

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

CR No.5461 of 2019

Date of Decision : 06.09.2019

Gaurav Soni

..... Petitioner

Versus

Meenal Dubey and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Bhavpreet Singh Dhatt, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

This revision has been preferred against the impugned order passed by the Ld. Additional Sessions Judge, Gurugram on 15.07.2019 (Annexure P-15) vide which the review application filed by the petitioner-husband, who happens to be the respondent in the Divorce Petition filed by the respondent-wife (Annexure P-1) seeking modification of the previous order dated 03.01.2019 (Annexure P-5), was dismissed.

2. It may be mentioned that the previous order was passed on the application, of the respondent-wife, under Sections 24 and 26 of the Hindu Marriage Act, 1955 seeking maintenance *pendente lite* for herself and her minor daughter, who is admittedly in her custody, although the manner in which such custody was taken by the respondent-wife has been basically disapproved by the petitioner.

3. Relevant aspects from the earlier order dated 03.01.2019 on the basis of which, maintenance *pendente lite* was actually granted to the respondent-wife are set out below:-

- “9. *It is specific stand take by the respondent that he has no permanent job and is planning to pursue higher studies or to start an enterprise. He has also lost life long savings to the applicant. He has no inheritance and does not have endless source of funds to run two separate households. It is argued that if the applicant is unable to raise the child, her custody should be granted to the respondent. He has specifically denied that he is working with Protivity India Advisory Private in Gurugram as alleged or that he is earning ₹ 4 lacs per month, rather his stands is that he has no permanent job. Moreover, it is argued that respondent is still ready and willing that petitioner should reside with him.*
10. *After having gone through the case file carefully, it transpires that the applicant has filed her affidavit regarding income, assets and expenditure, according to which her monthly income is about ₹55,000/- and her expenditure is ₹1,11,093/-. The respondent, on the other hand has failed to file his affidavit despite repeated opportunities being granted and as such adverse inference is liable to be drawn regarding the assertions made in the application qua his financial condition and income. It is not denied by the respondent that he was working with Protivity India Advisory Private. He has however taken a stand that presently he is not working with that company. However, in the absence of affidavit regarding income, assets and liabilities in counter to the affidavit filed by the petitioner, this Court is inclined to take a view that the respondent is in fact still earning about ₹ 4 lacs per month by doing a job as he is capable of earning that much and no reason has been shown as to why will he not earn as per his capabilities. It is for the respondent*

to disclose his income and place of work.

11. *It is the conceded case of the parties that the applicant herself is earning about ₹50,000/- by doing free lance work. The minor child/daughter is with her and as per her affidavit, the quarterly fee of the minor child is approx. ₹62,000/-, say ₹20,500/- per month. Besides, the child also require books, stationary to the tune of ₹5,000/-, pocket money to the tune of ₹3,000/- per month, money for sports and outings and summer camps, for entertainment and other miscellaneous expenses. Besides, the applicant has claimed ₹1,76,239/- as her expenditure in part 5 of her affidavit, which includes water, electricity, food and grocery, telephone bills, gas, cable maintenance of the household articles and kitchenware, full time/part time servants. Transport, fuel repair and maintenance of the vehicle, medical expenses, club and recreation, health and litigation expenses etc. As such the petitioner is claiming ₹1,76,239/-. Needless to say that the expenses are apparently a little inflated. However, the applicant being legally wedded wife, and the minor child being born of the wedlock between the applicant and the respondent have a right to claim maintenance and maintain same standard of life enjoyed by the respondent.*
12. *In view of the above discussion and keeping in mind that the applicant herself is earning about ₹50,000/-, the interest of justice would be met if the applicant is allowed maintenance pendente-lite to the tune of ₹50,000/- per month each, for herself and the minor daughter from the respondent from the date of filing the application i.e. 12.4.2017. The respondent shall deposit the maintenance amount by 10th of every calendar month, in the bank account of the applicant.*

The applicant shall be entitled to the maintenance under any one proceeding of her choice.”

4. It is, therefore, noteworthy that maintenance *pendente lite* was assessed by the Ld. Court below on the basis of explicit affidavit filed on behalf of the respondent-wife against which, no counter affidavit was filed despite repeated opportunities.

5. It has, however, been contended on behalf of the petitioner that he was not in a position to file an affidavit in that regard, since he wanted to place on record certain other material facts, which would have emerged, had he been allowed access to the joint bank lockers held by the parties, of which, the respondent-wife was claimed to be holding the keys. But he could not do so as the orders by the Ld. Courts below on his application for directing the respondent to supply him the keys for getting access to and opening the lockers were passed only after the earlier impugned order had already been passed against him.

6. Be that as it may, fact of the matter is that at a subsequent stage, the lockers were actually got opened in pursuance of the Court's order and inventory of the contents therein was drawn up by the Ld. Advocate Commissioner appointed by the Court below. It has been highlighted on behalf of the petitioner that as can be seen from Annexure P-10, which is part of the report of the Ld. Advocate Commissioner, all through, the lockers in question were operated only by the respondent-wife, and the same was done till shortly before she allegedly deserted the petitioner along with their minor daughter.

7. Nevertheless from the material recovered from the lockers, nothing worthwhile appears to have been traced which would have had the

effect of revealing the alleged aspects or income of the respondent-wife, which might have been factored in for the purpose of determining whether or not she was at all entitled to any maintenance *pendente lite*. But considering that the lockers in question had already been lastly operated long before filing of the matrimonial petition itself, even a positive order in favour of the petitioner prior to the disposal of the application for maintenance *pendente lite* would undoubtedly not have provided him with any additional material to object to the wife's prayer. Furthermore, it was only the bald assertion of the petitioner that he was no longer in employment. It was not disclosed in his objections when exactly and in what circumstances he had ceased to remain in employment, nor did he file any counter affidavit in support of his contention to rebut the respondent's affidavit, and it is to be noted that the fact he was not in employment was admittedly within his knowledge before disposal of the maintenance application.

8. Subsequent order dated 15.07.2019 dismissing his review application has, however, also been challenged on the question of maintainability inasmuch as contention of the petitioner's Ld. Counsel is that the Ld. Court below erroneously held that appeal against an order under Section 24 of the Hindu Marriage Act is maintainable, and to support its contention, the decision of a Full Bench of Patna High Court reported in ***Neelam Kumari Sinha vs. Shree Prashant Kumar***, 2010(4) RCR (Civil) 964 has been relied. There can be no dispute that appeal against an order under Section 24 of the Hindu Marriage Act itself does not lie. But it needs to be remembered that the impugned order dated

03.01.2019 was passed on an application not only under Section 24 of the Hindu Marriage Act, but also under Section 26 of the Hindu Marriage Act against which admittedly according to the statute an appeal does lie.

9. There is nothing on record to indicate any mistake apparent on the face of the record, or any material which has subsequently come to the knowledge of the petitioner, which could have justified modification of the previous order. Consequently, this Court finds no merit in the present revision petition, which is dismissed after upholding the impugned orders.

(SUDIP AHLUWALIA)
JUDGE

September 06, 2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No