



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

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CR-2490-2021**Date of decision : 19.11.2024****Jitender Kumar****..... Petitioner**

versus

Seema Singh**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

None for the respondent.

PANKAJ JAIN, J. (Oral)

1. Challenge is to the order dated 14.09.2021 passed by Family Court, Hisar whereby respondent-wife has been granted maintenance pendente lite alongwith litigation expenses.
2. Petitioner-husband filed petition for declaration to the effect that the marriage of the petitioner with respondent held on 13.11.2013 is a void marriage and be declared as nullity, as the petitioner was already married to one Jagwanti and his marriage with Jagwanti was annulled by decree of divorce on 07.11.2017 only. It has been thus claimed that the marriage was void as the petitioner himself suffered from a legal handicap, as he could not contract second marriage during the subsistence of the first wife.
3. In the petition filed seeking annulment of marriage, wife filed application seeking maintenance pendente lite. The same was contested by the husband claiming that the petition has been filed under



the provisions of Specific Relief Act and not under Hindu Marriage Act. It was further claimed that the marriage itself being void, the applicant being not a legally wedded wife was not entitled to claim maintenance under Section 24 of Hindu Marriage Act. Family Court vide impugned order rejected the objections raised by husband. Allowing application under Section 24 of the Hindu Marriage Act, wife was awarded interim maintenance pendente lite to the tune of Rs.25,000/- per month.

4. Learned counsel for the petitioner while assailing the impugned order has raised two fold submissions. He submits that the petition filed by the petitioner seeking declaration of the marriage to be void has its genesis under Section 34 of the Specific Relief Act and is mere a declaratory suit and not a petition under Section 11 of the Hindu Marriage Act. Thus, Section 24 was not applicable. He further submits that evidently the marriage having been solemnized while earlier marriage of the petitioner was still in vogue, respondent-wife not being a legally wedded wife was not entitled to claim maintenance pendente lite.

5. I have heard counsel for the petitioner and have carefully gone through the records of the case.

6. The first plea with respect to the petition being a suit under Section 34 of the Specific Relief Act is misconceived. Counsel for the petitioner is not in a position to dispute that the petition itself was instituted before Family Court and not before Civil Judge. The nomenclature of the petition does not explicitly mentioned the provision under which the same was filed. However, keeping in view the forum where it was instituted and is being tried, the plea raised lacks bonafide and deserves to be rejected. Thus, it can be safely concluded that even



though the petition has been filed without mentioning the provision, the same having tapings of the relief as provided under Section 11 of the Hindu Marriage Act has to be construed as petition under Section 11 of the Hindu Marriage Act for all intents and purposes.

7. So far as the second limb of the argument is concerned, the same is again misconceived. It is not disputed that the annulment of marriage has been sought for the reason that the marriage was indeed solemnized. Petitioner knew of his own legal handicap and yet solemnized the marriage with the respondent. Thus, at this stage he cannot be allowed to usurp the right of the wife claiming that she is not his legally wedded wife pleadings his own fully.

8. In view of above, the present petition being totally misconceived and lacking in bonafide, the same is dismissed.

(PANKAJ JAIN)
JUDGE

19.11.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No