234 CMM-58-2017 in FAO-2444-2016

VARUN GOEL
V/S
SHALINI

Present: Mr. Rajesh K. Sharma, Advocate,
for the appellant-husband.

Mr. Shailesh Gupta, Advocate,
for the respondent-wife.

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The appellant-husband, aggrieved by the dismissal of his petition for divorce, has preferred appeal before this Court, which has been admitted for hearing.

During pendency of the appeal, the respondent-wife has filed an application under Section 24 of the Hindu Marriage Act for grant of maintenance pendente lite to the tune of Rs.20,000/- per month and litigation expenses of Rs.50,000/- claiming that she is unemployed and dependent upon her old parents and is incapable of maintaining herself whereas the appellant-husband earns a sum of Rs.50,000/- per month having moveable and immoveable properties. He has got no other liability.

The appellant-husband has filed reply pleading therein that on earlier occasion, the parties had decided to dissolve the marriage by mutual consent by filing a petition under Section 13-B of the Hindu Marriage Act. A sum of Rs.8 lakhs in the shape of bank draft was paid for the marriage expenses and for future maintenance. He has denied his income as alleged by the respondent-wife but has admitted his income only to the extent of Rs.5000/- per month claiming that he is residing in a rented accommodation along with his parents.

We have heard the counsel for the appellant-husband as well as counsel for the respondent-wife.

Counsel for the appellant-husband has contended that earlier the appellant-husband had a business with his father as his father was running a shop of confectionery in Ambala Cantt. but on account of the litigation with the respondent-wife, he is not running any business with his father and shop stands closed.

We have considered the contentions of counsel for both the parties and taken into consideration the fact that a sum of Rs.3000/- has been ordered to be paid by the appellant-husband to the respondent-wife in proceedings under the Protection of Women from Domestic Violence Act. The appellant-husband is an able bodied person. He is educated and claims that he is a graduate but so far as income is concerned, he has admitted his income to be Rs.5000/- per month but the source of income has not been disclosed, compelling us to arrive at a conclusion that the facts and actual income is being concealed from this Court.

In such circumstances, we deem it appropriate on the basis of reasonable assessment to determine the income of the appellant-husband. He being an educated, able bodied person, even if presumed to be a skilled labourer, would be earning not less than a sum of Rs.20,000/- per month. A sum of Rs.8000/- per month is considered to be reasonable amount to be paid by the appellant-husband to the respondent-wife as maintenance pendente lite. The said amount will be payable with effect from the date of application i.e. March, 2017. It is made clear that any amount paid towards the maintenance in proceedings under the Protection of Women from Domestic Violence Act, would be adjustable against the amount of

Rs.8000/- determined by this Court. Litigation expenses are assessed as Rs.40,000/-. Any amount earlier paid towards interim litigation expenses will be deductible from the amount of Rs.40,000/-.

We have considered the contention of counsel for the appellant-husband that a sum of Rs.8 lakhs had been paid to the respondent-wife in the year 2013 and that the said amount would carry interest which is being enjoyed by the respondent-wife and that the said amount should be considered adequate enough for the survival of the respondent-wife. We do not find any force in the said contention of the counsel for the appellant-husband as the respondent-wife has explained that the said amount had been given to her for her spending and that she is even ready to return the said amount. Even if, we presume that the said amount is returnable to the appellant-husband, still it will not affect the quantum of maintenance pendente lite as while determining the maintenance pendente lite, we have taken into consideration the said amount pleaded in the application and awarded a lesser amount. In ordinary routine, the maintenance pendente lite, in the present case, would not have been less than Rs.10,000/- per month.

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 19.11.2018.

It is made clear that in case of non-payment of the arrears of maintenance on the next date of hearing, the said act would entail adverse legal consequences against the appellant-husband.

Parties are present in person.

We have made an attempt to bring about reconciliation.

Presently, there does not appear to be any chance of any settlement. However, the respondent-wife has expressed her desire to resume cohabitation. She has submitted that no doubt she had received a sum of Rs.8 lakhs but that amount was handed over to her for expenses. She has offered to return the amount to the appellant-husband, in case the appellant-husband is ready to permit her to re-join his company in the matrimonial home. The appellant-husband has expressed his reluctance for re-union and is adamant to part company stating that he has been harassed by the respondent-wife.

To come up on the date fixed for payment of arrears of maintenance.

(M.M.S. BEDI)
JUDGE

July 11, 2018 **(ANUPINDER SINGH GREWAL)**
harsha **JUDGE**