

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

FAO-5505-2017 (O&M)
Date of Decision: 29.04.2019

Sarabjit Kaur

. Appellant

Vs.

Santosh Kumar

. Respondent

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE HARNARESH SINGH GILL**

Present: - Ms.Sukhpreet Kaur, Advocate,
for the appellant.

Mr.Sarju Puri, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has arisen from the judgment and decree dated 1.4.2017 by which a petition filed under Section 9 of the Hindu Marriage Act, 1955 [for short 'the Act'] by the appellant has been dismissed.

In brief, the marriage of the parties was solemnized as per Hindu rites and ceremonies in the year 2000. The appellant has alleged that her husband has withdrawn his company without any sufficient reason and therefore, for the purpose of restitution and conjugal rights she had filed petition under Section 9 of the Act.

During the pendency of this appeal, an application under Section 24 of the Act was filed by the appellant-wife which was decided by this Court on 19.3.2018 and the respondent-husband was ordered to pay ₹10,000/- per month as maintenance *pendente lite* w.e.f. February 2018 besides litigation expenses to the tune of ₹30,000/-. The said order of maintenance has not been complied with so far in its letter and spirit and

therefore, the hearing of this case was deferred many times to enable the respondent to pay the maintenance. On 26.3.2019, this Court passed the following order: -

“Both the parties are present in Court. There is an issue of payment of maintenance pendente lite.

The respondent-husband has submitted that he is ready and willing to live with the appellant, who had been unsuccessful before the trial Court in a petition filed by her under Section 9 of the Hindu Marriage Act, 1955.

On the other hand, the appellant-wife has submitted that she is ready to join the company of the husband but she would live in her matrimonial home at Jalandhar and not in a rented accommodation in Nawanshahr.

Learned counsel for the respondent has specifically submitted that he has the instructions to submit that the respondent does not have any money to pay towards maintenance.

In this situation, the only course left with the Court is to strike off the defence of the respondent and allow the appeal of the appellant.

Learned counsel for the appellant prays for an adjournment for the purpose of seeking instructions.

Adjourned to 29.4.2019.”

Today, both the parties are present in Court but still there is a deadlock because as according to the appellant she would not allow the

respondent to live with her in a rented house as she wanted to live with him in the matrimonial home owed by the respondent. The respondent has submitted that he has no matrimonial home as he has been thrown out from his home by his children and is living at the mercy of others and is also not in a position to pay the maintenance *pendente lite*.

In view of the above, there is no alternative with this Court but to strike off the defence of the respondent on account of non-payment of maintenance *pendente lite*. Accordingly, the defence of the respondent is hereby struck off and in the absence of any defence, the present appeal is hereby allowed and the judgment and decree dated 1.4.2017 is hereby set aside.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

29.04.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*