

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 301 of 2020

- Smt. Kiran Shrivastava @ Sangeeta Verma, W/o Mithilesh Shrivastava, Aged About 50 Years, D/o Shri S. K. Verma, R/o (1) C/o Keshav Verma, Qtr. No. D-1, Parijat Extension Colony, Nehru Nagar, Bilaspur, District Bilaspur Chhattisgarh (2) Smt. Sangeeta Verma @ Kiran Shrivastava, Teacher, W/o Mithilesh Shrivastava, Through the Principal, Maharshi Vidya Mandir, Mangla, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

- Mithilesh Shrivastava, S/o Late K.P. Shrivastava, Aged About 53 Years, R/o H 2/21, Narmada Nagar, Mungeli Road, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

----Respondent

For Applicant/Petitioner – Shri Ravindra Agrawal and Shri Anant Bajpai, Advocates.

For Respondent – Shri H.B. Agrawal, Senior Advocate with Shri Basant Kaiwartya, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20-03-2020

1. This petition has been brought being aggrieved by the order dated 10-02-2020 passed by the Family Court Bilaspur in Civil Suit No.89A/2019 on application filed by the applicant/petitioner under Section 24 of the Hindu Marriage Act.
2. It is submitted that the respondent has filed the civil suit under Section 13 of the Hindu Marriage Act, 1955 praying for relief of dissolution of marriage against this applicant. The applicant/petitioner then filed an application under Section 24 of the Hindu Marriage Act praying for maintenance pendente lite and the cost of contesting the suit. The learned Family Court has by the impugned order decided the application and granted only Rs.6000/- towards cost of contesting and has rejected the prayer for grant of maintenance pendente lite.
3. It is submitted that the respondent is working as Chartered Accountant

since 25 years, although he has filed IT return showing that his monthly income is not more than Rs.30,000/-, but it has been observed by Hon'ble the Supreme Court in case of **Neeta Rakesh Jain Vs. Rakesh Jeetmal Jain**, AIR 2010 SC 3540 that the husband for that case was qualified as Chartered Accountant apart from having other qualifications, therefore, his claim that he has earning of rupees only 30,000/- per month was held unbelievable and this decision has been rendered on the application filed by the wife under Section 24 of the Hindu Marriage Act. Relying on the judgment of Bombay High Court in the case of **Shirish H. Garg Vs. Nidhi S. Garg**, 2011(1) Mh.L.J. 520, it is submitted that the Court has the figures showing in the IT returns filed by a party cannot be taken as gospel truth. It is further argued that Patna High Court in case of **Smt. Indu Singh Vs. Dr. Ranjeet Singh**, 1995 SCC OnLine Pat 262 held that the wife is entitled for maintenance pendente lite befitting her status.

It is also argued that this petition is maintainable under Article 227 of the Constitution of India and the same has been held by this Court in case of **Smt. Rashmi Tiwari Vs. Dr. Sajeev Tiwari**, I L R 2019 Chhattisgarh 1027.

It is submitted by learned counsel for the petitioner/applicant that refusal to grant maintenance pendente lite to the applicant on the ground that she herself is having earning from teaching job is erroneous. Firstly, the applicant is engaged in a private school, therefore, she does not have a secure employment. Secondly, from the earning she is having from the job she is not able to live according to the status she has enjoyed living with the respondent. Hence, on this basis the applicant is entitled for grant of maintenance pendente lite. It is prayed that the impugned order be interfered with.

4. Learned counsel for the respondent submits that the application filed under Section 24 of the Hindu Marriage Act provides for interim maintenance only. The learned Family Court has correctly appreciated the facts and held that the applicant is earning her livelihood on the basis of her earning at

present, therefore, she does not require any interim maintenance. It has been observed in the impugned order that the applicant is getting a monthly income of Rs.40,000/-, whereas, the respondent had on the basis of IT return filed presented this fact before the Family Court that his monthly income is only about Rs.30,000/- per month. Hence, no error has been committed by the Court below and the impugned order does not suffer from any kind of infirmity, which needs no interference.

5. Heard learned counsel for the parties and perused the documents.

6. There is no specific denial from the applicant side that she is capable to maintain herself. The only thing raised by the applicant/petitioner side is this, that she is not getting maintenance according to the status she had enjoyed living with the respondent. Section 24 of the Hindu Marriage Act provides that when it appears to the Court that either the wife or husband, as the case may be, has no independent income sufficient for her or his support, then it may on application filed by such wife or husband pass order for payment of maintenance during pendency of the proceeding.

According to the provision contained in Section 24 of the Hindu Marriage Act appreciation had to be made only on the basis of the pleadings made by the parties in the case and on the basis of prima facie findings which may be drawn at the stage according to the material present. It appears to be clearly demonstrated that the respondent has made a statement about his monthly income in the reply given to the application filed by the applicant side mentioning his income to be around about Rs.30,000/- per month and he has also stated about the income from salary received by the applicant/petitioner which has not been specifically denied by the applicant side. Only for the reason that the respondent is a qualified Chartered Accountant, proof of his income as presented cannot be brushed aside and presumption can be made on higher side. The facts of the case in **Neeta Rakesh Jain Vs. Rakesh**

Jeetmal Jain (supra) had been different, in which the wife did not have any income sufficient for her support, therefore, the High Court had ordered maintenance pendente lite of Rs.12,000/- per month, which Hon'ble the Supreme Court has found to be not on higher side. The facts in this case are not the same, on the contrary, it is demonstrated that the applicant/petitioner herself is drawing a salary which is comparable to the monthly income of the respondent himself. Hence, the ground needed to be established under Section 24 of the Hindu Marriage Act regarding the non-availability of income and its insufficiency at a prima facie stage is not available in this case, hence, I do not find any substance in this petition which is dismissed at motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge