

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-F-1024-2023 (O&M)

Date of order: 28.08.2023

Rajesh

.....Petitioner(s)

Vs.

Smt. Anita & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vijay Pal, Advocate
for the petitioner.

Nidhi Gupta, J.

Prayer in the present petition is for setting aside order dated 13.09.2019 passed by learned Additional District and Sessions Judge/Principal Judge, Family Court, Jind whereby in an application under Section 125 Cr.P.C. filed by the respondents herein, the learned Family Court has directed the petitioner to pay maintenance allowance proportionately on yearly basis i.e. Rs.9000/- per month {Rs.6000/- for respondent No.1 & Rs.3000/- for respondent No.2} to the respondents, from the date of filing the petition on 05.08.2015 till 04.08.2017; maintenance allowance of Rs.12000/- PM {i.e. Rs.8000/- for respondent No.1 and Rs.4000/- for respondent No.2} from 05.08.2017 till date of impugned order; and maintenance of Rs.15000/- PM {i.e. Rs.10000/- for respondent No.1 and Rs.5000/- for respondent No.2} with effect from date of passing the impugned order.

2. Learned counsel for the petitioner submits that the petitioner was married to respondent No.1 on 24.06.2007. Out of said wedlock, one son presently aged about 11 years, was born who is currently in the care and custody of respondent No.1. Vide the impugned order, the petitioner has been directed to pay as follows:-

*“10. In the light of foregoing discussion, this court finds justification, in directing the respondent to pay maintenance allowance proportionately on yearly basis i.e. Rs.9000/- per month {Rs.6000/- for petitioner no.1 & Rs.3000/- for petitioner no.2} to the petitioners, from the date of filing this petition on 5.8.2015 till 4.8.2017 respectively. Thereafter, respondent shall pay maintenance allowance of Rs.12000/- PM {i.e. Rs.8000/- for petitioner no.1 and Rs.4000/- for petitioner no.2} from 5.8.2017 till date of this order respectively. Thereafter, respondent shall pay maintenance of Rs.15000/- PM {i.e. Rs.10000/- for petitioner no.1 and Rs.5000/- for petitioner no.2} with effect from date of passing this order. It is further made clear that **respondent shall clear entire arrears of maintenance allowance ‘after adjusting paid interim maintenance allowance, with in period of three months positively.** However, it is made clear that respondent shall deposit monthly maintenance allowance of Rs.15000/- by 10th of each month directly in the bank account of petitioner no.1, without any fault...”*

3. Learned counsel submits that the petition filed by the petitioner under Section 13 of the Hindu Marriage Act, 1955, has already been allowed vide ex-parte decree passed on 17.07.2018 by the Id. Family Court; and the petitioner has thereafter re-married and now has a child with his second wife. Learned counsel states that accordingly, the petitioner cannot maintain two families. He is the only earning member of his family and he has no other source of income except his salary of Rs.67,000/- per month, which includes Rs.17,300/- towards risk allowance paid only to security personnel who are posted in disturbed areas. It is further submitted that it was the respondent No.1 herself who withdrew herself from the company of the petitioner and therefore, the respondents are not entitled to maintenance.

4. No other argument is raised on behalf of the petitioner.

5. I have heard learned counsel for the petitioner.

6. Perusal of the record of the case reveals that though the petitioner was granted numerous opportunities including last opportunity, but he failed to lead any evidence either documentary or oral. On the other hand, respondent No.1 had produced the salary slip of the petitioner as per which at the time of filing of the petition under Section 125 Cr.P.C. by the respondents, the petitioner was getting salary of Rs.35,000/- per month which was increased to about Rs.64,706/- per month by March, 2019 after 7th Pay Commission. The petitioner by his own admission is now drawing a salary of Rs.67,000/- per month. It is therefore clear that the salary of the petitioner increases periodically with each Pay Commission; whereas on the

other hand the respondent No.1 has no other source of income to maintain herself or her minor son.

7. Moreover, the petitioner has produced nothing before this Court to show that the petitioner has re-married or has a child from his second marriage. However, even assuming for the sake of argument that the petitioner has indeed re-married, the same cannot be a ground to absolve the petitioner of his responsibilities towards the respondents. It has further come on record that respondent No.1 had also filed an application under Order IX Rule 13 read with Section 151 CPC for setting aside proceedings dated 11.05.2018 and Ex-parte judgment and decree of divorce dated 17.07.2018 which is now pending for final arguments on 29.08.2023.

8. In view of above, I find no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed.**

9. Pending application(s) if any also stand(s) disposed of.

28.08.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No