226 CMM-109-2017 in FAO-M-178-2015

NITISH KUMAR V/S RAJNI @ SHARDA

Present: Mr. Gaurav Sharma, Advocate,
for the non-applicant/appellant-husband.

Mr. Robin Dutt, Advocate, for the applicant/respondent-wife.

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Reply to application under Section 24 of the Hindu Marriage Act has been filed.

Claiming that the applicant/respondent-wife has got no source of income, she has filed an application under Section 24 of the Hindu Marriage Act for maintenance pendente lite at the rate of Rs.20,000/- per month along with litigation expenses of Rs.20,000/-. It is pleaded in her application that the non-applicant/appellant-husband is doing account work in Nehru Palace and is dealing with the computer spare parts having income of Rs.50,000/- per month.

It is pleaded in the reply that the non-applicant/appellant-husband is working with M/s Gujral Engineers, Jawahar Colony, Faridabad as Helper and earning a sum of Rs.7500/- per month. Out of the said amount, he is paying rent of Rs.2000/- per month and is also paying maintenance pendente lite @ Rs.3500/- per month in proceedings under Section 125 Cr.P.C. The non-applicant/appellant-husband has also pleaded that the applicant/respondent-wife is capable of earning and she, being a skilled lady, is earning a sum of Rs.15,000/- per month, however, no documentary evidence indicating her employment or salary, has been brought on the record. Para No.2 of the application has not been specifically denied, so far as the income of the non-applicant/appellant-husband is concerned.

We have considered the facts and circumstances of the case.

The non-applicant/appellant-husband, in the present case, is an able bodied person. He has admitted his income only to the extent of Rs.7500/- per month against the income of Rs.50,000/- which has been alleged by the applicant/respondent-wife.

As no material has been brought on the record pertaining to the income of the non-applicant/appellant-husband, a bit of estimation is legally permissible, in said circumstances.

We have considered the fact that the non-applicant/appellant-husband is not an unemployed person. The amount of income claimed by him is far less than the minimum wages prescribed by the Government and the plea that he is earning only sum of Rs.7500/- is not acceptable. On the basis of the estimation as per his working capability and physical capacity, his income can be assessed to be not less than Rs.15,000/- to Rs.20,000/- per month even if he is presumed to be a daily wage labourer.

It is an admitted fact that the child born out of the wedlock is being maintained by the applicant/respondent-wife. As the applicant/respondent-wife is shouldering the responsibility of bringing up the child alone, the non-applicant/appellant-husband is required to contribute to the said expenses.

Taking judicial notice of the rising prices and the cost of living, we are of the opinion that the applicant/respondent-wife is entitled to a minimum amount of Rs.6000/- per month towards the maintenance pendente lite. Ordered accordingly. The said amount will be payable with effect from the date of application i.e. August, 2017. It is made clear that in case the non-applicant/appellant-husband has paid any amount in proceedings under Section 125 Cr.P.C for the period which is subject matter of present application under Section 24 of the Hindu Marriage Act, the said amount can be deducted from the amount assessed under Section 24 of the Hindu Marriage Act. 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 entire arrears of maintenance pendente lite calculated till 31.10.2018 and the balance of litigation expenses, adjourned to 12.10.2018.

(M.M.S. BEDI)
JUDGE

July 09, 2018 **(ANUPINDER SINGH GREWAL)**
harsha **JUDGE**