SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Gopal Kishan Vs. Kanchan @ Menu

Gopal Kishan Vs. Kanchan @ Menu

SooperKanoon Citation : sooperkanoon.com/1171983

Court : Delhi

Decided On : Nov-19-2014

Judge : Sunil Gaur

Appellant : Gopal Kishan

Respondent : Kanchan @ Menu

Advocate for Def. : Mr. Tabrez Alam

Advocate for Pet/Ap. : Ms. Isha Khanna

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: November 19, 2014 + C.M.(M) No.690/2014 & C.M. Nos. 11605-06/2014 GOPAL KISHAN Through: ..... Petitioner Ms. Isha Khanna, Advocate versus KANCHAN @ MENU Through: ..... Respondent Mr. Tabrez Alam, Advocate CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL) % In a petition for restitution of conjugal rights filed by petitioner, the respondent had filed an application under Section 24 of The Hindu Marriage Act, 1955 to seek interim maintenance and vide impugned order of 21st January, 2014, interim maintenance of `7,000/- per month each to the two children of the parties, aged seven years and three years respectively, has been granted, which is under challenge in this petition. It is evident from trial courts order of 16th September,

2013 that while arguments on application under Section 24 of The Hindu Marriage Act,1955 were being addressed, petitioner-husband had withdrawn his petition for restitution of conjugal rights, which was opposed by the respondent but petitioner was permitted to withdraw the petition under Section 9 of The Hindu Marriage Act, 1955 while making it clear that arguments on application under Section 24 of The Hindu Marriage C.M.(M) No.690/2014 Page 1 Act,1955 would continue. In the impugned order, trial court has relied upon oral assertions of respondent that petitioner is having rental income from part of his property and petitioner has not filed his bank account statements with salary slips and salary record and so, monthly income of petitioner has been assessed at `25,000/- per month and the rental income is assessed at `10,000/- and thus, the total income of petitioner has been assessed at `35,000/- per month. Along with this petition, petitioner has filed an application to place on record additional documents i.e. his salary record and it is submitted that net salary of petitioner is `5,121/- only and interim maintenance granted vide impugned order is much more than it. It was vehemently submitted by learned counsel for petitioner that petitioner is having no rental income and so, interim maintenance awarded vide impugned order deserves to be suitably reduced, as petitioner is hardly literate and is a semi-skilled worker, who is not earning more than his salary as reflected in the salary record. Learned counsel for respondent had supported the impugned order and had submitted that there is no illegality or infirmity in it and it was pointed out that petitioner is concealing his real income. Attention of this Court was drawn by learned counsel for respondent to the following observations made in the impugned order:29. It is a common practice for both the spouses to conceal their sources of income and their assets when it comes to claiming and contesting maintenance application, and to exaggerate that of the opposite spouse, court only is left with a C.M.(M) No.690/2014 Page 2 guess work. Both spouses are concealing in the present case about their real income and sources of income of the non applicant/husband as even lied about his expenses. Upon hearing and on perusal of impugned order and the material on record, I find that the afore-noted observation of trial court reflects the ground reality. Petitioner has not placed on record his bank statements nor has maintained that he does not have a bank account. Even the additional documents placed on record cannot be looked into because these are just photocopies.

However, in the impugned order, trial court has observed that even if it is taken that petitioner is a semi-skilled worker, still he will not be earning less than `10,000/- to `15,000/- per month. Petitioner is residing in Nihal Vihar, Kumhar Wali Gali, Nangloi, New Delhi and it has not come on record as to how many rooms petitioner has let out and so, in such a situation, the rental income may not be more than `5,000/- per month. Thus, it would be reasonable to assess income of petitioner at `20,000/- per month and out of it, petitioner cannot be asked to pay interim maintenance of `14,000/- per month to the children, which is apparently on the higher side. In view of aforesaid, interim order is modified and it is directed that petitioner shall pay interim maintenance @`10,000/- per month for the period in question. This petition and applications are disposed of with aforesaid directions. (SUNIL GAUR) JUDGE NOVEMBER19 2014 r C.M.(M) No.690/2014 Page 3

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com