

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

**RSA-5646 of 2019 (O&M)
Date of decision: 13.01.2020**

Hargilt Singh

... Petitioner

versus

Kulwinder Kaur

... Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. D.R. Punia, Advocate,
for the petitioner.

ARUN MONGA, J.

CM-16057-C of 2019

For the reasons stated in the application, the same is allowed and delay of 50 days in filing the appeal stands condoned.

RSA-5646 of 2019

1. Concurrent findings of the Court below and consequent money decree for recovery of Rs.5,40,000/- in favour of plaintiff-wife(respondent herein) and against defendant-husband(appellant herein) has led to the present second appeal.

2. Brief factual matrix first, as noted by the Courts below.

Marriage between the parties was solemnized on 19.06.1988 and a male child was born out of the wedlock, who is in custody of respondent-wife. Appellant is alleged to have ill-treated his wife, leading to their separation since 04.06.2011. The plaintiff had been getting maintenance of Rs.1500/- per month in terms of an order dated 28.11.2014

passed under the Protection of Women from Domestic Violence Act, 2005. However, the respondent-wife sought maintenance for the period prior thereto i.e. 26.03.2009 to 25.03.2012 @ Rs.15,000/- per month with a further prayer that appellant should be restrained from creating charge over his property, as detailed out more particularly in head note of the plaint. The respondent claimed that appellant herein earns an amount of Rs.30,000/- per month and plaintiff is suffering from ailment of hypothyroidism and diabetes and in this background she is entitled to get Rs.15,000/- per month as maintenance. The claim of the respondent was resisted by the appellant in his written statement by raising preliminary objection of locus-standi of the plaintiff-wife to file the suit. Though, relationship between the parties was admitted, but it is denied that she was ever treated with cruelty. It is claimed that the wife of her own started residing separately and she is getting Rs.1500/- per month. Apart therefrom, she is earning Rs.3,000/- to 4,000/- per month by sewing work and owns immovable property. It is denied that the wife is suffering from any ailment.

In the replication, the plaintiff-wife denied the averments of the written statement and reiterated her stand as pleaded in the plaint.

3. On the basis of pleadings of parties, following issues were framed:-

1. *Whether the plaintiff is entitled for arrears of maintenance from defendant?OPP*
2. *Whether the plaintiff is entitled for fixation of Rs.15,000/- per month as future maintenance?OPP*
3. *Whether the plaintiff is entitled for permanent injunction as prayed for?OPP*
4. *Whether the suit is not maintainable?OPD*

5. *Whether the plaintiff has no locus standi to file the present suit?OPD*

6. *Whether the plaintiff has no cause of action to file the present suit?OPD*

7. *Whether the plaintiff has not come to the Court with clean hands?OPD*

8. *Relief.*

4. The parties herein led oral and documentary evidence in support of their pleadings to discharge their respective onus as per the issues *ibid*.

5. The trial Court returned the finding that appellant-husband indeed owns 23 *kanals* of land and also plies four wheeler to transport goods and in the circumstances held that he earns Rs.25,000/- per month, while on the other hand, plaintiff/ respondent herein did not have any source of income and financial capacity to support herself. From the evidence adduced by the plaintiff, more particularly, examination of medical expert viz PW4 Yashpal Singh, a finding was returned that plaintiff indeed suffers from diabetes and hypothyroidism and her medical expenses per month is calculated to be Rs.2500-3500/-. In this background the appellant was directed to pay maintenance @ Rs.3500/- per month as arrears to be calculated from 04.06.2011 to 25.03.2012 with a further mandatory injunction of paying future maintenance also @ Rs.3500/- per month.

6. Feeling aggrieved, defendant-husband filed first appeal which too after re-evaluating the evidence adduced before the trial Court and the findings returned therein, upheld the decree granted in favour of the wife. The first Appellate Court opined that quantum of maintenance of Rs.1500/- per month which was earlier ordered was not sufficient since the wife was

found to be suffering from the ailments of diabetes and hypothyroidism. In the premise, the findings of the trial Court were upheld and the decree was re-affirmed. Hence, the instant regular second appeal.

7. There seems no reason to interfere with the concurrent findings returned by the Courts below as per record which are neither illegal nor perverse. No question of law much less substantial question of law is involved in present appeal, which is *sine qua non* for entertaining second appeal before this Court, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

8. In view of my discussion above and the reasons recorded therein, this appeal is dismissed in *limine* being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

9. Pending applications stand disposed of.

10. No order as to costs.

(ARUN MONGA)
JUDGE

January 13, 2020

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Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No