

FAO-398-2021 & CM-4435-CII-2021

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

FAO-398-2021 & CM-4435-CII-2021
Date of Decision: 23.04.2021

Smt. Varsha

...Appellant

Versus

Baljeet

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Sandeep Goyal, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the order dated 27.01.2021 passed by the Additional Principal Judge, Family Court, Hisar, vide which, application under Section 25 of the Hindu Marriage Act for permanent alimony, as preferred by the appellant – Varsha, stands dismissed.

2. Learned counsel for the appellant has submitted that the impugned order dated 27.01.2021 passed by the learned Additional Principal Judge, Family Court, Hisar, is against the facts and evidence available on record. The Court below has failed to appreciate that the appellant was suffering from breast cancer, for which she had been undergoing treatment but the same has not been taken into consideration despite the fact that the medical record for the years 2012 and 2017 was submitted by her and the same had been ignored on the ground that no recent medical record has been placed on file. This, the counsel asserts, is

unsustainable in the light of the fact that the appellant had clearly states that she is still undergoing treatment for the said ailment. His further submission is that the Court below has failed to appreciate that the respondent – husband was having ownership of agricultural land, which he had intentionally transferred in the name of his sisters to avoid liability of the appellant. The income, which has been generated from the agricultural properties, has totally been ignored. The Court below has also not taken into consideration the fact that the respondent was an able bodied person and therefore, would be earning some amount. It has also been ignored that the appellant is getting maintenance of an amount of Rs.7000/- per month under Section 125 of Cr.P.C., which clearly shows that there is income which the respondent has. The Court below has simply proceeded to reject the application of the appellant on the ground that she had not been able to prove any income of the respondent – husband, whereas the respondent – husband is presently earning more than Rs.50,000/- per month from his agricultural land and other immovable properties. Another ground which has been taken by the counsel for the appellant is that the Court below had proceeded on a wrong assumption that the appellant was working as a teacher in Gyan Yog Vidya Mandir Senior Secondary School (Recognized), Kalod, District Bhiwani, but has failed to appreciate that she had only worked from 13.11.2017 till 18.07.2019; thereafter she has no source of income and therefore, finding returned by the Court below that the appellant was having her independent source of income is unsustainable.

3. An application i.e. CM-4435-CII-2021 has been filed under

Order 41 Rule 27 read with Section 151 of CPC for placing on record a certificate dated 15.10.2020 (as Annexure A-1) issued by the Gyan Yog Vidya Mandir Senior Secondary School (Recognized), Kalod, District Bhiwani, as additional evidence, which shows that the appellant had worked with the school from 13.11.2017 to 18.07.2019 and thereafter, she had not worked with the said school. This, the counsel asserts, proves the fact that the appellant has no source of income and the order of the Court below as also findings are unsustainable. Prayer has, thus, been made for setting aside the impugned order dated 27.01.2021.

4. We have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the records of the case as also the impugned order.

5. Assertion of the counsel for the appellant that the Court below, vide its impugned order, has wrongly come to a conclusion that the appellant had monthly earning of Rs.18,650/- because she was serving as a teacher in the school is incorrect especially in the light of the fact that she had worked in the said school from 13.11.2017 to 18.07.2019 and thereafter, has not been so doing. This has been asserted on the basis of Annexure A-1, which is being sought to be brought on record by way of additional evidence through an application under Order 41 Rule 27 read with Section 151 of CPC i.e. CM-4435-CII-2021. The said application for additional evidence at this stage cannot be allowed as this would amount to fill-up of the lacuna, which the appellant cannot be permitted at this belated stage as there is nothing on record which would indicate that she could not

produce the certificate during the proceedings before the Court below that she was not working in Gyan Yog Vidya Mandir Senior Secondary School (Recognized), Kalod, District Bhiwani. The application, therefore, as has been moved by the appellant in the present appeal cannot be accepted and thus, is hereby dismissed.

6. That apart, as per the information which was received by the respondent under the Right to Information Act and placed on record as Ex.P-A, the appellant was working as a teacher in the above-mentioned school and was receiving Rs.18,650/- per month from 13.11.2017 to 26.06.2019 and still continuing when the said information was supplied. It is worth mentioning here that the appellant, in her cross-examination, stated that she had only worked for eight months in the school, which is contrary to the record and shows that the appellant to be a person who is not truthful and has mis-stated before the Court. The Court below, therefore, has rightly proceeded to conclude that the appellant was having a source of income.

7. As regards the contention of the learned counsel for the appellant that the appellant was suffering from breast cancer, for which she was being treated, suffice it to say that the appellant has not been able to prove the documents which have been presented in Court, which cannot establish the factum of the appellant being suffered from disease. Further, the medical record which has been produced, although marked, pertains to the years 2012 and 2017, whereas the said documents were tendered in the year 2019. No latest medical record has been produced which would indicate that she is undergoing treatment for her ailment. In the absence of

any such evidence being available on record, it cannot be said that the appellant required financial support for her treatment.

8. Application under Section 25 of the Hindu Marriage Act for permanent alimony which has been preferred by the appellant required the appellant to establish the factum of there being income at the hands of the respondent. The first assertion which has been made by the appellant was with regard to the agricultural as well as other immovable properties being owned by the said respondent. The said aspect with regard to the ownership of the immovable properties stands belied from the evidence, which has been placed on record by the appellant herself, which clearly establishes that as per the *jamabandi* for the year 2011-13, two mutations bearing Nos.4154 and 4171 had been entered, according to which the land which is asserted to be that of the respondent had been transferred in the name of his sisters by him by way of release deed and that too, prior to the filing of the case for decree of divorce by the respondent, in which an application under Section 24 of the Hindu Marriage Act had been filed by the appellant. There is nothing on record to show that apart from the above alleged agricultural land, there is any other land or residential/commercial property owned by the respondent. Nothing has come on record, which would indicate that the respondent has any regular source of income or that there is some individual income of the respondent.

In the absence of the onus having been discharged by the appellant with regard to the income of the respondent, the prayer of the appellant for grant of permanent alimony and maintenance could not have

been accepted by the trial Court and therefore, has rightly proceeded to reject the same.

9. In view of the above, we do not find any illegality in the impugned order dated 27.01.2021 passed by the Additional Principal Judge, Family Court, Hisar, dismissing the application of the appellant under Section 25 of the Hindu Marriage Act, as the same has been passed upon proper appreciation of the pleadings and the evidence, which has been brought on file.

Finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

23.04.2021

Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No