

**indu Singh Vs. Dr. Ranjeet Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/126434](http://sooperkanoon.com/126434)

**Court :** Patna

**Decided On :** Jul-14-1995

**Judge :** S.J. Mukhopadhaya, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 24; Hindu Marriage (Amendment) Act, 1984 - Sections 24

**Appeal No. :** Civil Revision No. 2100 of 1994

**Appellant :** indu Singh

**Respondent :** Dr. Ranjeet Singh

**Advocate for Def. :** Dinesh Kumar Singh and V.N. Mishra, Advs.

**Advocate for Pet/Ap. :** Gautam Bose and Rajan Sahay, Advs.

**Disposition :** Application allowed

**Judgement :**

**S.J. Mukhopadhaya, J.**

1. The petitioner opposite party has challenged the order dated 17th September, 1994, passed by the learned Principal Judge, Family Court in Matrimonial Case No. 75/93, rejecting the prayer of the petitioner (the wife), relating toad-interim maintenance claimed under Section 24 of the Hindu Marriage Act.

2. The opposite party (the husband) is the petitioner in Matrimonial Case No. 75/93 filed against the petitioner (the wife) for dissolution of marriage under Section 13 of Hindu Marriage Act.

3. Admittedly, there are four female children born out of wedlock; the eldest being about 21 years of age and the youngest 5 years of age. The petitioner opposite party (the wife) filed a petition under Section 24 of Hindu Marriage Act, praying therein interim maintenance @Rs. 2,500/-per month and a sum of Rs.5,000/-as a lumpsum amount as cost of litigation, as according to the petitioner (the wife), the income of the opposite party (the husband) is more than Rs. 10,000/- per month, the husband being Senior Professor in the Magadh University.

The Court below has rejected the claim of the petitioner (the wife) relating to ad-interim maintenance under Section 24 of the Hindu Marriage Act, by the impugned order dated 17th September, 1994, on the ground that the petitioner (the wife) cannot be deemed to be an indigent person to enable her to get interim maintenance. While rejecting such prayer for interim maintenance, the Court below by the impugned order has allowed the other prayer of the petitioner (the wife) by allowing a sum of Rs. 4,000/- as lump-sum amount towards the cost of litigation, to be paid in favour of the petitioner (the wife) by the husband.

4. When the case was taken up. Counsel for the opposite party (the husband) raised preliminary objection relating to maintenance of the instant civil revision application itself. According to me Opposite Party (the husband), the Civil Revision is not maintainable in terms of Section 19 of Family Courts Act, 1984. According to the Counsel for the opposite party, the petitioner should have filed an appeal/petition against the impugned order.

5. Both the Counsel also advanced their arguments on the merit of the case. In view of the aforesaid fact, there are two questions that are to be determined in the present civil revision application, namely (i) whether the civil revision application is maintainable against an order relating to ad-interim maintenance under Section 24 of the Hindu Marriage Act, if passed by a Family Court and; (ii) whether on merit, the impugned order passed by the Family Court, rejecting the prayer of the petitioner (the wife) for grant of ad-interim maintenance under Section 24 of the

Hindu Marriage Act, on the ground that the petitioner (the wife) is not an indigent person, is a reasoned valid order or not.

6. With respect to the first point, namely, maintenance of Civil Revision Application, Counsel for the opposite party (the husband) handdrawn my attention towards the provision of Section 19(1) of the Family Courts Act, 1984. It was contended that in terms of the said Section 19(1), the appeal is only maintainable against every judgment and/or order passed by a Family Court. It was further submitted by the Counsel for the opposite party (the husband) that in terms of Section 19(3) of the said Act, 1984, the appeal having not preferred before this Court within 30 days, the petitioner (the wife) is also debarred from filing such appeal before this Court. It was further submitted that the impugned order having reached its finality, this Court should not interfere in this matter.

7. Counsel appearing on behalf of the petitioner (the wife), on the other hand, while making his submission, relied on the some provision of Section 19(1) of the Family Courts Act, 1984. According to the Counsel for the petitioner (the wife), an order passed under Section 24 of the Hindu Marriage Act relating to ad-interim maintenance, being an interlocutory order, in nature, the appeal is not maintainable and she has rightly chosen the Forum by filing the instant civil revision-application, which is maintainable according to law.

8. Having heard the parties with respect to the very first point, I feel that the contention raised by the Counsel for the petitioner is correct. Section 19(1) of the Family Courts Act, 1984 reads, as follows :

'Appeal. (1) Save as provided in Sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.'

From plain reading of the aforesaid Section 19(1) of the Family Courts Act, 1984, it is evident and clear that the appeal is only maintainable against every judgment and/or order, but it is not maintainable against an interlocutory order. According to

me, an order passed under Section 24 of the Hindu Marriage Act, for ad-interim maintenance, being an interlocutory order, appeal under Section 19(1) of the Family Courts Act, 1984, is not maintainable. The petitioner has rightly chosen the Forum of civil revision application before this Court and the same is maintainable.

9. So far as the second point is concerned. Counsel for the petitioner made the following submissions:

It was submitted that the Court below by impugned order has taken into account, the sale proceeds of ornaments, out of which the petitioner (the wife) has deposited some amount in the Bank. It was submitted that the same is not permissible. He relied on the decision in the case of Radhika Bai v. Sadhu Ram, reported in AIR 1970 Madhya Pradesh 14.

It was further submitted by the Counsel for the petitioner that the earning of the petitioner (the wife), as has been shown by the Court below is erroneous having based on income, which is not permanent in nature.

It was further submitted by the Counsel for the petitioner that the Court below had failed to take into account the actual earning of the opposite party (the husband), for the purpose of coming to a just conclusion as to whether the petitioner (the wife) has 'sufficient independent income' or not, which is directly related with the status of an individual. He relied on the decision in the case of Smt. Ganga Pandik Waghmare v. Pandtik Maroti Waghmare & Anr., reported in AIR 1979 Bombay 264.

10. Counsel for the opposite party (the husband), on the other hand, submitted that the calculation that has been shown by the Court below vide the impugned order, is sufficient and thereby, the petitioner cannot be held to be an indigent person. Counsel for the Opposite Party (the husband), while relying on his show cause reply, pointed out from different paragraphs and the Annexures attached thereto, that a huge amount is also deposited in the name of the petitioner (the wife) and/or in the name of the daughters. It was contended by the Counsel for the opposite party that most of the savings of the opposite party (the husband), having deposited in the name of the petitioner (the wife), and/or children, and as die

petitioner (the wife), is living with children in his (husband's) ancestral house, there was no question of giving any ad-interim maintenance in favour of the petitioner (the wife) in terms of Section 24 of the Hindu Marriage Act.

11. It will be evident from the impugned order dated 17th September, 1994 that the Court below has come to the conclusion that the petitioner (the wife) has admitted income of Rs.1,374/-per month and thereby/she cannot claim to be an indigent person. For the purpose of coming to such definite conclusion of income of the petitioner (the wife) to the tune of Rs. 1,374/- per month, the following purported income has been taken into account by the Court below :

(i) An interest of Rs. 233/- per month out of one Fixed

Deposit of Rs. 20,000/-. There being total three

Fixed Deposits of Rs. 20/000/- in the name of the

petitioner (the wife); the total interest, the petitioner

(the wife) receives out of the aforesaid three Fixed

Deposits is .....Rs. 699/-

(ii) The income of the petitioner (the wife), out of

another Fixed Deposit of Rs. 15,000/-, towards

monthly interest is .... Rs. 175/-

(iii) The income of the petitioner (the wife) from teaching

work is ..... Rs. 500/-

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Total .....Rs. 1,374/-

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12. In the case of Radhikabai v. Sadhu ram Awatrai (supra), the Court held, as follows:

'XXX XXX XXX XXX

Section 24 does not envisage substitution of the customary ornaments for the income nor can the Court, in our opinion/refuse to make a grant for support simply because the wife can pull on for some time by selling the ornaments. Accordingly, we find that there being no sufficient independent income, in fact no independent income at all, there was a case for grant for a support. There was also a case for a grant of expenses which has of course been met at least in part.

XXX XXX XXX XXX

All this is likely to be true, at any rate, broadly so, may be subject to some slight exaggeration by the husband who is anxious to avoid having to pay anything; but the real point is, whether because of a potential capacity to grant maintenance, in other words, is the phrase 'independent sufficient income' equivalent to 'potential earning capacity'. In our opinion, it is not. The earning capacity is problematic and, further, no husband can be relieved of his duty to maintain the wife simply by compelling her to earn her livelihood. That way also the case for maintenance is not satisfactorily explained away.'

13. It will be evident from the impugned order that the Court below in computing the earning of the petitioner has taken into account the money deposited by the petitioner (the wife) after selling her ornaments. If the Court, according to the aforesaid judgment, in the case of Radhikabai (supra), cannot rely on the customary ornaments for the purpose of computing income of the wife, I do not understand as to how the amount deposited by the petitioner (the wife) after sale of such ornaments can be taken into account to compute the income of the petitioner (the wife). It is to be taken into note that the petitioner sold the ornaments to save herself and her four daughters from starvation.

14. Apart from the aforesaid fact. Section 24 of the Hindu Marriage Act stipulates not only with respect to adinterim maintenance but also with respect to cost of

necessary expenses of proceeding. Therefore, it is evident that both (a) the maintenance and (b) the cost and necessary expenses to fight out the litigation, are dependent on the factor as to whether the claimant has 'sufficient independent income' or not. By the impugned order, the Court has allowed cost of Rs. 4,000/- in favour of petitioner (the wife) as necessary expenses of the proceeding. It means, the Court for the said purpose has come to a conclusion that the petitioner has got no 'sufficient independent income' to fight out the case. If such is the position, I do not understand as to how by the same impugned order, the Court below can held that the petitioner has got 'sufficient independent income', to determine tile ad-interim maintenance. The impugned judgment to that extent is contradictory.

15. It is to be taken into note that under Section 24 of the Hindu Marriage Act, the Family Court is to decide the ad-interim maintenance, taking into account as to whether the claimant has got 'sufficient independent income' or not. In absence of any income, the decision is to be given on the basis of income of the other party (the husband in this case). Therefore, it is clear that for the purpose of coming to a definite conclusion as to whether a person has got 'sufficient independent income' or not, the status of the person is to be taken into account, as also the income of the other party, the same having got direct nexus with 'sufficient independent income'.

In the present case, by the impugned order, the Court below has not taken into account the income of the husband of the petitioner (the opposite party). Thereby, it is dear that the Court has also erred in coming to a definite conclusion as to whether the petitioner (the wife) has got 'sufficient independent income' or not.

16. For the reasons stated above, I hold that the civil revision application is maintainable against an order of ad-interim maintenance, passed under Section 24 of the Hindu Marriage Act, 1984. I further hold mat the impugned order dated 17th September, 1994, as passed in Matrimonial Case No. 75/93 by the learned Principal Judge, Family Court, is also erroneous, both on facts and on law.

17. Accordingly, I set aside the impugned order so far as it relates to ad-interim maintenance is concerned and remit the matter to the Court below for deciding the matter afresh after hearing the parties.

It is expected that the order relating to ad-interim maintenance will be passed by the Court below within a period of two months from the date of receipt/ production of a copy of this order.

18. The civil revision application is allowed with the aforementioned observations and directions.

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