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Court : Jammu and Kashmir

Decided On : Jul-03-1992

Judge : B.A. Khan, J.

Acts : Hindu Marriage Act, 1980 - Sections 30 and 34

Appeal No. : C. Rev. Petn. No. 121 of 1988

Appellant : Jagdev Singh

Respondent : Teedi

Advocate for Def. : H.S. Dogra, Adv.

Judgement :

ORDER

B.A. Khan, J.

1. Respondent is the wife of petitioner. Her application under Section 30 of Hindu Marriage Act, for pendente lite maintenance allowance has been allowed by the court below. As a result, Petitioner has been asked to pay Rs. 600/- in all per month. He feels aggrieved and has filed this revision petition. Petitioner assails the order impugned. It is submitted that petitioner is a petty employee working in some Co-operative shop on a monthly salary of Rs. 300/- and that the trial court has wrongly assessed his income while awarding maintenance.

2, Mr. Dogra, LC for respondent, has raised a preliminary objection, challenging the maintainability of the revision petition. He says as the order impugned is appealable, this revision would not lie. He seeks support from AIR 1973 Punj & Har 48. This raises the question -- whether or not an order passed under Section 30 of the Act is appealable? The answer will depend upon true interpretation of Section 34, which is reproduced hereunder :--

'34. Appeals from decrees and orders, (1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of Sub-section (3), be appealable as decrees of the court made in the exercising of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act under Section 31 or Section 32 shall, subject to the provisions of Sub-section (3), be appealable if they are not interim orders and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order.'

3. The provision leaves no scope for any doubt and makes all decrees passed by the court under the Act appealable. The Act delineates the proceedings wherein decrees are passed and as such no difficulty arises in this area. It, however, restricts the scope of appeal in case of orders. It does not make all types of orders appealable and restricts the right of appeal only against those orders passed in any proceedings under Sections 31 and 32. Section 31 deals with grant of permanent alimony and maintenance and Section 32 with custody of children. The section also bars an appeal in respect of an order on the subject of costs. Therefore, an order granting maintenance pendente lite and expenses of proceedings passed under Section 30 is not covered by Section 34 and does not

fall within the issue of appealable orders. Therefore, it is held that an order passed under Section 30 of the Act is not appealable.

4. Mr. Dogra has, however, sought support from some decisions of the Punjab High Court, reported in AIR 1973 Punj & Har 48 and AIR 1962 Punj 127. These proceed on the basis of Sections 24 and 28 of the Central Hindu Marriages Act, 1955 which are different from relevant provisions of the State Act. Section 28 of the Central Act also provides for an appeal in case of certain decrees and orders, but not the same way as Section 34 of State Act. The relevant provision reads thus :

'All decrees and orders made by the Court in any proceedings under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of the original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force:

Provided that there shall be no appeal on the subject of costs only.'

Section 28 of the Central Act, as is obvious, is materially different and poles apart from Section 34 of the State Act. The later is a self-contained provision in so far as it provides for right of appeal from the decrees and specified orders passed under the Act and is not dependant on any other statute for interpretation or implementation unlike the provision in the Central Act. Therefore, no support can be derived from the judgments cited by the learned counsel for the respondent.

5. On merits, however, after examining the order impugned, I find that interim maintenance and expenses of proceedings warded are on the higher side. These need to be slashed down from Rs. 600/- to Rs. 350/- p.m. I find from the record that petitioner has already deposited Rs. 2,400/- with the Nazir of this Court. This amount shall be released to the respondent forthwith. The balance amount of arrears shall be payable by the petitioner in monthly installments of Rs. 500/- commencing from August 1, 1992. This revision petition is accordingly disposed of. Record be returned. Trial Court shall summon the parties and take appropriate steps to give effect to the arrangement made.

