

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-1357-2024 (O&M)
Decided on: 14.03.2024

Sunita

...Petitioner

Versus

Om Parkash and Another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Ms. Kashish Kalra, Advocate
for the petitioner.

RITU TAGORE, J.

1. It is a petition under Article 227 of Constitution of India praying for issuance of directions to learned Additional Principal Judge (Family Court), Hisar to decide the application under Section 24 (Annexure P-3) filed by the petitioner in a petition titled as ‘Om Parkash Vs. Smt. Sunita and another’ bearing CIS No.DMC-1156 of 2021 with further prayer to set aside the order passed by learned Principal Judge for keeping the application under Section 24 in abeyance.
2. Considering the limited prayer made in this revision, notice to respondent is dispensed with.
3. Learned counsel submitted that petitioner is the legally wedded wife of respondent and has one minor daughter born from the wedlock. The strained matrimonial relations led to initiation of litigation between the parties. The petitioner-wife has filed a petition under Section 125 Cr.P.C.; a

petition for restitution of conjugal rights under Section 9 Hindu Marriage Act, 1955 (for short as 'HMA, 1955'); a petition under Protection of Women from Domestic Violence Act, 2005; and one petition under Section 13 of HMA, 1955 (Annexure P-1) has been filed by the respondent-husband, alleging adultery on the part of the petitioner as one of the grounds seeking divorce.

4. Learned counsel submits that petitioner has pleaded in the application under section 24 of HMA, 1955 (Annexure P-3) that she is an unemployed lady and has no independent source of income to support her. The respondent filed the response to said application. The learned counsel stated that learned Family Court without appreciating the facts and law, erred in keeping in abeyance the application under Section 24 of HMA, 1955, merely on the plea of the respondent-husband that petitioner-wife is leading an adulterous life. The learned counsel stated that the learned Family Court failed to note that the respondent-husband has yet to prove his allegations of adultery against the petitioner, till then, if wife makes out that she is unable to support her, the respondent-husband is liable to provide her maintenance.

5. The learned counsel stated that the learned Family Court failed to appreciate the very objective behind the provision of Section 24 of HMA, 1955 which provides that an indigent spouse is liable to be maintained by other spouse having means, till the pendency of the petition. It is thus, prayed that necessary direction be given to the learned Family Court regarding adjudication upon the application under Section 24 by setting aside the order dated 12.01.2024.

6. Perusal of paper book shows that respondent has filed a petition under Section 13 of HMA, 1955 against the petitioner and another, for

dissolution of his marriage with petitioner on the grounds of cruelty and adultery. The petitioner has filed her response, opposing the allegations. She also filed an application under section 24 of HMA, 1955. The matter is pending for evidence of the parties before the learned Family Court, Hisar. The learned Judge in the impugned order observed as follows:-

“ XXX

The petitioner sought divorce from respondent on the ground of adultery. Shri O.P. Yadav, Advocate is representing both respondent as well as co-respondent. This fact indicates that there is some connection between the respondent and co-respondent. Now, the nature of connection between the respondent and co-respondent can be assessed after taking evidence from both sides. There is substance in the submissions of petitioner. Resultantly, the application can only be decided after taking evidence. Till then application for maintenance pendent- lite be kept in abeyance.

XXX”

7. The learned Family Court failed to appreciate that the objective of Section 24 of HMA is to provide a support to the spouse having no independent sufficient source of income to maintain herself/himself and bear litigation expenses, till the pendency of the petition. Section 24 of HMA reads as under:-

“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 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”

8. As noted above, Section 24 *ibid* casts a duty upon the Court to decide the application for maintenance *pendent-lite* when moved by either spouse within a timeline of 60 days. In somewhat similar facts, in “**Smt. Shweta Rathee Vs. Devinder Singh Dahiya, 2012(5) R.C.R (Civil) 105**”, husband had filed a petition against the wife alleging adultery, wherein this Court held that “it is still to be proved whether the respondent is suffering from adultery but one thing has to be said that his being the husband is liable to maintain his wife during the pendency of the litigation. Therefore, no reason for declining the application under section 24 of HMA can be made out. Consequently the revision preferred by the husband is to be dismissed.” While dealing with application under section 24 Bombay High Court in the case “**Sushila Viresh Chhadva Vs. Viresh Nagshi Chhadva, 1995 SCC OnLine Bom 315**” observed that even in the case where there is strong possibility of a marriage being declared as a nullity, shall not be a ground for denying interim maintenance and expenses of the litigation to the spouse claiming such maintenance under section 24 of HMA, 1955.

9. As evident from the paper book, a divorce petition is still pending for adjudication before learned Family Court, Hisar wherein, respondent-husband has yet to prove his assertions and allegations against the petitioner. In the main petition, the petitioner-wife has filed an application under section 24 of the HMA, 1955 seeking *pendent-lite* maintenance. Instead, deciding the *pendent- lite* maintenance application as per the mandate of Section 24 of HMA, 1955, Learned Principal Judge

(Family Court) Hisar fell in serious error while ordering to keep the aforesaid application in abeyance.

10. Accordingly, order dated 12.01.2024 is set aside and Additional Principal, Judge (Family Court), Hisar is directed to adjudicate upon the application, expeditiously as per law.

11. Revision petition stands disposed of accordingly.

12. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

14.03.2024
Rimpal

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