

Neutral Citation No. - 2024:AHC-LKO:74139-DB

Court No. - 10

Case :- FIRST APPEAL No. - 195 of 2024

Appellant :- .

Respondent :

Counsel for Appellant :- Prachish Pandey

Hon'ble Vivek Chaudhary,J.

Hon'ble Om Prakash Shukla,J.

1. Heard Mr. Prachish Pandey, learned counsel for the appellant.
2. The instant Appeal having been filed under Section 19(1) of Family Court Act, 1984 is directed against an order dated 23.09.2024 passed by the learned Additional Principal Judge, Family Court, Court No.4, Lucknow in "Civil Suit No.5513/2023; _____", under Section 24 of Hindu Marriage Act, whereby the learned Family Court has directed the petitioner(husband) to pay one time Rs.50,000/- for legal activities (litigation expenses) to the opposite party(wife) in the case and also directed him to pay one time Rs.10,000/- as litigation costs and Rs.500/- per hearing, within 30 days from the date of order .
3. Facts in the nutshell would be that the marriage between the appellant- _____ and respondent- _____ was solemnized on 23.01.2011 and out of the said wedlock, one son was born on 05.11.2015. Apparently, the matrimonial relation between the parties become strained and due to indifference the opposite party started living separately.
4. In the aforesaid background, the appellant filed a divorce suit under Section 13 of Hindu Marriage Act,1955 (hereinafter referred to as "Act of 1955"), bearing Matrimonial Case No. 559/2023 before the learned Additional Principal Judge, Family Court, Court No.4, Lucknow (_____), wherein, the respondent moved an application under Section 24 of Act of 1955, seeking pendent-lite maintenance.

5. On 23.09.2024, the learned Family Court, came to allow the application filed by the Respondent under Section 24 of Hindu Marriage Act,1955 challenged in the present appeal.

6. Assailing the order dated 23.09.2024, under appeal, learned counsel for the appellant submits that the learned Family Court has not considered the fact that the Respondent-Wife is living separately from the appellant without any plausible justification or any rhyme or reason and most importantly, the learned Family court has overlooked the fact that the department of the appellant has already directed him to pay Rs.67,538/- in fifteen installments for the maintenance of his family, which according to the learned counsel ought to had been factored in while awarding any amount to the Respondent-Wife.

7. Learned Counsel for the appellant further submits that the impugned order is totally illegal and arbitrary and is liable to be set aside.

8. We have considered the submissions made by the learned Counsel for the appellant and perused the records.

9. We find that only point to be considered in the present Appeal is as to whether on the basis of pleading and evidence, the family court has rightly passed the order dated 23.09.2024, whereby application under Section 24 of Hindu Marriage Act, came to be allowed?

10. Before coming to other facts submitted before us suffice would be to say that by the impugned order the Court has granted only the expenses which the wife is going to make in the divorce suit before the Family Court. Therefore, if any, amount is being paid under the orders of the Department for maintenance of children, the same does not in any manner impact the expenses which the wife is required to make in the suit before the Family Court.

11. It further appears from the order dated 23.09.2024 that on the basis of evidence, the family court found and recorded finding(s) that appellant is a

Colonel in Indian Army and he is having good source of income and family court has also given its finding that respondent has no source of income for her livelihood and her child as well as she is also not getting any maintenance.

12. It is no longer *res Integra* that a husband's obligation to maintain his wife arises on marriage, whereas such an obligation towards the children arises on their birth. These obligations are imposed on him by operation of law. It is also a moral obligation imposed upon him and it would rather be 'immoral' and 'illegal' to deny them maintenance. In our view, it is a sacred duty of an ably bodied husband or father, as the case may be, towards his wife and children to maintain in all circumstances.

13. In a matrimonial proceeding, the wife and children are pitted against the husband or the father, as the case may be and in most of the cases they are not on equal footing. Some gets financial support from their parents, brothers and sisters and also some work and earn, in exceptional cases. However, in all cases, the women and children are unable to face the onslaught of matrimonial proceedings because of their financial crisis, which tends to be exploited by the husbands.

14. It is this precarious situation, which the provisions of section 24 of the Hindu Marriage Act, seeks to balance. In a matrimonial proceedings instituted under the personal laws, the wife can seek maintenance against the husband under the provisions of the Hindu Adoption & Maintenance Act as well as under the Hindu Marriage Act. The present issue emancipates from section 24 of the Hindu Marriage Act, which pertains to pendent-lite i.e during the pendency of the matrimonial proceedings. The said provision is of great significance as it is in the nature of providing a stop-gap arrangement during the pendency of the matrimonial proceedings, wherein a wife without proper financial support, may not be able to defend her case diligently and may also be not placed equally like her husband. The said provision tends to create a fiction of equality, wherein the wife is tried to brought equally, atleast financially along with the husband, so that the matrimonial case initiated is pursued by both the parties suitably & equally. In a way, pendent-lite is an aid

to the legal expenses, which the wife may have to be forced to spend for the litigation initiated by the husband or by herself under the provisions of the Hindu Marriage Act.

15. Thus, these interim maintenance came to be called 'pendent lite maintenance', which is also in the nature of a 'temporary alimony' to the wife and are in the nature of granting 'interim relief, 'interim measure', 'interim protection' etc.

16. Time & again, the court have held that the component of such maintenance includes a 'reasonable and a fair' amount for the woman to maintain herself 'according to the mode of life to which she is accustomed to', or 'according to the status to which she is entitled to', 'or according to the mode or life style to which her husband is accustomed to'. But, in any case, it cannot be for a luxurious mode of living or for 'extravagans' and not beyond the means of the husband. In case of children, this component also includes their educational expenses. They can be granted litigation expenses and monetary relief to cover their to and fro expenses to attend the Court and return their homes.

17. 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.

18. Section 24 of the Hindu Marriage Act seeks to provide financial support to withstand the financial crisis arising out of the separation and also to face the matrimonial proceedings initiated by her husband. The object behind Section 24 of the Hindu Marriage Act is survival of the wife as long as the matrimonial proceedings are pending. It also ensures to the appeals, revisions and connected proceedings arising out of the matrimonial

proceedings, either from the pendente lite maintenance proceedings or from the main matrimonial proceedings.

19. The prominence of these maintenance orders passed by the Matrimonial Courts/Civil Courts under Section 24 of the Hindu Marriage Act can also be contemplated from the fact that these orders have been made enforceable/executable as a Civil Court decrees under Section 51 and Order XXI of the Civil procedure Code, 1908, although the said maintenance order passed under Section 24 of the said Act, will come to an end when the matrimonial proceedings comes to an end.

20. The division Bench of this Court in the case of **Rajendra Prasad Versus Meena and another** reported in (2017) 6 AWC 5963, observed as under:

"A plain reading of the Act shows that intention of the legislature is that where in any proceedings 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, order the respondent to pay the expenses of the proceedings and monthly maintenance during the proceeding. These words make the intention of the legislature quite clear that expenses have to be allowed by the Court if the requirement as provided under Section 24 of Act are fulfilled for a period during the pendency of the suit or proceeding. It may be noted that the benefits granted under this Section are only temporary in nature and there are other provisions of law where a wife, who is not able to maintain herself, can claim maintenance/permanent alimony from the husband e.g. Section 25 of HMA or under provisions of Hindu Adoption and Maintenance Act.

Section 24 talks about interim relief which can be granted during the pendency of proceedings in Hindu Marriage Act. Once the case is over, Section 24 benefits will automatically stop. It is available only for Hindus.

It is thus clear that the right to claim maintenance or litigation expenses under Section 24 of the Hindu Marriage Act, is not made available generally to the parties to a marriage but only when a proceeding between the spouses are pending under that Act, and in that respect, the right conferred under Section 24 of that Act, is in the nature of a special statutory right not in any manner outside the provisions of Section 24 of the Hindu

Marriage Act. The purpose behind Section 24 of the Hindu Marriage Act is that parties to a matrimonial cause should not take undue and unfair advantage of a superior financial capacity to defeat the rightful claims of a weaker party and the proceedings under Section 24 of the Act serves a limited purpose, i.e., during the pendency of proceedings under that Act, to enable the weaker party to establish rights without being in any manner hindered by lack of financial support.

The cause of action for filing a petition under section 24 of the Act would arise only when there is a matrimonial proceeding initiated by the husband or wife. Therefore, the primary requirement for claiming maintenance under section 24 of the Act is the pendency of a matrimonial proceeding. This provision was introduced with a laudable object of ensuring maintenance to a party in the proceeding so as to enable him or her to maintain themselves during the pendency of such proceedings. This provision also permits the Court to award reasonable amount for the purpose of conducting the matrimonial proceeding. There is no ceiling time prescribed for the purpose of granting maintenance under section 24 of the Hindu Marriage Act. Section 24 of the Act seeks to maintain an equilibrium between the two parties to the litigation during the pendency of the proceeding as it makes provision for payment of maintenance for a party who is in a disadvantageous position to maintain and to contest the proceeding on account of poor economic condition.

A spouse unable to maintain himself/herself is entitled to maintenance on the principle of equi-status and respect that the spouse would have enjoyed if he/she continued to live with other spouse. It is pertinent to mention that the provisions of Section 24 are beneficent in nature and the power is exercised by the Court not only out of compassion but also by way of judicial duty so that the indigent spouse may not suffer at the instance of the affluent spouse. The Court while considering the merits of an application for grant of an interim maintenance under Section 24 has to necessarily arrive at prima-facie determination about the earning capacity of the rival claimant. The determination cannot be made with exactitude; it is essentially interim in nature. The Court is called upon to make a summary consideration of amount which the applicant is to be awarded by way of maintenance pendente-lite and litigation expenses in accordance with the financial resources of the parties. In the instant case, the wife has stated that the husband-appellant has deserted her in October, 2010 and since then he has not given a single penny towards maintenance. She has also brought on record the fact that the appellant is running a general store shop and is having agricultural income. The court below after considering the entire facts and the assertion of the

appellant that his only source of income is by doing labour work, awarded a sum of Rs. 2000/- per month to the first respondent [wife], which is perfectly justified in the circumstances of the case."

21. In the instant case, without there being any adjudication on the aspect as to whether the wife is staying away from the husband without any justifiable reason or not, the paramount interest of the wife is to be adjudged on the parameters given in Section 24 of the Hindu Marriage Act, namely, whether she has independent and sufficient income for her up keep or not. There is no material brought on record to point out that respondent wife has no independent source of income for her sustenance, whereas it has come on record that the Appellant- husband is a colonel in the Indian Army and draws a handsome salary. In absence of any such material, the discretion which has been exercised by the learned family court by awarding Rs.50,000/- to the Respondent/Wife for filing of reply and an amount of Rs.10,000/- as well as Rs.500/- per hearing, to be paid within 30 days from the date of order by the appellant, cannot be interfered in the supervisory jurisdiction of this Court unless perversity is explained on the face of the record. In the opinion of this Court since there is no perversity in the impugned order, it does not call for any interference.

22. Thus, in view of above, there is no illegality or infirmity in the order. For all the aforesaid reason, we do not find the present Appeal to be a fit case for interference.

23. The Appeal is **dismissed** accordingly.

24. No order as to the costs.

(Om Prakash Shukla,J.) (Vivek Chaudhary,J.)

Order Date :- 11.11.2024

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