

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR (F)-401-2021 (O&M)

Date of Decision: November 02, 2021

Manoj

... Petitioner

Versus

Seema and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Kartar Singh Malik-I, Advocate,
for the petitioner.

Vivek Puri, J. (Oral)

CRM-36718-2021

This is an application filed under Section 5 of the Limitation Act for condonation of delay of 46 days in filing the petition.

For the reasons mentioned in the application, delay of 46 days in filing the petition is condoned.

Instant application is disposed of.

CRR(F)-401-2021(O&M)

The petitioner has challenged the legality and validity of the impugned order dated 23.11.2019 passed by the learned Principal Judge, Family Court, Rohtak vide which interim maintenance to the tune of

Rs.4,000/- per month has been awarded to respondent no.1 and Rs. 2,000/- each awarded to respondents no. 2 and 3.

Briefly, the respondents have instituted an application under Section 125 Cr.P.C. and in the said proceedings, they have asserted their claim for interim maintenance. The allegation of the respondents is to the effect that the petitioner is owner of an auto rickshaw, plying the same and earning Rs.30,000/- per month. He has also movable and immovable property and respondents have no source of income. The petitioner has turned out the respondents from the matrimonial home and has refused and neglected to maintain them.

The petitioner has controverted the allegations of the respondents and has denied the allegations with regard to his avocation and income.

I have heard learned counsel for the petitioner.

It has been contended by the learned counsel for the petitioner that there is lack of material to indicate that the petitioner has neglected and refused to maintain the respondents and furthermore, respondent no.1 has refused to live with the petitioner without any sufficient reasons. It has been argued that at the earlier instance, the petitioner had instituted a petition under Section 9 of the Hindu Marriage Act, wherein an amicable settlement was effected and accordingly, the petition was dismissed as compromised in terms of order dated 26.02.2009 passed by the learned District Judge, Rohtak. Despite amicable settlement and compromise, respondent no.1 has

refused to reside with the petitioner. In terms of the impugned order dated 23.11.2019, the interim maintenance on higher side was awarded in favour of the respondents.

The fact of marriage between the petitioner and respondent no.1 and the birth of the minor respondents no.2 and 3 from the wedlock has not been disputed. Unfortunately, the matrimonial dispute has cropped up between the parties and they are residing separate from each other. The respondents have instituted an application under Section 125 Cr.P.C. for enforcement of their claim for maintenance and during the course of the proceedings, interim maintenance has been awarded.

It will be too early to conclude that respondent no.1 has without any sufficient reason refused to live with the petitioner or the petitioner has not refused or neglected to maintain the respondents. The genuineness of rival allegations as put-forth by both the parties is to be adjudicated after the same are substantiated with the evidence during the course of the proceedings before the Court below.

The petitioner has disputed the fact with regard to his avocation and income. The version of the respondents is to the effect that the petitioner is owner of an auto rickshaw, plying the same and earning Rs.30,000/- per month. Besides, he is also having movable and immovable property. The allegations as put-forth by the respondents have been supported with an affidavit of respondent no.1. In the reply, the petitioner has controverted the allegation with regard to his being the owner of an auto rickshaw, plying the

same and earning Rs.30,000/- per month or being owner of movable and immovable property. Significantly, the reply is silent with regard to occupation in which the petitioner is engaged and his income. Accordingly, it can be conveniently presumed that the petitioner must at least be earning more than Rs. 15,000/- per month, particularly because he is an able-bodied person. In such circumstances, the amount of interim maintenance as awarded in terms of the impugned order dated 23.11.2019 cannot be termed to be excessive or not commensurate with the income of the petitioner.

As such, the impugned order dated 23.11.2019 does not suffer from any illegality or irregularity, which may warrant any interference by this Court.

Accordingly, present petition is dismissed.

November 02, 2021
vkd

(Vivek Puri)
Judge

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No