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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.1159 of 2018 (O&M)
Date of Decision:08.02.2019**

Surender Solanki

.....Petitioner

Vs

Roopa @ Soni

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. V.B. Aggarwal, Advocate
for the petitioner.

Mr. Archit Gupta, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 24.01.2018 passed by the Principal District Judge Family Court, Gurugram dismissing the application under Section 151 CPC for refund of amount of Rs.6 lakhs.

[2]. Marriage was solemnized between the petitioner and respondent on 09.03.2014 at Delhi. The marriage could not make any headway on account of differences. As a result of that petition under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter to be referred as 'the Act') was filed for decree of

divorce by mutual consent on 27.07.2015, wherein joint statement of the parties was recorded at the first motion stage. An amount of Rs.6 lakhs was paid to the respondent as per the settlement (according to the petitioner). The case was adjourned for 29.01.2016 for second motion. On the date of second motion, respondent did not appear and the case was adjourned for 16.02.2016. Even on the adjourned date, respondent did not appear and the petition was dismissed due to non-appearance of the respondent.

[3]. Thereafter petitioner filed regular petition under Section 13 of the Act for decree of divorce on the ground of cruelty. In this petition, petitioner moved an application under Section 151 CPC for seeking direction to the respondent to return the amount of Rs.6 lakhs which was received at the stage of first motion in the petition under Section 13-B of Act.

[4]. In the proceedings under Section 24 of the Act, an amount of Rs.4,000/- per month has been awarded as maintenance pendente lite besides Rs.2200/- as litigation expenses vide order dated 22.11.2016. In paras No.2 and 3 of the said order following facts were noticed:-

“2. The applicant-respondent-wife Roopa has sought maintenance pendent lite from the petitioner-husband on the plea that the parties were married on 9.3.2015 at Nangloi Delhi. No child was born from this wedlock. The petitioner-husband is

not making any payment of maintenance to her. She has alleged that her husband has always treated her with cruelty. She has no independent source of income, whereas the petitioner – husband is employed in a private company at Rs.Six Lacs per annum. He had fraudulently tried to take a divorce from her by mutual consent in which he had paid her Rs. Six Lacs. Besides this he has never paid her any amount. It has, therefore, been prayed that she be awarded maintenance pendent lite.

The petitioner – husband admitted the relationship between the parties as also the fact that they were living separately and that he has paid her Rs.Six Lacs in a petition for divorce by mutual consent. After taking the amount, she refused to make the joint statement on second motion. He claimed that the applicant had left him. It was also disclosed during the course of arguments that the applicant had been teaching in a private school at Rs.15,000/- per month. It was, therefore, prayed that the application be dismissed.

3. *In this case, the relationship between the parties is not in dispute and it is admitted that the wife is living in her parental home. During the course of arguments, when a specific query was put to her, the respondent who is present in the court admitted that she had been paid Rs. Six Lacs in a petition for mutual consent but she claimed that the petitioner- husband had tried to take a divorce from her forcibly and fraudulently due to which she had not made the statement on second motion. The said amount is still with her. She also stated that she was unemployed and had never worked but she had trained to teach in a school for a short while. The petitioner has denied that he earns Rs. Six Lacs per annum but he has conveniently not disclosed his exact income. When his counsel was questioned in this regard during arguments, he tried to be evasive. Therefore, keeping in view of the social status of the parties, the minimum income of the petitioner – husband must be taken to be Rs.30,000/- per month and it must be borne in mind for the*

present purposes that the applicant – wife is in possession of Rs.Six lacs which were paid to her in a petition for divorce by mutual consent which was not finalized.

The provision under Section 24 of HMA provides for maintenance for a wife who is unable to maintain herself. It is a provision made for preventing vagrancy and destitution. In the instant case, the applicant has claimed that she has no source of income and she has been thrown out of the matrimonial home by the husband who used to treat her cruelty.

Keeping in view the facts and circumstances of the case especially the admitted fact that the parties are residing separately and the applicant is the legally wedded wife of the petitioner-husband, this Court is of the considered opinion that she is very much entitled to maintenance pendent lite. In the interest of justice and having regard to the social and economic standard of the parties, this Court is of the considered opinion that the applicant is entitled to maintenance pendent lite @ Rs.4,000/- per month from the date of filing of the application i.e. 14.07.2016 besides Rs.2200/- as litigation expenses. The application is allowed in the above terms.”

[5]. Perusal of the aforesaid paragraphs would show that the factum of payment of Rs.6 lakhs was noticed by the Court while awarding maintenance pendente lite @ Rs.4000/- per month from the date of filing of the application. Perusal of the aforesaid order would also show that the entitlement of the respondent to receive maintenance *pendente lite* was appreciated by the Family Court, even after noticing payment of Rs.6 lakhs and the case was adjourned for payment and for entire evidence of the petitioner. It was also ordered that the

payment shall be the condition precedent for further prosecution of the case by the petitioner/husband. The order dated 22.11.2016 passed by Family Court, Gurugram has not been assailed by the petitioner in any manner.

[6]. At the time of issuance of notice of motion on 20.02.2018, learned counsel for the petitioner relied upon **Deepak Singh vs. Pooja, 2016(2) R.C.R. (Civil) 742** and contended that refusal to make statement on second motion by the respondent wife would entail in return of the amount received by her at the first motion stage.

[7]. Learned counsel for the respondent vehemently submitted that the petitioner has not paid anything towards arrears of maintenance. Petitioner has misappropriated *Istridhan* of the respondent and there are many claims of the respondent for which petitioner can be held liable to answer in the pending litigation. Respondent is still legally wedded wife of the petitioner and during subsistence of matrimonial status, the petitioner has contracted second marriage with one Jyoti on 13.07.2016. This fact has been admitted by the petitioner in his cross-examination in a criminal complaint while appearing as PW-1.

[8]. Learned counsel also pointed out that the order dated

22.11.2016 passed by the District Judge, Family Court Gurugram has not been assailed by the petitioner in any manner. In the said order factum of payment of Rs.6 lakhs was duly noticed and despite that award of maintenance *pendente lite* to the tune of Rs.4000/- per month was made besides Rs.2200/- as litigation expenses. In view of above, the amount of maintenance is not subject to adjustment in the amount of Rs.6 lakhs.

[9]. I have considered the rival contentions of learned counsel for the parties.

[10]. There cannot be any dispute with regard to the ratio laid down in **Deepak Singh**'s case (supra) relied upon by learned counsel for the petitioner at the time of issuance of notice of motion.

[11]. With regard to the cross-examination of the petitioner in a criminal complaint while appearing as PW-1, wherein factum of second marriage with one Jyoti on 13.07.2016 was admitted, this Court is not in a position to comment upon legality or otherwise of such evidence in the present proceedings as the competent Court would take notice of such evidence at the time of adjudication of criminal complaint/case on merits. Fact remains that the petitioner has not approached the same Court

which has decided the petition under Section 13-B of the Act. In terms of Order 23 Rule 3 CPC, the petitioner could have approached the Court by way of moving appropriate application for refund of the amount, if any in the event of non-adherence of the compromise by the respondent. Maintainability of the application under Section 151 CPC in subsequent petition under Section 13(1)(1A) of the Act has been opposed by learned counsel for the respondent.

[12]. It appears that Family Court is pressing hard for payment of arrears of maintenance and in the even of non-payment of the same, defence of the petitioner may be struck off besides taking other coercive method for realization of the amount in question. In the aforesaid context orders dated 11.04.2018 passed by the Principal District Judge, Family Court, Gurugram can be noticed. On the one hand, respondent has taken an amount of Rs.6 lakhs at the first motion stage and has not responded to the stage of second motion. On the other hand, petitioner has not approached the same Court in terms of Order 23 Rule 3 CPC, which had passed the order under Section 13-B of the Act. The order dated 22.11.2016 also indicated factum of receiving Rs.6 lakhs by the respondent which was noticed by the Family Court, still the award of Rs.4,000/- per month as maintenance *pendente lite* besides

Rs.2200/- as litigation expenses was made and the said order has not been assailed by the petitioner.

[13]. In view of above situation, this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, deems it appropriate to allow adjustment of amount towards arrears of maintenance *pendente lite* and any other assessed future liability of the petitioner arising out of matrimonial discord.

[14]. In view of above arrangement, proceedings under Section 13(1)(1A) of the Act may go on and coercive method against the petitioner for payment of amount in question may not be insisted upon till the amount of Rs.6 lakhs is exhausted in accordance with law for which both the parties would be at liberty to file their respective calculations before the Family Court.

[15]. Petition stands disposed of in the aforesaid terms.

February 08, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No