

AFR

HIGH COURT OF CHHATTISGARH, BILASPURFAM No. 105 of 2019

- Smt.Nishita Singh D/o Shri Rajkumar Singh, Aged About 25 Years R/o 164/b, Maitri Vihar, Radhika Nagar, Supela, Bhilai, Tahsil and District Durg Chhattisgarh.

---- Appellant

Versus

- Abhishek Singh Tomar S/o Shri Harendra Singh Tomar, Aged About 31 Years R/o Zone - 1, Street No. 3-A, Behind Sahyog Hospital, Ward - 53, New Adarsg Nagar Durg, Tahsil and District Durg Chhattisgarh. Presently R/o A1 - 904, Akshar Elementa, Tathawad Wakad, Pune (Maharashtra) 411033.

---- Respondent

For Appellant	:	Shri Amiyakant Tiwari, Advocate
For Respondent	:	Smt. Arti Chandra Dut, Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****12/07/2019**

1. This appeal is preferred against the order dated 21.01.2019 passed by the Family Court by which the application filed by the appellant/wife for grant of maintenance *pendente lite* and litigation expenses has been rejected.

2. Shorn of unnecessary details, suffice to mention relevant factual matrix is that the respondent/husband filed a petition under Section 11 of the Hindu Marriage Act, before the Family court for annulment of marriage on the ground that his marriage with Smt. Nishita Singh (appellant herein) is void because on the date of their marriage, she already had a subsisting marriage and living spouse.

3. When the wife moved an application for grant of maintenance under Section 24 of the Hindu Marriage Act, learned Court below rejected the same outright by the impugned order, going into the pleadings of the parties and giving its opinion on merits of the case that prima-facie the present case appears to be a case of second marriage as it was solemnized when the appellant had a living spouse.

4. Learned counsel for the appellant would argue that the considerations on which the learned Family Court has rejected the application are wholly extraneous as the provision of Section 24 of the Hindu Marriage Act deals only with a stage of pendency of application. According to him, the provision contained in Section 24 of the Hindu Marriage Act is a piece of beneficial legislation intended to ensure that the wife is able to manage bare existence and does not suffer for want of money and further that she gets sufficient amount to enable her to contest the matter before the Court in which proceedings are pending, till its termination one way or the other. His argument is that if the Courts were allowed to take a decision on the merits of the case to decide whether or not maintenance pendente lite and litigation expenses should be granted under Section 24 during the pendency of the case, the very objective of the legislation would be defeated. To support his short and pointed submission, learned counsel has placed reliance upon **Bhuvneshwar Prasad V. Dropta Bai**¹, **Laxmi Bai V. Ayodhya Prasad**², **Krishnakant Mulshankar Vyas V. Reena Krishna Vyas and others**³ and **Amarjit Kaur Vs. Harbhajan Singh**⁴.

1 *AIR 1963 (MP) 259.*

2 *AIR 1991 (MP) 47.*

3 *AIR 1999 (Bombay) 127.*

4 *2003 (10) SCC 228.*

5. On the other hand learned counsel for respondent would argue that the order passed by learned Court below has been passed in exceptional circumstances where the Court found that *prima facie* it appears that the marriage, in respect of which a declaration of nullity has been sought, was null and void. Learned counsel for the respondent would argue that wife, while filing her written statement before the Family Court, did not dispute the factum of her first marriage but has come out with wholly baseless plea of there being a divorce with her first husband and then contracting marriage in the present case against the petitioner before the Family Court. He would submit that, though, ordinarily, maintenance *pendente lite* and litigation expenses can be granted but in a case like this, where on the basis of the pleadings of the parties, it is clear that the second marriage was null and void, grant of maintenance under Section 24 of Hindu Marriage Act would amount to extending monetary benefit to which the contesting wife is not *prima facie* entitled. It is further argued that in a case like this where *prima facie* it could not be established that the wife is “legally wedded wife”, the ratio laid down by the Supreme Court in **Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and another (1988 vol (1) SCC 530)** would be applicable where it has been held that in such cases, maintenance may not be granted as the wife has failed to establish that she was the legally wedded wife.

6. We have heard the learned counsel for parties and perused the records.

7. The issue arising for consideration before us is well settled in plethora of decisions, some of which have been placed before us and

is no longer *res integra*. Section 24 of the Hindu Marriage Act is a piece of beneficial legislation. The object of the provision is to provide financial assistance to the claiming spouse who has no independent income sufficient for her or his support and the necessary expenses of proceedings. The relevant consideration at the time of deciding application under Section 24 would be whether the spouse making an application for grant of maintenance *pendente lite* and litigation expenses has no independent income sufficient for support and bear expenses of the proceedings. What is the case of the respective parties, which party has a *prima facie* better case based on pleadings and which party is likely to get an order in his favour at the conclusion of proceedings is not decisive. If such considerations were to be read in the light of Section 24 of the Hindu Marriage Act, the very objective of the beneficial piece of legislation would stand defeated. In a case where one of the spouse who has no independent sufficient income for his or her support and the necessary expenses of proceedings, will have to face serious financial crisis not only relating to bare existence but also affecting the ability of that party to contest the proceedings for want of sufficient litigation expenses. Given such laudable object of the legislation enacting a provision for grant of maintenance *pendente lite* and litigation expenses, such interpretation and giving a room for exercise of discretion on the merits of the case, would be completely destructive of the objective of the legislation and, therefore, such interpretation has to be avoided. It will only advance the objective to enactment if the provision is interpreted in a liberal manner that the irrespective of the merits of the case, where one of the spouse is unable to establish that it has no independent income sufficient for her

or his support and the necessary expenses of the proceedings, such spouse would be entitled to interim maintenance during pendency the of proceedings, as ordained under Section 24 of Hindu Marriage Act. In this regard we may usefully refer to the observation made by their lordships in Supreme Court in the case of Amarjeet Kaur (supra) where it was held that :-

“8. Section 24 of the Hindu Marriage Act, 1955 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 both the petitioner and the respondent. Once the High Court, in this case, has come to the conclusion that the wife - appellant herein has to be provided with the litigation expenses and monthly maintenance, it is beyond comprehension as to how, dehors the criteria laid down in the statutory provision itself, the court could have thought of imposing an extraneous condition, with a default clause which is likely to defeat the very claim which has been sustained by the court itself. Consideration as to the ultimate outcome of the main proceeding after regular trial would be wholly alien to assess the need or necessity for awarding interim maintenance, as long as the marriage, the dissolution of which has been sought, cannot be disputed, and the marital relationship of husband and wife subsisted. As noticed earlier, the relevant statutory consideration being only that either of the party, who was the petitioner in the application under [Section 24](#) of the Act, has no independent income sufficient for her or his support, for the grant of interim maintenance, the same has to be granted and the discretion thereafter left with the court, in our view, is only with reference to reasonableness of the amount that could be awarded and not to impose any condition, which has self-defeating consequence. Therefore, we are unable to approve of the course adopted by the learned single judge, in this case.”

8. Different High Courts have also taken similar view. In the case of Laxmi Bai (supra), the factual background in which provision under Section 24 were interpreted, were the same as in the present case

that proceedings for annulment of marriage were instituted on the allegation that the second marriage during subsistence of the previous one was void. Interpretation placed on the provision under Section 24 was as below:-

"8. From the entire scheme of the Act, as examined by me, from the provisions mentioned above, I find that it is a piece of social welfare legislation regulating the marital relations of Hindu consistently with their customary law i.e. Hindu law. The object behind Section 24 of the Act providing for maintenance pendente lite to a party in matrimonial proceedings is obviously to provide financial assistance to the indigent spouse to maintain herself or himself during the pendency of the proceedings and also to 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 funds. The expressions 'husband and wife' used in Section 24 of the Act have, therefore, to be construed in the context in which that expression is used for granting and fixing maintenance pendente lite and keeping in view the aims and object of the case. It may be seen from the above provisions of the Act that even in a case of bigamous marriage one of the parties can seek a decree of nullity of marriage by way of a petitioner or respondent which is permissible under Section 23A of the Act. It may also be seen that in pending proceedings even at the instance of a second wife in a void bigamous marriage the Court is empowered to make attempt for reconciliation, to pass necessary orders with regard to the custody of children and a disposal of property exchanged at the time of marriage. The Court has also power in such proceedings to make an order of permanent alimony or maintenance under Section 25 of the Act. The Court is empowered under Section 25 of the Act to pass an order of permanent alimony in favour of a wife although her petition for restitution of conjugal rights may fail on the ground that it was a prohibited bigamous marriage in Hindu law. The Act thus confers wide powers on the matrimonial Court so as to regulate the matrimonial relationship between the parties and such powers are to be exercised by the Court even in a case of alleged or proved invalid bigamous marriage. It is for the purpose of exercise of those powers by the Court that the Court has been further empowered to fix some interim maintenance to one of the needy spouse so as to sustain herself/himself during the pendency of the proceedings in the Court and to meet the expenses of the litigation. It is with this benevolent object to assist the parties and the Court for passing adequate reliefs under the Act that Section 24 has been enacted providing for maintenance pendente lite. Keeping in

view the aims and object of the Act and the wide powers conferred on the matrimonial Court in that respect, I am of the view that the expression "wife and husband" used in Section 24 have not to be given strict literal meaning as to convey only legally married wife and husband. According to me, the expression 'wife and husband' in the context of the section and scheme of the Act should mean a 'person claiming to be a wife or husband.' "

9. Similar views have been expressed by the Calcutta High Court as well as Bombay High Court. In the case of Subhankar Mukherjee (supra) the view expressed is that the issue as to whether the petitioner had a legally married wife or not is sub-judice pending final hearing and disposal of the suit after taking evidence. At the stage of consideration of application for grant of maintenance during the pendency of the proceedings, the denial of factum of marriage could not be a ground to refuse interim maintenance.

10. In the case of Krishnakant Mool Shankar Vyas (supra) also it has been held that the provision relating to grant of maintenance during pendency of proceedings is a piece of social welfare legislation filed with the object of providing maintenance *pendente lite* to a party in matrimonial proceedings in order to maintain the indigent spouse to maintain herself or himself during the pendency of the proceedings and also to 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 funds. It has also been held that it would not be right to adopt a pedantic approach and the Court must adopt a liberal and progressive approach keeping in mind that it was a liberal and progressive approach of the legislature which led to the enactment being passed. It is also held that pending proceedings, even at the instance of the second wife in a void bigamous marriage, the Court is empowered to

make an attempt for conciliation, to pass necessary orders. The Court, therefore, also has power in such proceedings to make an order of maintenance *pendente lite* under Section 24 and there is no reason why the words “wife” or “husband” used in Section 24 should not be interpreted so as to include a man and woman who have gone through a ceremony of a Hindu marriage which should have been valid but for the provision of Section 11 read with (i) of Section 5 of Hindu Marriage Act.

11. Reliance placed on the judgment of Supreme Court in the case of Yamnua Bai Anant Rav Adhav (Supra) is misplaced. Interpretation of word “wife” as defined under Section 125 (1) (a) of the Criminal Procedure code came up for consideration before the Supreme Court. The question calling for determination was whether the expression “wife” used in Section 125 of Code should be interpreted to mean only a legally wedded wife not covered by Section 11 of the Act.

12. In the present case it is not that the wife has admitted that during subsistence of the first marriage, second marriage has been contracted. As has been placed before us, the pleading in the reply of the wife is that a divorce had taken place and thereafter, the second marriage was contracted. Whether the so called divorce was valid under the law, in our view, is a matter required to be decided in the proceeding under Section 11, after allowing the parties to lead the oral and documentary evidence. At the stage of pleading, no conclusion can be drawn either way as to whether the so called divorce of the first marriage was legal and valid in the eye of law. The very fact that the marriage had been solemnized and the factum of second marriage

being not in dispute, in our opinion, makes out a *prima-facie* case in favour of the wife to seek interim maintenance.

13. In view of above consideration the impugned order passed by learned Family court cannot be sustained and is therefore, set aside. The Family Court shall decide the application on its own merits and ascertain from the affidavits and various documents placed before it by the parties whether appellant/wife has no independent income sufficient for her support and the necessary expenses of the proceedings. The order shall be passed within a period of 30 days from the date of first appearance of the parties before the Family Court. The parties shall appear before the Family Court on 7th of August, 2019, personally or through their respective counsel.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge