

**Gouri Das Vs. Pradyumna Kumar Das**

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**Court :** Orissa

**Decided On :** May-05-1986

**Reported in :** 62(1986)CLT218; 1986(II)OLR44

**Judge :** R.C. Patnaik, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 13 and 24

**Appeal No. :** Civil Revision No. 518 of 1984

**Appellant :** Gouri Das

**Respondent :** Pradyumna Kumar Das

**Advocate for Def. :** S.K. Dey and Y. Mohanty

**Advocate for Pet/Ap. :** M. Patra, S.R. Patnaik, U.S. Patnaik and A.K. Baral

**Disposition :** Revision allowed

**Judgement :**

**R.C. Patnaik, J.**

1. This is a revision by the wife against an order passed by the Subprnate Judge rejecing her application Med Section 24 of the Hindu Marriage Act 1955 (for short the Act') for pendente the maintennce and litigation expense in a proceeding initiated , by the opposite graty husband for under.Section 13 of the Act.

2. After entering appearance in the main proceeding, the wife filed an application Under Section 24 of the Act claiming Rs. 6,000/-; Rs. 1,000/-towards litigation expenses and Rs. 5,000/- towards pendente lite maintenance. She submitted that she was a deserted and helpless lady having no independent income for her support and for defending her in the proceeding. Though she had taken shelter under the roof of her father, the meagre resources of her father, who was a retired Government servant, were insufficient to maintain and support her. She alleged that her husband was working an Assistant Engineer and was getting salary of Rs. 2,000/- per month. Besides, he had income from agricultural lands, 7 acres in extent. The application was resisted by the husband. He averred that the father and the brother of the wife had considerable income. The wife had also considerable income from sewing. It was further alleged that the wife's family had a building at Cuttack, a portion whereof had been let out. He stated that after deductions, he received a sum of Rs. 1,000/- only and the income from the agricultural lands was meagre.

3. Upon a consideration of the aforesaid materials, the learned Subordinate Judge rejected the application holding that there was no material before him that 'the wife had no independent income sufficient for her support and the necessary expense of the divorce proceeding.' The learned Subordinate Judge was of the view that had there been some material before him, he would have allowed a sum of Rs. 200/- towards monthly maintenance to the wife.

4. Shri M. Patra, the learned counsel for the petitioner, has urged that the learned Subordinate Judge has erred in exercise of jurisdiction with an erroneous approach to the matter. Sri S. K Dey, the learned counsel for the opposite party, has endeavoured to support the judgment by contending that the family of the petitioner had considerable income and there was no material to show that the wife did not have adequate resource. When there was no material to show that the wife had no income, which was sufficient for her support and the necessary expenses of the proceeding, there was no infirmity in the impugned order.

5. Contentions have been raised at the Bar regarding the time of commencement of the proceeding Under Section 24 of the Act and the point of time from which the

maintenance is payable. The counsel have cited authorities in support of their contentions which will be noticed in due course. Before I notice the contentions raised, it is worthwhile to mention that the wife moved the Court for pendente lite maintenance and necessary expense for the proceeding alleging that she had no income to support her and to defend her in the proceeding. She had pleaded that unless litigation expense was paid to her, she was not in a position to file her written statement. No doubt, the initial onus is on the applicant. But, where the stand is that the applicant has no sufficient income to support him or her and to carry on the litigation, denial itself would shift the burden to the otherside who asserts that the applicant has sufficient income. It would be inappropriate to call upon the applicant to establish the negative, i. e , he or she has no income. To discharge the burden, the otherside has to lead evidence to satisfy the Court that the applicant has independent income sufficient for his or her support and the necessary expense of the proceeding.

It was alleged by the husband that the wife's family had considerable assets or income. The income of the father or the brother of the applicant is irrelevant. The legislature has in its wisdom used the expressions 'Independent income', that is to say, 'the income of the applicant'.

The husband further alleged that the wife had considerable income from her sewing business. The burden was on him to establish that the wife was carrying on sewing business and had independent income therefrom sufficient for her support and the necessary expense of the proceeding. The learned Subordinate Judge misdirected himself in throwing the burden on the wife to establish the negative. When there was no supporting evidence, 'the objector's plea should have been discarded. Besides, the facts of life should not have been overlooked, the state of emancipation of women, the social customs and taboos, habits and attitudes. Therefore, the wife was entitled to pendente lite maintenance and litigation expense.

6. The two controversies that have arisen during the arguments are-Firstly, when does a proceeding for the purpose of Section 24 of the Act commence and secondly, from what point of time is maintenance payable.

7. The learned counsel for the opposite party has relied on AIR 1981 Jammu and Kashmir 5 Purna Chand v. Mst. Kamala Devi and contended that the proceeding for the purpose of Section 24 of the Act commences with the settlement of issues. The aforesaid decision has, however, been overruled by the Full Bench of the same Court in AIR 1982 Jammu & Kashmir 98 Amrit Lal Nohru v. Usha Nehru Kotwal, J. speaking for the Full Bench observed that there was no warrant for the proposition that proceeding in a suit commences only from the stage contemplated by Order 13. The stage of first hearing is one of the various stages in the proceeding which starts as soon as the plaint is filed in Court. The term 'during' in Section 24(1) implies the period intervening the commencement and termination of the main proceeding. The matter can be viewed from another angle. The object of Section 24 is two fold-Firstly, to prevent vagrancy resulting from strained relations between the husband and the wife, and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. See Amrit Lal's case. In AIR 1962 Cal. 88 Smt. Anita Karmokar v. Birendra Chandra Karmakar, it was held that if the amount directed to be paid towards pendente lite maintenance and litigation expense is not paid, further proceedings should be stayed so that the case of the indigent spouse is not hampered. In AIR 1968 Cal. 68 Smt. Latika Ghosh v. Nirmal Kumar Ghosh, it was held that the wife could not be compelled to file her written statement before her prayer for maintenance and expenses was considered. She could insist that her application Under Section 24 should first be decided before she was called upon to file her written statement. Similar view was taken in AIR 1981 All. 178 Smt. Anjula v. Milan Kumar. The Courts, therefore, have insisted that whenever an application Under Section 24 of the Act is made, the same must be disposed of before any further steps are taken in the main proceeding. Therefore, whenever an order is passed directing payment of pendente lite maintenance and litigation expense, the Courts should in exercise of their inherent power stay further proceedings of the main proceeding till the order passed by it granting pendente lite maintenance and litigation expense is complied with by the other side.

I am, therefore, of the view that the expressions 'during the proceeding' in Section 24 should not be construed as to mean the stage of settlement of issues.

8. The next question is from what point of time is the maintenance payable. Section 24 does not contain any limiting provision. No fetters have been imposed on the discretion of the Court. What should be the date from which maintenance is payable where the applicant is the petitioner in the substantive petition under the Hindu Marriage Act and when he or she is the respondent As regards the first category, in some decisions it has been held that the date from which the maintenance is payable is the date on which summons is served on the respondent in the main proceeding The contrary view maintains that the date could be the date of the application, for maintenance for otherwise the clever. respondent with a view to thwarting the claim for interim maintenance might keep himself out of the way of service of summons. In my view, ordinarily it should be the date of service of summons. .No hard and fast rule can be laid down. The Court has to decide the date from which maintenance is payable having regard to the facts and circumstances of each case and the conduct of the parties. (See AIR 1982 A. P. 100 Narendra Kumar Mehta v. Smt. Suraj Mehta). Also in this connection see AIR 1964 Mysore 38 N. Subramanyam v. Mrs. M. G. Seraswathi (1978) 80 Punjab law Reports 213 Sarita Mehta v. Aravind K. Mehta. Where the applicant is the respondent, ordinarily it should be the date of service of summons. (See S. Radhakumari v. K. M. K. Nair, AIR 1983 Kerala 139). Where, however, there has been inordinate delay in making the application, which could have been made earlier, laches on the part of the applicant might be taken into account as circumstance disentitling her maintenance from a date prior to the date of application.

9. Now on the question of the quantum of maintenance, though in the past the Courts had attempted to lay, down a rigid rule of one-third or one-fifth of the income as the quantum, the more recent trend is not to lay stress on any such inflexible arithmetical rule. The section itself provides the guideline, namely, the petitioner's own income and the income of the respondent should be taken into account. The Courts should take the facts and circumstances of the case including the status, habits, etc. and determine what amount would be reasonable.

10. The opposite party admitted that after deduction he had an income of Rs. 1,000/-. The petitioner was the wife of an Assistant Engineer. She should be given

an allowance befitting her status, habits etc. as the wife of an Assistant Engineer. I would, accordingly entitle her to Rs. 300/-per month as pendente lite maintenance. The amount shall be payable from 10.11. 1983 when the application Under Section 24 of the Act was filed. The petitioner is also entitled to get a sum of Rs 1,000/- towards litigation expense.

In the facts and circumstances, indirect that the opposite party shall pay the litigation expense of Rs. 1.000/- in the trial Court by 30th June, 1986. The petitioner shall file her written statement within two weeks after the receipt of the aforesaid amount. The opposite party shall pay to the petitioner the arrears of pendmte lite maintenance till 30th April, 1986, within two months from today. He shall also continue to pay the pendente lite maintenance at the rate of Rs. 300/-per month. The monthly maintenance from the 1st May, 1986 onwards shall be paid by the 20th of every succeeding month. On failure of the opposite party to comply with any of the directions aforesaid, further progress in the main proceeding Under Section 13 shall be stayed.

With the aforesaid observations and directions, the order is set aside and the revision is allowed with costs, assessed at Rs. 100/-.

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