

CR-232-2023

Date of Decision :16.01.2023

Avtar Singh

...Petitioner

versus

Amanpreet Kaur

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Gursimran Singh Bhatia, Advocate for the petitioner.

B.S. Walia, J. (Oral)

Challenge in the petition is to order Annexure P-4 dated 08.09.2022 passed by the learned Additional Principal Judge, Family Court, Amritsar allowing application filed by the respondent under Section 24 of the Hindu Marriage Act and granting her interim maintenance of Rs.3,000/- per month.

Learned counsel contends that the petitioner had filed a petition under Section 12 of the Hindu Marriage Act for annulment of the marriage on the ground as contained in para No.4 of the petition, Annexure P-1 namely of the respondent suffering from mental disorder and that during the pendency of the aforementioned petition, the respondent filed an application under Section 24 of the Hindu Marriage Act for grant of maintenance pendent lite whereupon vide order Annexure P-4, the learned Additional Principal Judge, Family Court, Amritsar was pleased to award maintenance pendent lite @ Rs.3,000/- per month.

Learned counsel contends that in view of petition for annulment having been filed, the application for maintenance under Section 24 of the

Hindu Marriage Act was not maintainable. No other point has been argued.

I have considered the submissions of learned counsel but am and unable to agree with the same as the issue is no longer res integra and stands decided by Hon'ble Supreme Court in case titled as **Madhavi Ramesh Dudani versus Ramesh K. Dudani** Law finder Doc Id # 238018. Relevant extract of the same is reproduced as under:

"3. Admittedly, the appellant and the respondent are wife and husband. The appellant filed a petition for judicial separation and other reliefs. In the said petition the appellant claimed interim maintenance. The Family Court partly allowed the application to the extent of the claim of interim maintenance in respect of the two minor daughters. As a counter- blast the respondent filed a petition in the Family Court for declaration that the marriage with the appellant was nullity. Against the said order refusing maintenance, the appellant filed a writ petition before the High Court of Bombay. The High Court was of the view that the marriage was a nullity and, therefore, the appellant was not entitled to any maintenance.

4. It is against the said decision, the appellant is in appeal before us. During the course of hearing, we are informed that both the petitions one filed by the appellant and the other by the respondent are yet to be decided on merits by the Family Court. Under the circumstances, it was not appropriate for the High Court to record any concluded pinion about the legal position of the marriage between the appellant and the respondent. Only on this short ground the judgment of the High Court deserves to be set aside. learned Counsel appearing for the respondent states that the respondent is prepared to pay a sum of Rs. 7,500/- (Rupees seven thousand five hundred only) to the appellant per month towards interim maintenance with effect from 1.3.2000. This is acceptable to the Counsel for the appellant: Consequently, the judgment under appeal is set aside. The appeal is allowed. The Family Court is directed to expedite the hearing in the aforesaid pending matters. There shall be no Order as to costs."

Apart from the aforementioned decision of Hon'ble the Supreme Court, in **Karampal Singh versus Amarjit Kaur**, Law Finder

maintenance under Section 24 of the Hindu Marriage Act cannot be denied when the issue with regard to whether marriage is legal or void is yet to be decided. Relevant extract of the decision is reproduced as under:

“6. The learned counsel for the petitioner contended that the respondent was already married before getting marriage to the petitioner and, therefore, the marriage was null and void and, therefore, she could not be treated to be wife for seeking maintenance under Section 24 of the Hindu Marriage Act. The learned counsel for the petitioner in support of this contention has placed reliance on the judgment of the Honble Supreme Court in the case of Smt. Yamunabai Anantrao Adhav v. Anantrao Shivaram Adhav and another, AIR 1988 SC 644.

7. It may be noticed that in the said very judgment the Honble Supreme Court while considering the provisions of Sections 125 Criminal Procedure Code came to the conclusion that the grant of maintenance cannot be altogether excluded from consideration, even if the marriage is not proved. The petitioner has moved an application under Sections 11 and 12 read with Section 13 of the Hindu Marriage Act seeking divorce from the respondent. Whether marriage is illegal or void is yet to be decided. The provisions of Section 24 of the Hindu Marriage Act envisages maintenance of pendente lite during pendency of petition under the Act and, therefore, no distinction could be drawn whether the marriage is legal or illegal as it is yet to be decided after the parties are allowed to lead evidence.”

Likewise, Hon’ble the Jharkhand High Court in W.P (C)

No.3052 of 2003 titled as **Sandeep Kumar @ Bobby versus State of Jharkhand and another** decided on 24.09.2003 held that as far as maintenance pendent lite is concerned, no restriction has been made under Section 24 of the Hindu marriage Act for maintenance under Section 12 and 13 of the Act and the husband is bound to pay the wife, costs of any proceedings under the Act as also to provide her pendent lite maintenance pending disposal of such proceedings.

To similar effect is the view of Hon’ble the Karnataka High Court

Finder Doc Id #456.

In the instant case, the learned Additional Principal Judge, Family Court, Amritsar by taking into account that the petitioner is able bodied person and even by doing manual labour, can earn at least Rs.15000/18000/- awarded Rs.3,000/- per month as maintenance pendent lite to the respondent-wife with effect from the date of application.

In view of the settled position of law as also the fact that the validity of marriage is yet to be adjudicated, and the fact that it is the solemn duty of the husband to provide for the maintenance of his spouse who does not have any means of sustenance, I do not find any reason whatsoever to interfere with the interim maintenance awarded to the respondent u/s 24 of the Hindu Marriage Act.

Dismissed.

(B.S. Walia)
Judge

16.01.2023

ps

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>