

RA-CR-221-CII-2017 in/and FAO-M-108-2011

BALA DEVI VS. NEEL KANTH SHARMA

Present: Mr. Arvind Bansal, Advocate
for the appellant.

Ms. Jigyasa Tanwar, Advocate
for the respondent.

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An application under Order 47 Rule 5 read with Section 151 CPC for review of order dated 26.09.2017 passed in application under Section 24 of Hindu Marriage Act, has been filed by the respondent-husband.

The main contention of the learned counsel for the respondent-husband is that since the appellant-wife has not challenged the order passed in proceedings under Section 125 Cr.P.C. fixing the maintenance of Rs. 5,000/- per month, she shall not be entitled to any amount beyond the said amount in proceedings under Section 24 of the Hindu Marriage Act. We have carefully gone through the contention and are of the opinion that an order passed in proceedings under Section 125 Cr.P.C. having not been challenged by a wife will not be an estoppel or waiver for adjudication of her rights under Section 24 of the Hindu Marriage Act and the application for review is liable to be dismissed on this score.

Learned counsel for the respondent-husband has also submitted that this is a fact that the amount of maintenance pendent-lite has been awarded in appeal arising out of an order passed under Section 9 of the Hindu Marriage Act in favour of the respondent-husband, and the husband had obtained a decree of divorce in a petition under Section 13 of the Hindu Marriage Act on the ground of non compliance of order under Section 9 of

the Hindu Marriage Act, as such the proceedings under Section 9 would not be maintainable. We have considered the contention of counsel for the respondent. Where the two appeals arising out against an order under Section 9 of the Hindu Marriage Act and another order under Section 13 of the Hindu Marriage Act are being heard simultaneously, the provisions of Section 24 of the Hindu Marriage Act are applicable in any of the appeals arisen from any proceedings under the Hindu Marriage Act. The respondent is required to pay the maintenance amount in only one proceeding as such we do not find any force in the said contention of the counsel for the respondent-husband.

The review application is thus dismissed.

Let the appeal be listed, as per roster, for final disposal on 30.04.2018 at 2.30 P.M.

(M.M.S. BEDI)
JUDGE

February 12, 2018.
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(AUGUSTINE GEORGE MASIH)
JUDGE