

JAGDISH SINGH
V/S
SARABJIT KAUR

Present: Mr. B.S. Jaswal, Advocate, for the appellant-husband.

Mr. M.K. Bhatnagar, Advocate, for the respondent-wife.

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

Aggrieved by the dismissal of his petition for divorce, the appellant-husband has preferred the first appeal before this Court.

During pendency of the appeal, the respondent-wife has filed an application under Section 24 of the Hindu Marriage Act claiming maintenance pendente lite at the rate of Rs.20,000/- per month alleging that the appellant-husband is having income of Rs.40,000/- per month from the pension, his income from abroad and income from his property measuring 17 marlas at village Kot Khehra, Tehsil Baba Bakala, District Amritsar. It is also averred in the application that the appellant-husband is owner of agricultural land measuring 5 killa and is running a dairy farm having 15 buffaloes.

In the reply filed, the appellant-husband has pleaded that he has been dismissed from the Army in the year 2007 and is unemployed. He has denied that he is owner of any property but admitted that his father is owner of 2 killas of land. He has not mentioned any source of income and the business from which he is surviving. It is averred in the reply that he has got no means of income except selling milk after purchasing from the farmers and earning his livelihood.

We have considered the facts and circumstances of the case.

On asking of the Court, it has been informed that the lower Court had awarded a sum of Rs.4000/- per month towards the interim maintenance in the year 2015.

Since there is no material available on the record to enable this Court to determine the actual income of the appellant-husband, a bit of estimation is permissible in such circumstances. It is an admitted fact that the appellant-husband, in the present case, is an ex-service man. He is an able bodied person. The allegation of the respondent-wife is that the appellant-husband had gone abroad and has returned after drawing earnings. It is denied by him that he had gone abroad. He admits that he only indulges in sale of milk and he has even denied to be owner of a dairy farm.

Presuming that the appellant-husband is an un-skilled labourer, he is presumed to be earning at least a sum of Rs.400/- to 500/- per day. His total income per month will not be less than Rs.15,000/- to Rs.20,000/-. His liability for interim maintenance was determined in the year 2015 to the extent of Rs.4000/- per month.

It is an admitted fact that there is a daughter born out of the wedlock who is being maintained by the respondent-wife.

It has also been informed that Judicial Magistrate Ist Class, Amritsar, in the exercise of powers under the Protection of Women from Domestic Violence Act, 2005, had awarded a sum of Rs.8000/- per month to the respondent-wife vide order dated 18.12.2014, payable by the appellant-husband.

The appellant-husband cannot run away from his liability to maintain his wife and the daughter. A sum of Rs.8000/- per month appears

to be a reasonable amount for the survival of the respondent-wife and the minor daughter born out of the wedlock. The maintenance pendente lite in this case is thus assessed as Rs.8000/- per month. The said amount will be payable with effect from the date of application i.e. October, 2017. In case any amount has been paid to the respondent-wife in any other proceedings for the period which is subject matter of present application under Section 24 of the Hindu Marriage Act, the said amount will be deductible from the amount assessed under Section 24 of the Hindu Marriage Act. Litigation expenses are assessed as Rs.25,000/-. A sum of Rs.20,000/- 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 and litigation expenses, adjourned to 20.08.2018.

Non-payment of the amount of arrears will tantamount to adverse order including the dismissal of the petition as per law.

(M.M.S. BEDI)
JUDGE

July 03, 2018
harsha

(ANUPINDER SINGH GREWAL)
JUDGE