

Laxmi Sharma Vs. Dr. Akash Deep

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Court : Himachal Pradesh

Decided On : Aug-11-2011

Judge : V.K. Ahuja

Appeal No. : CMPMO No. 150 of 2011

Appellant : Laxmi Sharma

Respondent : Dr. Akash Deep

Judgement :

V.K. Ahuja, J.

Oral:

1. Present petition has been filed by the petitioner-wife against order, dated 11.1.2011, passed by the learned District Judge, Shimla allowing the application filed by her for maintenance pendente lite under Section 24 of the Hindu Marriage Act amounting whereby a sum of Rs. 5,000/- per month and litigation charges to the extent of Rs. 3,000/- were awarded. The petitioner is aggrieved by the meagre maintenance awarded by the court of the learned District Judge.

2. A notice of the petition was issued to the respondent.

3. I have heard the learned counsel for the parties and have gone through the copies of the documents placed on record. The petitioner had submitted that her

two children are school going and she is only getting a sum of Rs. 11,000/- per month by working in a school and the respondent is getting more than Rs. 35,000/- per month as income, being a Class-I Officer and accordingly she had claimed maintenance at the rate of Rs. 10,000/- per month for herself and at the rate of Rs. 10,000/- per month for her two children. The proceedings were initiated by the respondent for divorce and in these proceedings, the present application was filed by the petitioner-wife.

4. The fact that the respondent-husband was getting more than Rs. 35,000/- was admitted by the respondent to the extent that he pleaded that his income was Rs. 35,000/- per month. No salary certificate, either by the petitioner or by the respondent, was filed and I assume that the income of the respondent, on the basis of the documents placed on record or the assertions made in the petition, is Rs. 35,000/- per month.

5. The petitioner has placed on record the receipts of fee and other admission charges from the School to show that the school fee for the two children studying in different classes comes to Rs. 4,000/- per month, apart from other annual charges paid for admission etc. The petitioner also must be spending some amount towards their living etc. She is only getting a sum of Rs. 11,000/- per month, though the gross salary as mentioned as Rs. 13,000/-, as per the documents placed on record, which have not been rebutted by the respondent in any manner.

6. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in Smt.Jasbir Kaur Sehgal versus District Judge, Dehradun and others, AIR 1997 Supreme Court 3397, wherein considering the facts of the case and the petition under Section 24 of the Act, it was observed that the provision cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. The observations made in para 6 are relevant and are being reproduced below:

“Under the Hindu Adoptions and Maintenance Act, 1956 it is the obligation of a person to maintain his unmarried daughter if she is unable to maintain herself. In this case since the wife has no income of her own, it is the obligation of the

husband to maintain her and her two unmarried daughters one of whom is living with wife and one with him. Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter.”

7. It is, therefore, clear from the above discussion that while awarding interim maintenance under Section 24 of the Hindu Marriage Act, the case of the children can also be considered and accordingly the maintenance can be given.

8. The respondent has taken the plea that he has to maintain his old parents, but there is no affidavit of the respondent on record to show that they are living with him or that he is spending money for them. Even if that be so that he has to maintain his parents, it is also his bounden duty to maintain his wife and minor children who are studying in school. The amount of maintenance awarded by the learned District Judge to the extent of Rs. 5,000/-, keeping in view the income of the respondent as Rs.35,000/-, was too meagre and it is accordingly enhanced to Rs.15,000/- per month, which amount includes the maintenance of the wife and the two children. The litigation expenses are also enhanced to Rs. 10,000/-. The balance amount, as awarded above, shall be payable by the respondent within 30 days from today, which shall be deposited either in the Court or paid to the petitioner-wife against receipt. The future maintenance shall be payable by 10th of every month in advance.

9. The petition stands allowed and disposed of accordingly. A copy of this order be sent to the learned District Judge.

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