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Court : Punjab and Haryana

Decided On : Dec-09-1992

Reported in : I(1994)DMC456

Judge : V.K. Bali, J.

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

Appeal No. : Civil Revision No. 2617 of 1992 and Civil Misc. No. 6957-CII of 1992

Appellant : Jagatjit Singh

Respondent : Sushma

Advocate for Def. : Y.P. Khullar, Adv.

Advocate for Pet/Ap. : H.L. Sarin and; Ashish Handa, Advs.

Disposition : Petition dismissed

Judgement :

V.K. Bali, J.

1. The respondent-wife in her application filed under Section 24 of the Hindu Marriage Act, during the pendency of divorce petition instituted by the petitioner husband, was allowed maintenance pendente lite at the rate of Rs. 1,000/- per mensem and Rs. 1,500/- as expensed of proceedings vide orders dated

September 1, 1992 passed by Additional District Judge Jalandhar. It is against this order that the present revision petition has been filed.

2. Briefly the facts reveal that the petitioner-husband sought dissolution of marriage with respondent-wife on various grounds and during the pendency of the petition aforesaid, the respondent-wife filed an application under Section 24 of the Hindu Marriage Act claiming maintenance pendente lite at the rate of Rs. 1,000/ per mensem and Rs. 5,000/- as expenses of proceedings by pleading that she had no movable or immovable property to support herself as also that she has no source of income whatsoever. She also pleaded that the petitioner was dealing with the sale of auto spare parts and shoes and his monthly income was Rs. 5,000/-. He had no liability except to maintain the respondent-wife and the minor child.

3. In response to the notice issued in the application aforesaid, the petitioner-husband filed reply and opposed the prayer. He, inter alia, pleaded that the respondent wife was a teacher working in Nauhria Mal Jain High School, Ludhiana and was drawing salary of Rs. 1,500/ per mensem. Besides, she was also earning Rs. 1,000/- per mensem from tuition work. In so far as his income is concerned, he pleaded that he had no income whatsoever and he was un-employed.

4. The respondent-wife, with a view to support her cause filed her own affidavit as also the affidavit of Raman Walia, her brother. The facts mentioned in the petition under Section 24 of the Hindu Marriage Act were reiterated in the affidavits aforesaid. After returning a finding that-----the respondent-wife who was living with her minor son had no independent source of income whereas the respondent was atleast an able bodied person who could not be earning less than Rs. 1,500/- to Rs. 1,700/- per mensem, it was ordered that the petitioner-husband would pay an amount of Rs. 1,000/- towards maintenance pendente lite and Rs. 1,500/- towards expenses of the proceedings.

5. Mr. H.L. Sarin, learned Senior Advocate appearing for the petitioner contends that an application was moved for summoning the witnesses so as to prove that the respondent was in service. The prayer in the application was for summoning Clerk concerned from Nauhria Mal Jain Public High School, Bharat Nagar,

Ludhiana and Clerk concerned of Provident Fund Office, Dhian Singh Complex Ludhiana. On the application aforesaid, it was ordered by the Court that diet money of witnesses be deposited for the date fixed and it is thereafter that the diet money and process fee were deposited. It is further argued by the learned Counsel that even summons were duly issued to the witnesses but later on the Additional District Judge dealing with the matter without effecting the service on the witnesses aforesaid passed the impugned order on the basis of available record. The course, thus, adopted by the Additional District Judge is illegal, arbitrary and without jurisdiction, contends the learned Counsel.

6. After hearing the learned Counsel for the parties, I do not find any substance in this petition which deserves to be dismissed. Proceedings under Section 24 of the Hindu Marriage Act are summary in nature and it is not necessary for the Court to record evidence, The matter can be decided on the basis of pleadings supported by affidavits and the documents that may be filed by the parties in support of their contention. The applications for summoning the witnesses are filed and allowed in routine. At that time, the Court is not normally called upon to see as to whether there is any necessity of summoning the witnesses or not. The normal procedure that goes on in the Mufassal Court is that such applications are-----put up before the Reader of the Courts and are signed in routine by the Presiding Officer Mr. Sarin has not been able to point out any interim order passed by the Additional District Judge which might show that the application for summoning the witnesses was considered by the Presiding Officer of the Court in the presence of the party opposite and the Court had applied its mind while ordering deposit of process fee and diet money as desired by the petitioner. However, when the matter came up before the Court for considering the necessity of summoning the witnesses, the Court rightly chose not to summon the witnesses and instead decided the case on the available material. If there was some truth in the assertion of the petitioner that the respondent-wife was in service of the school then it was not difficult for him to have produced some documents showing that such was the situation. The pay certificate, deposit of Provident Fund or even some affidavit of the school Headmistress or Clerk or Cashier could have been produced to show prima facie atleast that the assertion made by him was correct. If such document was available on the record and yet it was asserted by the respondent-wife that she

was not in service then there could have been some justification for summoning the witnesses but the attempt of the petitioner to summon the witnesses, to me, appears to be a clear device to delay finalisation of the claim of respondent-wife with-regard to maintenance. It requires to be mentioned here that vide orders dated 25-11-1992 the parties were directed to appear in person. On the questions put, the respondent in no uncertain terms stated that even though she was educated, but she had never been in service throughout her career. She went on to state that all her academic certificates were lying at the house of the petitioner and she was not made available the said documents so that she may be able to apply for some post some where.

7. In so far as the contention of Mr. Sarin that the petitioner is unemployed is concerned, suffice it to say that maintenance pendente lite has been assessed by the Court below not on the basis that he is doing either any service or is self employed or doing any business but the same has been assessed by observing that even if he is an able bodied person, he could not be earning less than Rs. 1,500/- to Rs. 1,700/- per mensem and the respondent-wife is unable to maintain herself and minor child. In the circumstances, I do not think that the order granting maintenance pendente lite at the rate of Rs. 1,000/- is in any way excessive or calls for interference by this Court.