

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

FAO-M-5-2024 (O&M)
Date of Decision: 20.03.2024

PITAMBER SHARMA

...Appellant

Versus

SHASHIBALA

...Respondent

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

Present : Mr. Lakshman Sharma, Advocate
for the appellant.

HARSH BUNGER, J.

CM-4354-CII-2024

Civil Misc. Application is allowed, as prayed for.

CM-4355-CII-2024

This is an application filed under Section 5 of the Limitation Act for condonation of delay of 27 days in filing the accompanying appeal.

For the reasons mentioned in the application, the same is allowed and delay of 27 days in filing the accompanying appeal is condoned.

Civil Misc. Application is, accordingly, disposed of.

FAO-M-5-2024

The present appeal has been filed by appellant-Pitamber Sharma, seeking setting aside of order dated 31.10.2023 passed by the Court of learned Additional District Judge, Charkhi Dadri; whereby an interim maintenance of Rs.3,000/- p.m. has been granted to the respondent-Shashibala (wife of the appellant).

2. Briefly, the marriage of the appellant was solemnized with the respondent on 28.06.1986 in accordance with the Hindu rites and

ceremonies at CCI Dadri, Tehsil and District Bhiwani and out of the said wedlock, three children namely, Priya, Neha and Anurodh were born. All the children are stated to be married.

3. Appellant alleges adultery against respondent-wife and on that basis, he is stated to have filed a divorce petition. It is stated that even the respondent-wife had filed a separate petition for divorce, however, on 26.04.2014, on intervention by their children and other family members, both the parties arrived at a compromise and withdrew their respective divorce cases.

4. It transpires that thereafter on 22.07.2014, the respondent-wife filed a petition under Section 125 of Cr.P.C for grant of maintenance and another petition was filed under Section 12 of the Domestic Violence Act against the appellant herein. It appears that during the pendency of the aforesaid petitions, the parties arrived at a settlement, wherein the appellant was to make a monthly payment of Rs.5,000/- to the respondent-wife as maintenance amount. According to the appellant, the aforesaid settlement was arrived at upon the condition that the respondent-wife would stay with their son at their house at Village Samaspur, Tehsil and District Charkhi Dadri and also that the respondent-wife would withdraw the application filed by her under Section 12 of the Domestic Violence Act against the appellant herein.

5. On the basis of the afore-said settlement, the application under Section 125 of the Cr.P.C., filed by the respondent-wife against the appellant-husband was disposed of by the Court of learned District Judge, Bhiwani, vide order dated 08.09.2015 (Annexure A-2).

6. According to the appellant, the respondent-wife did not comply with the terms of the settlement arrived at between the parties, as recorded in the order dated 08.09.2015 (Annexure A-2) as she did not withdraw the application filed by her under Section 12 of the Domestic Violence Act and also she did not reside with their son at Village Samaspur. Apparently, the appellant stopped making the monthly payment to the respondent-wife as agreed by him in terms of order dated 08.09.2015 (Annexure A-2) as according to him, the respondent-wife did not abide by the terms of the settlement. It further transpires that the respondent-wife sought execution of order dated 08.09.2015, wherein the learned District Judge, Family Court, Bhiwani passed an order dated 19.05.2018, granting arrears of maintenance to the respondent-wife. The said order was impugned before this Court by way of filing a petition i.e. ***CRR(F)-807-2019***, wherein further proceedings before the trial Court have been ordered to be stayed qua the appellant herein, vide order dated 16.10.2019 (Annexure A-3), however subject to the appellant depositing an amount of Rs. 50,000/- before the trial court. The aforesaid petition i.e. ***CRR(F)-807-2019***, is stated to be still pending before this court.

7. It appears that the appellant herein again filed another petition under Section 13 of the Hindu Marriage Act, 1955 seeking dissolution of marriage by decree of divorce, wherein the respondent-wife filed an application under Section 24 of the Hindu Marriage Act, 1955, seeking maintenance *pendente-lite* and also the litigation expenses. The afore-said application filed by the respondent-wife under Section 24 of the Hindu Marriage Act, 1955, was contested by the appellant-husband and upon considering the matter, the learned trial Court vide impugned order dated

31.10.2023, has awarded maintenance of Rs.3,000/- p.m. to the respondent-wife from the date of filing of the application i.e. 17.12.2022. The trial Court further awarded an amount of Rs.5,500/- as litigation expenses and Rs.300/- as the expenses for attending Court hearings.

8. Being aggrieved against the afore-said order dated 31.10.2023, the appellant has filed the present appeal before this Court.

9. Learned counsel for the appellant submits that the trial Court has erred in law and fact in allowing the application under Section 24 of the Hindu Marriage Act, 1955. It is submitted that the trial Court has failed to consider that the respondent-wife had already been granted the maintenance of Rs.5,000/- p.m. vide order dated 08.09.2015 (Annexure A-2) and it was only upon the non-compliance of the terms of the afore-said order dated 08.09.2015 that the appellant stopped making payment and the execution of the said maintenance has been ordered to be stayed by this Court in ***CRR(F)-807-2019***. It is, therefore, contended that the question of entitlement of the respondent-wife of getting maintenance from the appellant is pending adjudication before this Court and therefore, it was not proper for the trial Court to have awarded the maintenance to the respondent-wife under Section 24 of the Hindu Marriage Act, 1955. It is further submitted that the respondent-wife had filed an application under Section 24 of the Hindu Marriage Act, 1955, without disclosing the true facts, therefore, she is not entitled to any maintenance. It is also contended that the respondent-wife is working as 'Anganwadi worker' and is getting a sum of Rs.15,000/- p.m. as salary. It is stated that the respondent-wife is also working as a correspondent for a newspaper namely, Uttal Hindu and is earning about Rs.10,000/- p.m. from the said job.

10. With the afore-said contentions, the learned counsel for the appellant submits that the impugned order be set aside and the application under Section 24 of the Hindu Marriage Act, 1955, filed by the respondent-wife be dismissed.

11. We have heard learned counsel for the appellant and perused the paper-book with his able assistance.

12. It is well established that the proceedings under Section 24 of the Hindu Marriage Act and under Section 125 Criminal Procedure Code are independent and separate proceedings and order of maintenance can be passed in both of them. It is also well settled that an order passed under Section 125 Cr.P.C. will not take away the jurisdiction of the Matrimonial Courts/Civil Courts to grant *pendente lite* maintenance to the wife and children under Sections 24 and 26 of the Hindu Marriage Act.

13. The object of Section 24 of the Hindu Marriages Act in providing maintenance to a party in matrimonial proceedings is obviously to provide financial assistance to the spouse to maintain herself or himself during the pendency of the proceedings and also to 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.

14. In the matter of making an order for 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; the background from which both the parties come from and the economic dependence of the applicant, etc. to arrive at a proper amount.

15. Admittedly, the respondent is a legally wedded wife of the appellant. The obligation of the appellant to provide maintenance to the respondent-wife is not only legal but also moral. 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 legal obligation to support his wife as well.

16. In the present case, although it is contended on behalf of the appellant that the respondent-wife is working as 'Anganwadi worker' and is getting a sum of Rs.15,000/- p.m. as salary and also that the respondent-wife is also working as a correspondent for a newspaper namely, Uttal Hindu and is earning about Rs.10,000/- p.m. from the said job; however there is no material on record in support of the said contention of the appellant. Mere assertion by the appellant-husband that the respondent-wife is earning; is not sufficient to come to a conclusion that she is having a regular source of income.

17. Concededly, during the pendency of the petition under Section 125 of Cr.P.C, the parties arrived at a settlement, wherein the appellant had agreed to make a monthly payment of Rs.5,000/- to the respondent-wife as maintenance amount, therefore it can safely be concluded that the appellant-husband has the means and capacity to pay maintenance to respondent-wife. It has come on record that the appellant is a retired army person as well as retired from CCI, Rajvan (Himachal Pradesh) and is getting sufficient pension.

18. Considering the facts and circumstances of the case and keeping in mind the spiralling inflation rate and high cost of living index, we are of the opinion that Rs. 3000/- per month towards maintenance *pendente lite* and Rs. 5,500/- as litigation expenses and Rs.300/- as the expenses for attending Court hearings; cannot be said to be on higher side, rather it is on lower side.

19. Thus, we find that the impugned order passed by learned court below is neither perverse nor based on any extraneous consideration or irrelevant material. This Court, while exercising its appellate jurisdiction cannot substitute its opinion for the opinion of the court below unless it is found that the conclusion drawn by the court below is factually incorrect, manifestly illegal or perverse. The appellant has failed to point out any infirmity in the impugned order.

20. Before parting with this order, it is required to be mentioned that the very fact that the appellant has laid challenge to the order granting a meagre amount of Rs.3,000/- as maintenance *pendente-lite* to the respondent-wife, shows the conduct/*bonafides* of the appellant. Apparently, the appellant has not laid any challenge to the order dated 08.09.2015 (Annexure A-2) passed by the learned District Judge (Family Court), Bhiwani under Section 125 of the Cr.P.C., wherein an amount of Rs.5,000/- was to be paid by appellant to the respondent-wife. Admittedly, the appellant did not abide by said order dated 08.09.2015 (Annexure A-2) and he was in arrears of payment of maintenance and when the said order was sought to be executed by the respondent-wife, the appellant approached this Court by way of filing **CRR(F)-807-2019**, wherein further proceedings in execution

were stayed. Thus, the appellant is not paying any amount to the respondent-wife, who is concededly more than 60 years of age.

21. Considering the afore-mentioned facts and circumstances, we find no merit in this appeal and the same is, hereby, dismissed with costs of Rs.25,000/-, to be paid by the appellant-husband to the respondent-wife.

22. It is made clear that this order will not come in way of the respondent-wife, if she files any application/appeal for enhancement of maintenance and litigation expenses etc.

23. Let the payment of amount of maintenance *pendente-lite*, as awarded by the Court below along with the costs of Rs.25,000/-, be made by the appellant-husband to respondent-wife within a period of two months from today and an affidavit of compliance thereof be submitted by appellant in that regard before this Court.

24. Registry is directed to list this matter in the month of July, 2024 to ensure compliance of the afore-said directions issued by this Court.

25. All pending applications (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

March 20, 2024
gurpreet

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No