

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 203 (2 cases)

CR-8064-2016

Date of decision : 04.02.2019

Vivek Malik

..... Petitioner

VERSUS

Sujata

..... Respondent

2.

CR-4425-2017

Sujata

..... Petitioner

VERSUS

Vivek Malik

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Dinesh Arora, Advocate, for the petitioner.

Mr. P. S. Poonia, Advocate, for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present order shall dispose of two petitions being CR-8064-2016 "*Vivek Malik vs Sujata*" and CR-4425-2017 "*Sujata vs Vivek Malik*" as both these petitions arise out of a common order dated 23.09.2016, passed by the District Judge, Family Court, Rohtak (for short, the Trial Court).

The facts, in brief, which are required to be noticed for adjudicating upon the present petitions are that Vivek Malik (hereinafter referred to as the 'husband') filed a petition under Sections 13(1)(1a) and 13(1)(1b) of the Hindu Marriage Act, 1955 (for short, the Act) for dissolution of the marriage between him and Sujata (hereinafter referred to as the 'wife') on the grounds of mental and physical cruelty as also desertion.

During the pendency of the aforesaid divorce petition, the wife filed an application under Section 24 of the Act, seeking therein interim maintenance and litigation expenses. In her application, the wife

disclosed that she was working as a Lecturer in Tika Ram Girls College, Sonapat and gave details of the expenses being incurred by her on the education and upkeep of the minor girl child of the parties namely Mehar Malik. She also averred therein that the husband was earning ₹6 lakhs per month from a factory on Hisar Road, Industrial Area, Rohtak as also from seventeen shops in Panipat and from six acres of agricultural land owned by him. The husband filed a reply to the aforesaid application and *inter alia* submitted therein that the wife was not entitled to any maintenance as she herself was earning ₹55,500/- per month. So far as the averments with regard to his assets were concerned, he submitted that he was running a small unit in partnership with his mother wherein nut and bolts were manufactured. It was denied that he was receiving any rent from any shop at Panipat and that he owned any agricultural land.

After considering the stand taken by both the parties as also sifting the evidence led by them, the Trial Court assessed the monthly expenditure on the education and upkeep of the minor girl child of the parties and after going through the income tax returns of the husband which depicted his annual income for the year 2015-16 to be ₹4,41,761/-, directed the husband to pay ₹13,000/- per month in addition to one time litigation expenses of ₹5,500/-. Such direction was given by the Trial Court after observing in the order that it was the responsibility of both the parties to look after their minor daughter.

Learned counsel for the husband submits that his client has no objection to the grant of the awarded amount to the minor daughter of the

parties. However, he submits that no such amount could have been granted in an application filed by the wife under Section 24 of the Act.

A perusal of the order impugned in the present proceedings shows that the Trial Court, after considering the evidence which had come on record, assessed the monthly expenses being incurred by the wife towards education and upkeep of the minor daughter of the parties and after observing that it was the responsibility of both the parents to take care of their child, directed the husband to pay ₹13,000/-per month as maintenance *pendente lite*. Such direction was given after the husband had produced his income tax returns for the year 2015-16 which depicted his monthly income to be ₹40,000/- (approximately).

The order passed by the Trial Court further shows that the awarded maintenance was only for the welfare of the minor daughter of the parties and in this regard paragraphs 5 and 6 of the order are reproduced below for ready reference: -

“5. Documents annexed by the applicant have been perused by me. Income Tax Return of the petitioner for the assessment years 2011-12 to 2015-16 have been perused by me. In Income Tax Return for the year 2015-16, income of the petitioner has been shown to be ₹4,41,761/-. Photocopy of the partnership deed reveal that Vivek Malik and Asha Malik had altered clause no. 13 of the partnership deed dated 12.12.2004 which was executed since they had been carrying the business of jobwork and manufacturing of nut, bolts, precision and turned auto components. Photocopy of the various receipts reveal expenditure incurred by the applicant on the education of child Mehar. It transpires that child is studying in Shri Ram Global School and in the receipts dates 21.7.2015, 23.10.2015 and 21.04.2015 tuition fees of school has been shown to be ₹13500/- besides other charges.

6. It is therefore evident from the documents that child Mehar is studying in one of the best schools of Rohtak and court is conscious that besides education expenses, good amount of money is spent for upbringing of the child i.e. for food, clothes, other activities etc. Though it is the responsibility of the husband and wife to take care of the child, yet the father is more under obligation to take care of the child, even though both the parties of the child are working. Income

Tax Returns which have been filed by businessmen are their own self declarations only even though they may be earning much more than reflected in Income Tax Return.”

The above extract clearly reveals that the amount ordered to be paid by the husband through the impugned order is for the welfare of the minor daughter of the parties. Such order is not liable to be set aside only because it has been passed in a proceeding under Section 24 of the Act as a minor child of the parties in similar circumstances is entitled to the same maintenance under Section 26 of the Act.

Keeping in view the welfare of the minor daughter of the parties, on this technical ground this Court is not inclined to set aside the impugned order especially when learned counsel for the husband has stated that his client has no objection in paying maintenance for his minor daughter.

In the petition filed by the wife there is no scope for any further enhancement in the awarded maintenance as the amount granted through the impugned order is found to be just and adequate.

Resultantly, both the petitions being CR-8064-2016 “*Vivek Malik vs Sujata*” and CR-4425-2017 “*Sujata vs Vivek Malik*” are dismissed.

No costs.

04.02.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No