

Ashima Joshi Vs. Sameer Joshi

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Court : Madhya Pradesh

Decided On : Dec-05-2003

Reported in : II(2004)DMC48; 2004(2)MPHT550

Judge : A.M. Sapre, J.

Acts : [Constitution of India](#) - Article 227

Appeal No. : Writ Petition No. 9005/2003

Appellant : Ashima Joshi

Respondent : Sameer Joshi

Advocate for Pet/Ap. : M.G. Upadhyaya, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A.M. Sapre, J.

1. This is a writ under Article 227 of the [Constitution of India](#). It is filed by the defendant, against an interim order, passed by the Family Court on an application under Section 24 of the Hindu Marriage Act. By impugned order, the learned Family Judge has fixed Rs. 2,500/- per month by way of maintenance to be paid to

petitioner i.e. wife, Rs. 500/- per month for her minor child and Rs. 3,000/- towards litigation expenses. Petitioner says that it is less and should have been more. She also claim some amount towards maternity expenses.

2. In my view, Writ Court may not be able to go into the factual issues arising out of disposal of such interim applications, which does not decide the rights of the parties. When the revision is held barred then writ can not be a substitute in every case. A Writ Court can come in only when there is gross injustice caused to the parties or where it is a pure question of jurisdiction. Every interim order deciding the application of interlocutory nature can not be made subject matter of scrutiny on writ side under Article 227 of the Constitution. In the present case, the learned Family Judge has taken into account, the income of husband and then in her discretion fixed the monthly alimony for wife and child. This finding being pure finding of fact and is based on exercise of discretion conferred upon the learned Family Judge, it is binding on this Court while hearing the writ under Article 227 of the Constitution. It is not a first appeal where the Court is empowered to examine the evidence and then record a finding other than the one recorded by the Trial Court on such interlocutory application. In other words, this distinction must always be borne in mind while deciding writ arising out of any interlocutory matter. Every order, if not to the liking of a litigant can not be subjected to denovo scrutiny in writ else there is no end for its judicial scrutiny. Finality has to be attached at some place.

3. Learned Counsel for the petitioner than placing reliance on a decision reported in AIR 2003 Karnataka 183, urged that maternity expenses ought to have been awarded. I find no merit in it. In the first place, it is the discretion of the Family Court in grant of such interim alimony. In the second place, it can not be claimed as of right, thirdly, merely because the nature of expenses not being mentioned, does not entitle the petitioner to claim alimony if all other expenses are found to be based on reasonable platform.

4. Petition, thus, fails and is dismissed in limine.