

FAO-742-2024 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-742-2024 (O&M)

Date of Decision: 12.02.2024

AYUSHI SINGLA

...Appellant

Versus

PANKAJ GOYAL

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Rajan Bansal, Advocate
for the appellant.

HARSH BUNGER, J.

The present appeal has been filed for modifying the order dated 09.11.2023 passed by the Family Court, Bathinda, whereby, the application filed by the appellant under Sections 24 and 26 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') has been allowed and the respondent-husband was directed to pay maintenance of Rs.20,000/- per month to the appellant and Rs. 10,000/- per month to the minor child, besides litigation expenses to the appellant.

2. Briefly, the facts of the case, as made out in the present appeal, are that the marriage of the appellant was solemnized with respondent as per Hindu rites and ceremonies on 16.01.2017 at Queens Land Resort, Bathinda. Out of said wedlock, one female child was also born on 14.01.2018. Due to

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the difference of opinion arisen between the parties, the respondent-husband filed a petition for restitution of conjugal rights under Section 9 of the Act, 1955, which was contested by the appellant by way of filing written statement. Along with written statement, the appellant-wife also filed an application for grant of maintenance *pendente-lite* and litigation expenses for herself and her minor daughter. Respondent filed reply to the application and the appellant-wife was awarded maintenance of Rs.20,000/- per month and Rs. 10,000/- per month was awarded to the minor child besides litigation expenses to the appellant, vide order dated 09.11.2023 passed by the Family Court, Bathinda.

3. Aggrieved by said order of award of maintenance, the appellant-wife has approached this Court by way of filing the present appeal.

4. Learned counsel for the appellant-wife submits that the amount of maintenance, as awarded by the Family Court, Bathinda is on the lower side as she has to take care and bring up the minor child. It is submitted that the respondent-husband has not made correct disclosure of his assets and income. At the end, learned counsel for the appellant-wife submits that she is not earning any amount and as such, the maintenance be enhanced to some reasonable amount.

5. We have heard the arguments of learned counsel for the appellant and have also perused the impugned order as well as other documents available on the file, with his able assistance.

6. The facts relating to marriage between the parties, birth of child out of said wedlock, filing of petition under Section 9 of Hindu Marriage

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Act by the respondent-husband and filing of application for maintenance by the appellant-wife, are not disputed.

7. While filing written statement, the appellant-wife also moved an application for grant of maintenance *pendente-lite* and litigation expenses for herself and her minor daughter and both were allowed maintenance i.e. @ Rs. 20,000/- per month for appellant-wife and Rs. 10,000/- per month for minor child. Order of granting maintenance has been challenged on the ground that the same is on the lower side as the appellant-wife is not having any source of income and has to support her minor child also.

8. For grant of maintenance, the Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those, he is obliged under the law and statute. The amount of maintenance fixed for the wife should be as much which is sufficient for her to lead comfortable life so that she may not feel handicapped to meet out the expenses for her bread and butter.

9. Section 24 of the Act, 1955 makes a provision for maintenance *pendent lite* and expenses of proceedings. The same reads thus:-

"S.24.- Maintenance pendent lite and expenses of proceedings.- 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

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own income and the income of the respondent, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

Section 24, thus, provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may apply to the court to direct the respondent to pay the monthly maintenance as the court may think reasonable, regard being had to the applicant's own income and the income of the respondent. The very language in which Section is couched indicates that a wide discretion has been conferred on the court in the matter of an order for interim maintenance. Although the discretion conferred on the court is wide, the Section provides guideline inasmuch as while fixing the interim maintenance, the court has to give due regard to the income of the respondent and the applicant's own income. In other words, in the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status and the economical dependence of the applicant. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors, which are mentioned in the statute.

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The object behind Section 24 of the Act, 1955 is to provide for maintenance, *pendente-lite*, to a spouse in matrimonial proceedings so that during the pendency of the proceedings, the spouse can maintain herself/himself and also have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds.

10. The Court while considering the merits of an application for grant of an interim maintenance under Section 24 of the Act, 1955, has to necessarily arrive at *prima-facie* determination about the earning capacity of the rival claimants. The determination cannot be made with exactitude as it is essentially interim in nature. The Court is called upon to make a summary consideration of amount which the applicant is to be awarded by way of maintenance *pendente-lite* and litigation expenses in accordance with the financial resources of the parties. The capacity of the other party to earn cannot be taken into consideration.

11. It is also well settled that it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

12. In *Shamima Farooqui v. Shahid Khan, 2015(2) RCR (Criminal) 526*, it has been held by Hon'ble the Supreme Court that plea of husband that he is not doing job and has no means to pay, cannot be accepted to deny the maintenance as these are only bald excuses. In case the husband is healthy, able bodied and is in a position to support himself, he is under a legal obligation to support his wife as well.

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13. An order for maintenance *pendente-lite* or for costs of the proceedings is conditional on the circumstance that the wife or husband, who makes a claim for the same, has no independent income sufficient for her or his support or to meet the necessary expenses of the proceedings. Maintenance is always dependent upon factual situation and the Court should, therefore, mould the claim for maintenance, determining the quantum based on various factors brought before the Court.

14. In the present case, the respondent-husband had filed his affidavit indicating his assets and income and a categorical stand was taken by him that he had resigned from the job and was not having any employment. However, the learned Family Court considered the material available on record and going by the stand taken by the respondent husband in his affidavit indicating his assets and income of Rs. 77,000/- to Rs. 84,000/- per month, the learned Court below has awarded maintenance of Rs. 20,000/- per month to the appellant-wife and Rs. 10,000/- per month for her minor daughter. Learned counsel for the appellant has neither brought on record any material to show that the income of the husband has been wrongly reflected in his affidavit filed before the Court below nor any document/evidence has been brought on record to indicate that the respondent-husband is earning more than Rs. 77,000/- to Rs. 84,000/- per month. Bald plea of the appellant-wife that the respondent-husband has not made correct disclosure of his assets and income and/or that the respondent-husband is earning more than Rs. 77,000/- to Rs. 84,000/- per month, cannot be accepted in the absence of any material on record to support the said assertion(s). During the course of hearing of this appeal, learned counsel for

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the appellant-wife has not disputed the fact that she alongwith the minor child is residing in her own house at Bathinda (Punjab), and also that she owns other immovable property, car and FDR's, besides being sufficiently educated (M.A. Psychology and Diploma in Psychotherapy and counselling).

15. Considering the totality of circumstances, we are of the considered view that for meeting out the day-to-day expenses and to look after the minor child, an amount of Rs. 30,000/- per month (Rs. 20,000/- for appellant-wife and Rs. 10,000/- per month for her minor daughter) as awarded by the learned Family Court, Bathinda, cannot be said to be on the lower side.

16. In view of the above discussion, there is no merit in the contentions raised by learned counsel for the appellant and no interference is required in the impugned order dated 09.11.2023. Accordingly, the present appeal, being devoid of any merit, is hereby dismissed.

17. Pending applications, if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

February 12, 2024
gurpreet

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No