

Supriyanka Santosh Mahadik ...Petitioner.

Santosh Namdev Mahadik ...Respondents.

*Mr. Kuldeep U. Nikam for the Petitioner.
Mr. Ranjeet Patil for the Respondent.*

Coram : Sharmila U. Deshmukh, J.

Date : 27th March , 2024.

P. C.:

1. By this petition exception is taken to the order dated 5th December 2016 rejecting the petitioner's application for interim maintenance under Section 24 of the Hindu Marriage Act. The Trial Court while rejecting the Application took into consideration the fact that the husband has obtained a decree of restitution of conjugal rights in the year 2014 which was challenged by the petitioner-wife by way of an appeal which was dismissed by the Appellate Court. Relying upon the decision in

the case of ***Manju Kamal Mehra vs. Kamal Pushkar Mehra, 2009 (5) Mah. L. J. 859***, the Trial Court held that the petitioner wife is not entitled to any alimony.

2. Heard *Mr. Kuldeep U. Nikam, learned counsel for the petitioner and Mr. Ranjeet Patil, learned counsel for the Respondent.*

3. Learned counsel for the petitioner would submit that reliance placed by the Trial Court on the decision of ***Manju Kamal Mehra vs. Kamal Pushkar Mehra (supra)*** is erroneous as in the facts of that case a decree of restitution of conjugal rights was passed and despite thereof an order for grant of maintenance was passed. He would submit that it was in the facts of that case that this Court had held that when the decree of restitution of conjugal rights was passed and wife is required to join company of the husband, there is no question of maintenance and if maintenance is directed to be paid, the wife would be reluctant to join the husband. He submits that the decision of the Trial Court is based on a complete misreading of the said decision.

4. *Per contra*, learned counsel for the respondent - husband would submit that the impugned order is of the year 2016 and the proceedings before the Trial Court are at the stage of recording evidence of the petitioner-wife. He submits that as the matter has substantially progressed before the Trial Court, impugned order may not be interfered with in writ jurisdiction.

5. Considered the submissions and perused the record.

6. The undisputed position is that after obtaining a decree of restitution of conjugal rights which came to be challenged up to this Court the respondent-husband gave up the relief of restitution of conjugal rights and instead filed a petition for divorce i.e. Hindu Marriage Petition No.236/2015. It is in these proceedings that the Application came to be filed under Section 24 for interim maintenance. Reliance placed by the Trial Court on the decision of ***Manju Kamal Mehra vs. Kamal Pushkar Mehra (supra)*** to deny the relief of interim maintenance proceeds on complete mis-reading of the said decision. Mr. Nikam is right in contending that in the facts of that case where decree of restitution of conjugal rights was passed and order of

maintenance was granted, it was observed by this Court that the decree of restitution of conjugal rights may be rendered inoperative and for such act of wife, husband would be penalized to pay maintenance to the wife which is not subject to the decree passed by the Court. The facts of the case being clearly distinguishable were inapplicable to the facts of the instant case.

7. Despite the above, the fact remains that impugned order has been passed in the year 2016, petition was filed in the year 2018 and the same came to be dismissed for default which was restored in the year 2019, upon change of Advocate and till the year 2024 no effective steps have been taken by the petitioner-wife for obtaining any relief in the present petition. Considering that the impugned order was passed in the year 2016 and the petitioner-wife was not diligent in prosecuting present petition coupled with the fact that petition for divorce has reached at the stage of evidence, I am not inclined to consider the relief sought by the petitioner- wife. It needs to be noted that if the Application is allowed, the same will amount to

putting a premium on the negligence of the petitioner-wife, who after filing petition in the year 2016 in respect of order passed in year 2016 has thereafter not bothered to prosecute the said petition resulting in petition being dismissed and thereafter restored. At this stage, to subject the respondent-husband to payment of maintenance from the date of the Application i.e. 2015-2016 would result in gross injustice to the respondent-husband. Considering that the Trial Court proceedings are at the stage of evidence, in my view in exercise of writ jurisdiction the impugned order of the year 2016 does not deserve any interference.

8. Having regard to discussion above, the Petition is dismissed. It is clarified that the Trial Court is to decide the petition and the claim for permanent maintenance if any made by the wife on its own merits and uninfluenced by the observations made in the impugned order dated 5th December 2016.

[Sharmila U. Deshmukh, J.]