

action of the Arbitrator was, therefore, not only in clear violation of the Rules but also against the well-established rules of natural justice requiring that no one shall be condemned unheard. The executing Court was thus well-justified in upholding the objection of the judgment-debtor and declaring the award to be incapable of execution as it was without jurisdiction and a nullity.

(4) Mr. K. N. Tewari, learned counsel for the respondent, urges that a notice was necessary to the judgment-debtor by the Registrar or the Assistant Registrar before the Arbitrator was appointed but it is not necessary to express any opinion on that question when the award is otherwise patently illegal and inexecutable for reasons stated above.

(5) In the result, there is no merit in the appeal which stands dismissed. The parties are left to bear their own costs.

B. S. G.

APPELLATE CIVIL

*Before Gopal Singh, J.*

KAMLA RANI,—Appellant.

*versus*

RAJ KUMAR,—Respondent.

**F. A. O. No. 44-M of 1970**

January 27, 1971.

*Hindu Marriage Act (XXV of 1955)—Sections 9 and 24—Proceedings for restitution of conjugal rights against wife—Maintenance allowance to the wife under section 24 during such proceedings—Whether payable only from the date of order granting the same.*

*Held*, that under section 24 of the Hindu Marriage Act, 1955, monthly maintenance allowance to support the wife has to be paid for the period during which proceedings of the petition for restitution of conjugal rights under section 9 of the Act remain pending against the wife. Under this section, the wife is entitled to the maintenance allowance for the whole of the said period unless the husband can show that she has some independent income sufficient for her support or there are any other circumstances disentitling her to claim that maintenance. She has a right for arrears of

**Kamla Rani v. Raj Kumar (Gopal Singh, J)**

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maintenance from the date she contests the proceedings upto the date of the order under section 24 of the Act. The expression 'during the proceedings' in the section does not imply that that allowance is payable only from the date of its order. Its payment can start with retrospective effect for the whole period of the proceedings.

(Para 5)

*First Appeal from order of Shri Harnam Singh, Sub-Judge, 1st Class, Samrala, dated 26th June, 1970, ordering that the respondent shall pay to the petitioner Rs. 125 on account of expenses of the proceedings and Rs. 70 P.M. from 26th June, 1970 as maintenance.*

M. P. MALERI, ADVOCATE, for the appellant.

NARINDER SINGH, ADVOCATE, for the respondent.

**JUDGMENT**

GOPAL SINGH, J.—(1) This is first appeal filed by Smt. Kamla Rani against her husband Raj Kumar from the order of Shri Harnam Singh, Sub-Judge 1st Class, Samrala fixing expenses for proceedings at Rs. 125 and monthly expenses by way of maintenance at Rs. 70 per mensem in favour of Smt. Kamla Rani against her husband on an application made by the former under Section 24 of the Hindu Marriage Act, 1955.

(2) Raj Kumar, the husband filed petition on May 21, 1968 against his wife, Smt. Kamla Rani under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. After the wife was served, she made an application under Section 24 of the Hindu Marriage Act on November 21, 1968 for fixation of expenses of the proceedings and for monthly maintenance allowance for the period of proceedings of the petition on the ground that she had no independent income sufficient for her support and these expenses should be awarded to her against her husband. I have treated the date of November 21, 1968 as the date when the wife came to know about the pendency of proceedings under Section 9 of the Hindu Marriage Act. The Counsel for both the parties have not contested the correctness of that date as the date both for her service and her appearance in the proceedings under Section 9 of the Act.

(3) In course of hearing of the petition, there was recorded the evidence of Smt. Kusam Gupta, Head Mistress, Som Nath Arya Kanaya

Pathshala, Ropar. She stated that the wife served as a teacher in her school from May 1, 1969 to August 31, 1969 receiving Rs. 223 per mensem as salary including allowances. The husband gave oral evidence by himself going into the witness box stating that she was employed as a teacher. The wife denied that fact except that she had served as a teacher in the Kanaya Pathshala, Ropar as proved by the evidence of Smt. Kusam Gupta. It was on the basis of that evidence that the trial Court fixed the above amount of Rs. 125 for litigation expenses and Rs. 70 per mensem as monthly maintenance allowance. The trial Court, however, granted monthly maintenance allowance payable from the date of the order. The present appeal is directed against that order confined only to the question that the sum of Rs. 70 per mensem fixed by the trial Court be also payable to the appellant for the period of proceedings of petition under Section 9 of the Hindu Marriage Act earlier than the date of the order and not from the date of the order.

(4) Section 24 of the Hindu Marriage Act, under which the amount of monthly maintenance allowance is being claimed by the wife runs as follows :—

“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.”

(5) As the above reproduced language of Section 24 shows, the monthly or monthly maintenance allowance to support the wife has to be paid for the period, during which the proceedings of the petition under Section 9 of the Hindu Marriage Act remained pending against the wife. The Section does not admit of any doubt as to the wife being entitled to the maintenance allowance for the said period unless the husband can show that she had some independent income sufficient for her support or there are any other circumstances disentitling her to claim that maintenance. There is no warrant for the suggestion made on behalf of the Counsel for the husband that direction for

Inder v. Gurdit Singh (Sodhi, J.)

arrears of maintenance from the date she contested the proceedings upto the date of the order under Section 24 of the Act could not be made. The expression, 'during the proceeding' in relation to the monthly maintenance allowance to be fixed by the Court determines the period for which the wife is entitled to maintenance and does not imply that that allowance is payable only from the date of its order. Its payment can start with retrospective effect for the period of the proceedings and not from the date of the order only. Thus, the view taken by the trial Court that the wife is entitled to maintenance from the date of the order is untenable and liable to be set aside.

(6) According to the evidence given by Smt. Kusam Gupta as referred to above, the wife earned pay and allowances as a teacher for four months from May 1, 1969 to August 31, 1969 and thus had independent income sufficient for her support or maintenance. She is, therefore, not entitled to any maintenance allowance for that period of four months, when she served as a teacher.

(7) The correctness of quantum of expenses fixed for the proceedings pending under Section 9 of the Hindu Marriage Act has not been challenged. Hence, the figure of Rs. 70 per mensem stands undisturbed.

(8) For the foregoing reasons, I allow the appeal and modify the order of the trial Court to the extent of awarding also monthly maintenance allowance at Rs. 70 per mensem with effect from November 21, 1968 upto the date of the order barring the period from May 1, 1969 to August 31, 1969, when she served as a teacher. The order already passed for fixation of maintenance from the date of the order for the period of proceedings commencing from that date has not been sought to be appealed from and remains otherwise operative. There will be no order as to costs.

B. S. G.

CIVIL REFERENCE

Before H. R. Sodhi, J.

INDER,—Petitioner.

versus

GURDIT SINGH,—Respondent.

Civil Reference No. 1 of 1970

February 8, 1971.

The Punjab Tenancy Act (XVI of 1887)—Section 77(3) (k)—Evidence Act (I of 1872)—Section 115—Plaintiff filing suit in Revenue Court for