

Before Daya Chaudhary, J.

DHARAWANT SINGH — *Petitioner*

versus

NARINDER KAUR — *Respondent*

CR No. 1356 of 2016

April 04, 2017

Constitution of India, 1950 — Art. 227 — Hindu marriage Act, 1956 — Ss. 9 & 24 — Revision Petition filed for setting aside order dated 26.10.2015 granting interim maintenance @ Rs.2000/- pm to wife and Rs. 2500/- pm each to minor children — Marriage between petitioner and respondent solemnized on 09.11.2008 — Two children born out of the wedlock — Wife left her matrimonial home in February, 2013 — Wife filed application u/s 24 of Hindu Marriage Act — Trial Court allowed the application by granting interim maintenance to tune of Rs. 2000/- p.m. to wife and Rs. 2500/- pm each to minor children — Petitioner submits that wife left herself the matrimonial home- but never came back — Petitioner states that he was not working as a foreman and was not getting salary of Rs. 10,000/- pm — He states himself to be a labourer and earns Rs. 5000/- pm only — submits that an amount of Rs. 7000/- (in total) is on higher side — Petition allowed — Matter remanded back.

Held that though S. 24 of the Act does not specifically show that maintenance for child may also be awarded but I am of the opinion that in case, the children are also residing with the party for whom the maintenance has been claimed, the Court is competent to award maintenance under this provision.

(Para 10)

Further held that the Court is guided by the criterion provided in the section, namely, the means of the parties and also after taking into consideration the relevant factors like social status; the background from which both the parties belong, the economical dependency of the respondent party.

(Para 13)

Pritam Saini, Advocate
for the petitioner.

Harmanpreet Kaur, Advocate
for the respondent.

DAYA CHAUDHARY, J.

(1) The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 26.10.2015 passed by learned Civil Judge (Senior Division), Rajpura, whereby, interim maintenance @ Rs. 2,000/- per month has been granted to respondent-wife and Rs. 2500/- per month each to minor children, namely, Harminder Kaur @ Harmandeep Kaur and Gurjoban Singh from the date of filing of application under Section 24 of the Hindu Marriage Act.

(2) Briefly, the facts of the case are that the marriage between the petitioner and respondent was solemnized on 09.11.2008 as per sikh rites and from the said wedlock, two children were born. However, some differences arose between the parties and the respondent-wife left her matrimonial home in the month of February, 2013. Respondent-wife has filed an application under Section 24 of the Hindu Marriage Act for grant of litigation expenses and interim maintenance as petition under Section 9 of the Hindu Marriage Act was pending.

(3) As per claim of respondent-wife, the petitioner-husband was working as Foreman and was getting salary of Rs. 10,000/- per month. It was also mentioned in the application that there was an agriculture income of Rs.4 lakh per year. Reply to the application was filed and averments made in the application were denied. The trial Court allowed the application by granting interim maintenance to the tune of Rs. 2000/- per month to respondent-wife and Rs. 2500/- per month each to minor children Harminder Kaur @ Harmandeep Kaur and Gurjoban Singh from the date of filing of application.

(4) Aggrieved by order granting maintenance to respondent-wife and children, the present revision petition has been filed by raising various grounds.

(5) Learned counsel for the petitioner submits that the respondent-wife left herself the matrimonial home on her own and took away along with all jewellery and other items. She went to her parental home with a promise to come back after a week but thereafter, she never come back. Learned counsel also submits that after some time, the petitioner visited the house of parents of respondent-wife with panchayat members of the village but she and her family members refused to send her back. Learned counsel further submits that the order of interim maintenance has been passed without taking into consideration the evidence and without considering the actual income

of the petitioner. The petitioner was not working as Foreman and was not getting salary of Rs. 10,000/- per month. He is labourer by profession and earns only Rs. 5,000/- per month. There was no document on record to prove the income of the petitioner but still the maintenance, which is on the higher side, has been granted. Petitioner is ready to keep the respondent-wife along with children but it is only the respondent-wife, who is not ready to accompany him without any reasonable cause. At the end, learned counsel for the petitioner submits that an amount of Rs. 7,000/- (in total) is on the higher side and the same may be reduced to some reasonable amount.

(6) Learned counsel for the respondent submits that for interim maintenance, the evidence of any income is not required to be proved as it is a matter of evidence and the same is to be considered during trial. The interim maintenance is granted only on the basis of factors that the respondent-wife is not in a position to maintain herself and there is no other source of her income. Even it has not been denied by the petitioner-husband that he is not earning anything. Only it has been mentioned that the petitioner-husband is not getting salary, which has been mentioned by the respondent-wife.

(7) Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

(8) Undisputedly, the respondent-wife has filed a petition under Section 9 of the Hindu Marriage Act for the restitution of conjugal rights. In that petition, she has filed an application under Section 24 of the Hindu Marriage Act for grant of interim maintenance pendente-lite as well as litigation expenses. The said application was contested by the petitioner by way of filing reply and the application filed by respondent-wife and two minor children was allowed by granting interim maintenance @ Rs. 2000/- per month to respondent-wife and Rs. 2500/- to both the children each by giving a finding that petitioner-husband is an able-bodied person and it is his legal and moral duty to grant interim maintenance to his legally wedded wife and children. The said amount of maintenance has been awarded with effect from the date of filing of application.

(9) Section 24 of the Hindu Marriage Act is reproduced as under

“S. 24.- Maintenance pendente 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 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.”

(10) Section 24 of the Act 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. Although, the wordings of Section 24 of the Act do not specifically show that maintenance for child may also be awarded under this provision but I am of the opinion that in case, the children are also residing with the party for whom the maintenance has been claimed and that party is maintaining the children, the Court is competent to award maintenance even under this provision for the children.

(11) Hon'ble the Apex Court in case *Smt. Jasbir Kaur Sehgal* versus *District Judge, Dehradun and others*¹ has held that Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Under the provisions of Hindu Adoption and Maintenance Act, 1956, it is the obligation of a person to maintain his minor son/children if he/she is/are unable to maintain himself/herself/themselves. Thus, it is the legal obligation of the respondent to maintain the minor children. The Court is entitled to award maintenance even for children also.

(12) In the present case, two minor children are residing with the respondent-wife and there is no other source of income.

¹ AIR 1997(SC) 3397

(13) The very language of Section is also apparent and wide discretion has been conferred on the court in the matter of an order for interim maintenance. The discretion conferred on the court is wide as Section 24 of the Act provides the guideline inasmuch as while fixing the interim maintenance, the Court has to give due regard to the income of the respondent and the petitioner's own income. However, the Court is guided by the criterion provided in the section, namely, the means of the parties and also after taking into consideration the relevant factors like social status; the background from which both the parties belong, the economical dependency of the respondent party. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court is not necessary but these relevant factors, as mentioned above, are to be taken into account and the Court is to arrive at a proper conclusion by considering these factors.

(14) In the present case, the respondent-wife has no independent source of income and not only she is to support herself but to her minor children also. The respondent-wife cannot be deprived of from getting the amount to earn her livelihood as well as for her two minor children.

(15) Same view was held in the judgment of this Court in case *Hanish Kumar* versus *Deepika and another*² as well as judgment of Karnataka High Court in case *Smt. Padmavathi and others* versus *C. Lakshminarayana*³

(16) In *Smt. Padmavathi's* case (supra), the judgment of Division Bench of Madhya Pradesh High Court titled as *Durga Singh Lodhi Bench* versus *Prembai*⁴ was also relied upon, wherein, it has been held as under :-

“It includes capacity to earn money. A healthy and able-bodied person but without any visible or real property must be held as having means to support his wife or child. Once a person has capacity to earn, he cannot escape his liability to maintain under Section 125(1). A Full Bench of the Rangoon High Court, in *Maung Tin* versus *Ma Hmin*, *AIR 1933 Rangoon 138 : (1933(34) Crl. L.J. 815)* held that sufficient means is not confined to pecuniary resources. This view was shared by the Nagpur High Court in *Abdul Wahub* versus *Sugrabi*, *(1936) 37 Crl. L.J. 86*. The Madhya

² 2015(4) RCR (Civil) 59

³ 2003(3) RCR (Civil) 158

⁴ 1990(2) RCR (Criminal) 697

Bharat High Court, in *Prabhulal* versus *Parwatibai*, AIR 1952 Madh Bha. 96 even went to the extent of saying that mere minority or the fact that the husband does not work cannot come in the way of grant of maintenance to the wife. What should be ascertained is the earning capacity of the husband, if he is compelled to work, Rs.Means', of course, has to be sufficient to maintain. An able bodied person in our opinion, must be held as having sufficient means to maintain and it will always be for such a person to prove to the contrary. The view taken by the Delhi High Court, in *Chander Prakash* versus *Shila Rani*, AIR 1968 Delhi 174 : 1968 Crl. L.J. 1153 in this regard, is that an able-bodied young man must be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control to earn enough to discharge his legal obligation of maintaining his wife and child. We are, therefore, of the firm opinion that as person cannot avoid his liability under Section 125(1), Criminal Procedure Code merely because he has no tangible real property or income, but is otherwise able bodied and healthy and has capacity to earn. The presumption should be that such an able-bodied and healthy person has capacity to earn. The presumption should be that such an able-bodied healthy person is possessed of sufficient means and it is for him to show that by accident, disease or the conditions of labour market or otherwise, he is not capable of earning anything."

(17) In *Smt. Jasbir Kaur Sehgal's* case (supra), Hon'ble the Apex Court, has made following observations :-

"6.In this case since the wife has no income of her own, it is the obligation of the husband to maintain her and her two unmarried daughters one of whom is living with wife and one with him. Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is maintenance of the wife alone and no one else. Since wife is

maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife. We are aware of the provisions of Section 26 of the Act providing for custody of minor children, their maintenance and education but that section operates in its own field.”

(18) Similarly, in *Smt. Padmavathi's* case (supra), the observations of Karnataka High Court, are as under :-

“9. The law relating to matrimonial cause provides for rules for payment of maintenance pendent lite and expense of the proceedings. Section 24 of the Act has been enacted with a view to empower the Court to direct payment of maintenance to the husband or the wife as the case may be, provided he or she has no independent income sufficient for his or her support and necessary expenses of the proceedings. Under this Section 24 the amplest discretion is conferred on the Court to award interim maintenance. However, the Court is required to take into consideration the income of the parties before deciding the quantum of interim maintenance. The Court has to keep in view the need of the applicant and paying capacity of the non applicant. While considering the application under this Section, the Court is expected to make a summary enquiry and the Court need not try the issue at length. The granting of maintenance under this Section is a matter of discretion but like all other discretion's exercisable by the Court, this discretion has to be exercised judicially and in accordance with law. The Court is empowered to make an order which is to operate during the pendency of the proceedings.”

(19) Although, the law position is clear from various judgments and all factors, which are relevant to be considered for grant of interim maintenance have not been considered by the trial Court while passing the impugned order. No doubt, at this stage, there cannot be any evidence but still the factors are necessary to be considered. Neither any discussion is there as to how the children are entitled for interim maintenance in a petition filed under Section 24 of the Hindu Marriage Act. The contentions raised by petitioner-husband are necessary to be considered.

(20) Accordingly, the revision petition is allowed and the case is remanded back to the trial Court to reconsider the case afresh and pass necessary orders after considering all these factors which are necessary for grant of interim maintenance and law position as discussed above.

Amit Aggarwal