

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP227 No. 328 of 2019**

Smt. Ruchi Sahu W/o Anand Sahu, Aged about 32 years, R/o behind Sagar Hotel, Durg, C/o Daughter of Shri Chandra Kant Kurre, Durg, Tahsil and District Durg, Chhattisgarh.

(wrongly written Distt. Bilaspur)

--- Petitioner/Non-applicant

Versus

Anand Kumar Sahu S/o Late Shyamsundar Sahu, Aged about 38 years, R/o Vidhya Nagar, Pendra, Thana & Tahsil Pendrra, Distt. Bilaspur, Chhattisgarh.

---- Respondent/Applicant

For Petitioner	:	Mr. Shrawan Agrawal, Advocate
For Respondent	:	Mr. Prakash Mishra on behalf of Mr. Ashok Soni, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/09/2019

1. The petitioner herein is non-applicant facing proceeding for divorce filed by her husband/respondent herein under Section 13 (a) of the Hindu Marriage Act, 1955 (hereinafter, "the Act") before the trial Court. During the pendency of the proceeding for divorce, she filed an application under Section 24 of the Act for maintenance *pendente lite* and expenses of proceedings stating *inter alia* that she is residing separately at Durg and she does not have any

independent income which is sufficient for her support and for bearing the expenses of the proceeding, as such, an amount of Rs. 50,000/- per month be granted to her, payable by her husband/respondent, which was opposed by the respondent herein.

2. By the impugned order dated 05/02/2019, learned trial Court rejected the application filed by the petitioner under Section 24 of the Act holding that as the petitioner herein is residing separately voluntarily without any reasonable cause, therefore, she is not entitled for maintenance *pendente lite* and expenses of proceedings under Section 24 of the Act against which this writ petition under Article 227 is preferred by the petitioner/non-applicant.
3. Mr. Shrawan Agrawal, learned counsel for the petitioner would submit that learned Additional District Judge is absolutely unjustified in rejecting the application filed by the petitioner under Section 24 of the Act, as the Court is required to take into account the income of the parties before deciding the quantum of the interim maintenance and keep in view the need of the applicant i.e. the petitioner herein and paying capacity of the non-applicant i.e. the respondent herein, but it cannot reject the application for maintenance *pendente lite* by going into the merits of the matter while the divorce petition is still pending consideration.
4. Mr. Prakash Mishra, learned counsel for the respondent would support the impugned order.
5. I have heard learned counsel for the parties at length.

6. Section 24 of the Hindu Marriage Act, 1955 provides as under :-

“Where in any proceeding under this Act 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 the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, it may seem to the court to be reasonable :

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]”

7. A careful perusal of the aforesaid provision would show that Section 24 of the Act provides for support to be given to the earning spouse in favour of the non-earning spouse during the pendency of proceedings before the Court, as such, the trial Court ought to have considered whether, in this case, wife/petitioner has sufficient income to meet her needs and bear the expenses of the proceedings, and also the income of the other side i.e. the husband/respondent and thereafter, depending upon that, the application has to be decided. Merits of the application for divorce cannot be considered at this stage so as to reject the application under Section 24 of the Act.

8. In the instant case, learned Additional District Judge has not considered the above-stated requirements while rejecting the application filed by the petitioner for maintenance pendente lite

and expenses of proceedings, and has simply rejected the application on the ground which is totally irrelevant for considering the application filed under Section 24 of the Act. Accordingly, the impugned order rejecting the application filed by the petitioner under Section 24 of the Act for maintenance *pendente lite* and expenses of proceedings is hereby set aside and the matter is remitted back to the trial Court to consider the application afresh in line with Section 24 of the Act and decide it within three weeks after hearing the parties. It is made clear that this Court has not expressed any opinion on the merits of the matter. The application filed by the petitioner will be considered by the trial Court strictly in accordance with Section 24 of the Act.

9. With the aforesaid observation, this writ petition stands disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge