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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 29th January, 2021
+ CM(M) 426/2020 & CM APPL. 20237/2020

APURVA ANAND

..... Petitioner

Through: Dr. Aman Hingorani & Mr. Himanshu
Yadav, Advocates.

versus

CHANCHAL NIRANJAN

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The Petitioner – Mr. Apurva Anand was married to Ms. Chanchal Niranjana on 11th July, 2008. The Petitioner filed a divorce petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter*, 'Act'), seeking divorce from his wife on 4th October 2016. Vide judgment dated 6th August, 2020, the Family Court, Patiala House Courts, Central District granted a decree of divorce to dissolve the marriage solemnised in the following terms:

“28. In the present proceedings, the conduct of the respondent has been to delay the matter as also she has not sincerely contested the case. Since the defense of the respondent was struck off, she could cross examine the petitioner only on legal issues. It is not permissible to the respondent to cross-examine the respondent on the basis of her pleas taken in written statement as also the filing of written statement was permitted subject to the payment of costs which was not complied with. In these circumstances, the pleas taken by the respondent in her defence cannot be considered or appreciated.

29. The petitioner has been able to establish his case by way of oral and documentary evidence. The respondent has not been able to demolish the case of the petitioner by way of cross-examination or by way of leading her own evidence. I, therefore conclude that petitioner has been able to prove and make out a case for grant of divorce.

30. On the basis of above observations, I grant the relief in favour of the petitioner. Accordingly, the marriage between the petitioner Apurva Anand and respondent Chanchal Niranjana is hereby dissolved U/s 13(1) (i-a) of the Hindu Marriage Act, 1955.”

3. However, on the same very date, notice has been issued in the application under Section 24 of the Act, vide a separate order, and the Family Court has called for detailed affidavits to be filed as to the expenditure, assets and liabilities of both the Petitioner and Respondent. It is this order passed in the said application under Section 24 of the Act which is under challenge in the present writ petition.

4. Dr. Hingorani, Id. counsel for the Petitioner, submits that in view of the fact that the Respondent has abandoned her defence in the petition for divorce, application under Section 24 of the Act would not survive. Reliance is placed upon the judgment in the divorce petition dated 6th August 2020, wherein the conduct of the Respondent has been set out in detail. Dr. Hingorani, Id. counsel has also relied upon the judgment of the Id. Single Judge of this Court in **Rita Mago v. V.P. Mago, 20(1981) DLT 103**.

5. In the present case, vide order dated 18th September, 2020, further proceedings in the Section 24 application were stayed by this Court. On the said date, Respondent was duly represented by her counsel. However, no counter affidavit has been filed in this petition. Even today, there is no

appearance on behalf of the Respondent.

6. In the judgment granting the decree of divorce dated 6th August, 2020, the Family Court has recorded as under:

“11. Notice of the petition was duly served upon the respondent before the court of metropolitan magistrate where the proceedings under Domestic Violence Act were pending, but the respondent did not promptly appear before this court. The court fixed the case for filing written statement but no written statement was filed, resultantly on 06.06.2017, the respondent was proceeded against exparte and matter was listed for exparte evidence. However, on the next date i.e. 25.09.2017, counsel for respondent Sh. Rakesh Kumar appeared and sought setting aside of the exparte order, without moving any application. The matter was again listed for exparte evidence as per the convenience of the petitioner who was to come from Australia. On 22.11.2017, an application under Order 9 Rule 7 CPC was moved on behalf of respondent, which was allowed subject to the cost of Rs.15,000/and respondent was given last opportunity for filing written statement within 15 days alongwith detailed income affidavit. On the next date i.e. 22.02.2018 the counsel for the respondent appeared but neither the cost was paid nor the written statement was filed. The court imposed further cost of Rs.2,000/ and fixed the matter for 19.04.2018 when the respondent moved an application for waiver of cost, which was dismissed. The written statement and application under Order 24 HMA was taken on record despite the objections of the petitioner that proceedings are being delayed by the respondent.

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14. During the course of proceedings, on 26.09.2018, finding that respondent has not paid the costs imposed by the court, despite various opportunities, defence of the respondent was struck off and matter was listed for Petitioner Evidence. On 03.01.2019, the court noted

that respondent was not interested in pursuing her matter seriously, but at her request granted one opportunity subject to further cost of Rs.5,000/ for adjournment.

15. On 20.03.2019 petitioner was examined as PW1 and partly cross examined and the respondent also moved application seeking recalling of the orders of striking off the defence and imposition of costs. On 10.12.2019 this application of the respondent was dismissed.

16. The petitioner appeared on 02.03.2020 when there was no appearance on behalf of respondent and accordingly opportunity for cross examination of the petitioner was closed as also the petitioner's evidence.

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18. Arguments have been advanced by Ld. Counsel for petitioner Dr. Aman Hingorani (through video conferencing) and written submissions have also been filed on record. However, despite various opportunities arguments have not been advanced on behalf of the respondent.

...

28. In the present proceedings, the conduct of the respondent has been to delay the matter as also she has not sincerely contested the case....””

7. A perusal of the above extracts from the judgment dated 6th August, 2020 shows that the Respondent did not contest the divorce petition at all. The defence of the Respondent was struck off and the cross-examination of the Petitioner was also of a limited nature. Considering that on the merits of the matter, the Respondent had not set out any substantial defence and the decree of divorce has been granted without contest, it appears that the Respondent is no longer interested in pressing the application under Section 24 of the Act, which is meant only for interim maintenance *pendente lite*.

8. The judgement in ***Rita Mago (supra)*** relied upon by the Petitioner has

been considered by a Id. Division Bench of this Court in ***Akash Chadha Vs. Preeti Khanna (Mat. App. (FC) 101/2016, decided on 1st August 2016***). The Id. Division Bench agreed with the view taken by the Ld. Division Bench of the Punjab & Haryana High Court in ***Sohan Lal v. Kamlesh (AIR 1984 P&H 332)***. The Id. Division Bench of the Punjab and Haryana High Court in ***Sohan Lal (supra)*** has held:

“5. *The first question that arises for determination is that if the main petition under the Act is decided finally, whether the application for maintenance pendente lite and litigation expenses under S. 24 of the Act, which is pending decision, can continue. Section 24 deals with maintenance pendente lite and expenses of proceedings. It reads as follows: -*

"Where in any proceeding under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

From a reading of the section, it is evident that the Court, during the pendency of the proceedings under the Act, viz., for restitution of conjugal rights, judicial separation, divorce or nullity of marriage, can grant to a spouse having no sufficient come to maintain himself/herself and to meet the necessary expenses of the proceeding, maintenance pendente lite and litigation expenses. The object of enacting the section is that an indigent spouse

should not suffer during the pendency of the proceedings because of his/her poverty. It is the duty of the Court to decide such an application expeditiously so that the indigent spouse is not handicapped because of want of funds. However, if the application under S. 24 is not decided during the pendency of the main petition on account of dilatory tactics of the other spouse or for some unforeseen circumstances, the whole purpose of the section stands frustrated in case it is dismissed on the ground that after the decision of main petition it does not survive. Therefore, we are of the view that even if the main petition is decided finally, the application under Section 24 which is pending decision can continue.

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10. In Smt. Chitra Lekha's case AIR 1977 Del 176 (supra) the petition was filed by the husband under Section 10(1)(b) of the Hindu Marriage Act for judicial separation. The wife made an application under Section 24 for grant of interim alimony and litigation expenses. Before disposal of the application under Section 24, the husband's petition was dismissed for default. Consequently, the application under Section 24 was also dismissed. An appeal against the order under Section 24 was dismissed observing that no interim alimony and litigation expenses can be granted after termination of the proceedings. The same view was taken in Rita Mago's case 1982 HLR 201 (Delhi)(supra). With great respect to the learned Judges, we have not been able to persuade ourselves to accept that view.

11. The second question that arises for determination is that if the application under Section 24 continues after dismissal of the main petition, whether the applicant is entitled to the maintenance till the date of decision of the main petition or the disposal of the application under Section 24. Section 24 has already been reproduced above. The word "proceeding" in the section appears at three places and it connotes the main proceedings, that is, proceedings other than proceedings under Section 24. The words "monthly during the

proceedings such sum" are very important. These words show the intention of the legislature that it intended to give maintenance to the indigent spouse till disposal of the main petition. If the application under Section 24 is taken to be included in the word "proceeding", anomalous results would follow. Therefore, we are of the opinion that if the application under Section 24 continues after dismissal of the main petition, the applicant is entitled to the maintenance till the date of the decision of the main petition. In Sudarshan Kumar Khurana's case (AIR 1981 Punj & Har 305) (supra), a different view has been expressed by the learned single Judge wherein it was observed that there was no justification for not awarding maintenance pendente lite to the wife even beyond the conclusion of the main petition till proceedings under Ss. 24 and 26 of the Act were finalised. With great respect to the learned Judge, we do not agree with the above observations. Consequently, we overrule the said case to this extent only, However, it may be reiterated that we have approved the other observations of the learned Judge in this case, as mentioned above."

Thus, the Punjab and Haryana High Court differed with the view taken in **Rita Mago's** (supra) case. The Id. Division Bench of this court in **Akash Chadha** (supra), agreeing with this view of the Punjab & Haryana High Court held:

"3. This Court is also of the opinion that if the reasoning in Chitra Lekha (supra) is allowed to stand, unanticipated hardship could ensue frequently to those moving the Court under Section 24. For instance, in the event a substantive claim for matrimonial relief is made by the husband and the wife's application under Section 24 is pending for an unduly long period, of say one or two years, the exercise of choice by the husband to withdraw the petition for reasons best known to him - and the application of the rule that no maintenance would be granted even for the limited duration, would cause untold hardship. Situations could well arise where in such event, husband, for tactical reasons, withdraws the substantive

proceeding despite knowledge that his wife is deprived of sources of income or livelihood.

4. The other reason which persuades us to accept the view in Sohan Lal (supra) is that Section 24 itself provides the clue to holding that it has an independent life apart from the main proceeding - (although for a limited period apart from the main proceedings) because it constitutes a "proceeding" by itself. Thus, while the matrimonial court might be constrained not to grant relief under Section 24 beyond the date when the main proceeding has ceased, nothing prevents it from doing so for the limitation duration from the filing of such application and the cessation of proceedings."

9. Thus, the legal position is that a Section 24 application under the Act can survive beyond the dismissal of the main proceeding for grant of divorce, in respect of the period till the dismissal of the said petition. The decision in ***Rita Mago (supra)*** cited by the Petitioner, may no longer be good law.

10. However, this issue need not be gone into in the present petition as the Respondent did not take any defence in the divorce petition. She in fact chose not to even file the written statement. Even before this Court, after being served, the Respondent has not entered appearance. Under such circumstances, this Court concludes that the Respondent is no longer interested in pursuing the application under Section 24 for interim maintenance. The said application under Section 24 is accordingly dismissed.

11. This petition is allowed and all pending applications are disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 29, 2021

Rahul/Ak

(Corrected & released on 2nd February, 2021)