last three months. However, he admits that on account of parties have patched up their differences with the intervention of the mediation, he had started staying with the appellant-wife subject to the condition that he will continue to

deposit sum of Rs.5000/- per month but he claims that on account of she having left his company, he has stopped paying that amount and that she is not entitled to any maintenance pendente lite.

We have considered the facts and circumstances of the case and are of the opinion that it is the statutory obligation of the respondent-husband to maintain the appellant-wife even during pendency of matrimonial litigation between them. The capability and capacity of the able-bodied respondent-husband to earn money is not controversial. He being an able bodied person is capable of earning. He admitted that he had earlier been doing the business of goldsmith and three months prior from today he had been working and paying sum of Rs.5000/- to the appellant-wife when attempt was made for bringing about reconciliation. He has expressed his inability, in view of above circumstances, to pay any maintenance pendente lite or litigation expenses to the wife as of now.

Counsel for the respondent-husband, in support of respondent, has submitted that a sum of Rs.5000/- was paid towards the household expenses under an agreement. He relies upon judgment of the Supreme Court in *Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav, 1988 (1) R.C.R. (Criminal) 322*, wherein a second wife claiming maintenance had been held to be not entitled for the same as the marriage would be a nullity. The marriage being a nullity is subjudice before this Court. As per the wording of Section 24 of the Hindu Marriage Act, a wife is entitled to interim maintenance “**in any proceedings**” pending between the parties under the Hindu Marriage Act as such the judgment cited by counsel for the respondent is not absolutely applicable to the facts of present case.

Counsel for the appellant-wife, at this stage relies upon judgment of the Single Bench of this Court in **Manjeet Singh Vs. Parson Kaur, 1990 (2) PLR 97** wherein such application had been dismissed relying upon the judgment in **Yamunabai Anantrao Adhav's case (supra)** which judgment has been held to be not applicable in view of the statutory right arising in favour of a spouse in any proceedings pending under the Hindu Marriage Act. The said judgment of the Single Bench does not lay down an absolute rule of law and is not applicable to the rights of the parties.

We, in above circumstances, hold that the appellant-wife is entitled to maintenance pendente lite under Section 24 of the Hindu Marriage Act.

It cannot be believed that an able bodied person who is technically expert in jewellery making in the present time would not be able to earn anything especially when he has got a family business of jewellery making. The husband cannot be permitted to adopt an evasive approach and run away from his responsibilities by raising a claim that he has started living in some Dera.

Our attention has been drawn by counsel for the appellant-wife to the fact that application under Section 24 of the Hindu Marriage Act was dismissed by the trial Court but the High Court in Civil Revision No.592-2015 awarded a sum of Rs.7500/- per month.

Taking into consideration the fact that the respondent-husband has expressed inability on account of his earning capacity having been reduced, we deem it appropriate, in the interest of justice, to grant maintenance pendente lite @ Rs.5000/- per month to the wife.

Application under Section 24 of the Hindu Marriage Act is allowed. It is ordered that the respondent-husband will pay a sum of Rs.5,000/- per month as maintenance pendente lite to the appellant-wife with effect from the date of application i.e. May, 2017. It is made clear that the amount paid by the respondent-husband during the process of mediation proceedings for a period of three months, will be deductible while calculating the amount due towards the maintenance pendente lite. Litigation expenses are assessed as Rs.30,000/-. A sum of Rs.20,000/- earlier paid towards the litigation expenses, will be deductible from the said amount.

For payment of entire arrears of maintenance pendente lite calculated till 31.07.2018 and balance of litigation expenses, adjourned to 23.07.2018.

Counsel for the respondent-husband submits that there are still chances of amicable settlement by mediation.

Let both the parties again appear before the Mediation and Conciliation Centre of Punjab and Haryana High Court, Chandigarh on 23.05.2018, on which date, 50% of the amount due towards the maintenance pendente lite will be paid to the appellant-wife.

For awaiting the report of Mediation Centre, to come up on the date fixed.

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

May 10, 2018.

harsha

Harsha Rani
2018.05.18 10:39
I attest to the accuracy and
integrity of this document

**(HARI PAL VERMA)
JUDGE**