

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.334 of 2019**

=====

Raju Babu, Son of Sri Ravindra Sharma, Resident of Village-Berra, Police Station-Masaurhi in the district of Patna. A/P near Ramdev Mandir, Ashok Nagar, Kankarbagh, P.S.-Kankarbagh, Dist-Patna.

... .. Petitioner

Versus

Shobha Kumari, Wife of Raju Babu, Daughter of Surendra Prasad Singh, presently resident of Mohalla-Kumhar Toli, Masaurhi, Police Station-Masaurhi in the district of Patna.

... .. Respondent

=====

Appearance :

For the Appellant/s : Mr. Sunil Kumar, Advocate
For the Respondent/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 17-05-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 29.11.2018 passed by the learned Principal Judge, Family Court, Patna in Matrimonial Case No.6026 of 2014 whereby in a proceeding under Section 24 of the Hindu Marriage Act the petitioner has been directed to pay Rs.15,000/- per month towards maintenance of his wife and minor daughter from the date of filing of the petition i.e. with effect from 18.12.2017.

3. Learned counsel appearing for the petitioner submitted that the petitioner is suffering from economic hardship. Somehow he is maintaining himself through his practice. He is



not earning so much that he can pay Rs.15,000/- per month to the respondent. The petitioner is not living in jointness with his brother and father and, therefore, his income cannot be assessed on the basis of the earnings made by them. He has taken a loan of Rs.5 lakhs from Bajaj Finance Company for establishing his clinic against which, he is paying monthly installment of Rs.4,751/-, which would be evident from the account details of the petitioner. On the basis of the aforesaid submissions, he contended that the order impugned is erroneous and is fit to be set aside also because the petitioner was married to the respondent when he was a minor.

4. Having heard learned counsel for the petitioner and perused the materials on record including the order impugned, I find that the petitioner had filed Divorce Case No.6026 of 2014 under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage solemnized on 02.06.1994 between the petitioner and the respondent on the ground that the said marriage did not fulfil the condition, which is defined under Section 5 of the Hindu Marriage Act, 1955, as at the time of marriage, the petitioner was minor and was aged about 16 years only. The additional ground for seeking the dissolution of marriage is cruelty on the part of the respondent. In the said matrimonial case, the respondent filed an application under Section 24 of the Hindu Marriage Act seeking



maintenance allowance for herself as well as her minor daughter. In her application, she had stated that her husband is a dental doctor and is running a dental clinic in Patna. His earning from the private practice is about Rs. 1 lakh per month from the said clinic. He has also landed property in his home village from which, he has income of Rs.50,000/- per year. His two brothers are doctors and his father was employed in a subsidiary of Coal India Limited and has recently retired. She had also pleaded that her husband has a house at Ranchi from which, he is earning rent of about Rs.20,000/- per month. She had further stated that she has no independent source of income and is totally dependent upon support she is getting from her father. Her daughter is 13 years old and is studying in class-VII in private school with the support of her parents.

5. The court below after considering the submissions made on behalf of the parties, vide impugned order dated 29.11.2018 directed the petitioner to pay Rs.15,000/- per month towards maintenance of his wife and minor daughter from the date of filing of the petition.

6. The aforesaid order dated 29.11.2018 is under challenge in the present application.



7. Section 24 of the Hindu Marriage Act, 1955 provides where in any proceeding under this Act it appears to the Court that either the wife of the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay the petitioner the expenses of the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable.

8. In **Manish Jain v. Akanksha Jain [(2017) 15 SCC 801]** while interpreting Section 24 of the Hindu Marriage Act, the Hon'ble Supreme Court observed:-

“Section 24 of the Hindu Marriage Act empowers the court in any proceeding under the Act, if it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of the respondent and the petitioner.”



9. The object behind Section 24 of the Hindu Marriage Act is to provide for maintenance *pendente lite*, to a spouse in matrimonial proceedings so that during the pendency of the proceedings the spouse can maintain herself/himself and also have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of fund.

10. It is well settled position in law that during pendency of application for dissolution of marriage or a divorce proceeding at any point of time, if the wife establishes that she has no sufficient independent income for her support, it is open to her to claim maintenance *pendente lite*.

11. In the instant case, the marriage is not denied. The plea of the petitioner that his marriage had taken place while he had not attained majority and his marriage with the respondent in the year 1994 did not fulfil the condition for Hindu Marriage Act, as given under Section 5 of the Hindu Marriage Act, is yet to be determined by the court below. Hence, it would not be proper for this Court to make any comment on the plea taken by the petitioner in the matrimonial suit. However, it would be pertinent to note here the fallacy in the claim of the petitioner. He claims himself to be aged 16 years and few months at the time of marriage in the year 1994, but the application for dissolution of



marriage has been filed by him after lapse of more than 18 years from the date of marriage.

12. Under the facts and circumstances of the case, during pendency of the matrimonial suit, having regard to financial resources of the petitioner and the respondent, if the court below has awarded maintenance allowance of Rs.15,000/- to the petitioner from the date of filing of the application, I see no reason to interfere with the order impugned in my supervisory jurisdiction under Article 227 of the Constitution of India.

13. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.05.2019
Transmission Date	NA

