time, after receipt of the notice of contempt he passed order dated 31st July, 1994 and at the same time tendered unqualified apology. Subsequently, he has passed two more orders dated 8th August, 1994 (annexures R/9 and R/10) giving benefit of regularisation of service to both the petitioners with effect from 1st October, 1988. In addition to this, learned counsel for the respondent has made a statement that all consequential benefits will be paid to the petitioners within a period of one month. This shows that at least after the receipt of notice of contempt, the respondent has taken steps for compliance of the Court's order dated 3rd December, 1992. In view of these orders and the unqualified apology tendered by the respondent, we do not consider it proper to impose any substantive sentence on the respondent. In our opinon the ends of justice would be served by administration of a severe reprimand to the respondent.

In the result, the respondent is held guilty of contempt of court but is let off with a severe warning. Taking note of the fact that the petitioners have been forced to file a second petition in the High Court on account of omission of the respondent to comply with the Court's order, we direct that the respondent shall pay costs of Rs. 1,000 to each of the petitioners.

S.C.K.

Before Hon'ble R. P. Sethi & Sat Pal, JJ.

RAM LAL,—*Appellant*

versus

SMT. SURINDER KAUR,—*Respondent*

L.P.A. No. 1576 of 1987

14th November, 1994

Hindu Marriage Act, 1955—Ss. 24 & 25—Grant of Maintenance allowance of permanent alimony—Wife's application for grant of maintenance of permanent alimony & child support—Court to grant maintenance only after it is satisfied that applicant is not able to support itself.

Held, that while granting the relief under Section 25 of the Act, the Court has to keep in mind the following consideration :—

(i) Husband's own income ;

(ii) Income of the husband's other property ;

(iii) Income of the applicant ; and

(iv) Conduct of the parties.

The object of providing maintenance is that none of the parties should suffer to get adequate justice from the Court on account of his or her financial difficulties and should not be deprived of maintaining himself or herself after the decree. While awarding the maintenance the Court is required to keep in view as to whether the spouse claiming the maintenance was himself or herself earning so that the other party could not be saddled with the monetary burden. In the instant case, however, it is admitted even by the respondent-wife that she was drawing a salary of Rs. 2,300 p.m. being a J.B.T. teacher. She has, however, claimed the maintenance for the child. No maintenance allowance to the child can be granted under Sections 24 or 25 of the Act. As the respondent-wife is proved to have sufficient income, the appellant-husband cannot be directed to pay any maintenance. The application of the respondent-wife for the grant of the maintenance allowance or permanent alimony are dismissed.

(Para 8)

V. G. Dogra, Advocate, *for the Petitioner.*

J. B. S. Gill, Advocate, *for the Respondent.*

JUDGMENT

R. P. Sethi, J.

(1) The pleas raised in this appeal are concluded by concurrent findings of fact. The findings of fact arrived at by the trial Court as also the first appellate Court are alleged to be not based upon proper appreciation of evidence, or being based upon the error of law or substantial error of procedure. After going through the whole record, we have come to the conclusion that the judgment is not based on unsatisfactory or insufficient evidence and the mere possibility of the second appellate Court coming to a different view does not justify the disturbance of the findings of fact in this appeal.

(2) In *Paras Nath* v. *Mohani Dasi* (1), it was held that the High Court, on second appeal, cannot go into the question of fact, however, erroneous the findings of fact recorded by the courts of fact may be. It was held :

> "It is manifest that the question to be determined by the High Court on the second appeal was essentially one of fact. That the High Court was cognizant of this aspect of the

(1) A.I.R. 1959 S.C. 1204.

case appears from the following observation with which the decision of the Court begins :

> "In second appeal the substantial point urged before us is whether the evidence, both oral and documentary, would warrant an inference that the properties had infact been dedicated to the deity."

It is well settled by a long series of decisions of the Judicial Committee of the Privy Council and of this Court, that a High Court, on Second Appeal, cannot go into questions of fact, however, erroneous the findings of fact recorded by the courts of fact may be. It is not necessary to cite those decisions. Indeed, the learned counsel for the plaintiff-respondents did not and could not contend that the High Court was competent to go behind the findings of fact concurrently recorded by the two courts of fact. The High Court then set out to examine the evidence, both oral and documentary, and after an elaborate examination of the large volume of evidence adduced by the parties, recorded the finding that :—

> "defendant No. 1 has failed to prove his title and that the plaintiffs are entitled to have the suit properties sold with a view to satisfy the decree obtained by them against the judgment-debtors."

(3) In our opinion, the High Court has completely misdirected itself both in law and on facts, as will presently appear, even assuming that it was open to it to go behind findings of facts.

(4) It is also settled proposition of law that where from a given set of circumstances two inferences are possible, the one drawn by the lower appellate Court is binding on the second appellate Court in second appeal.

(5) In the instant case, the appellant-husband sought divorce on the grounds of desertion and cruelty which were made subject matter of issue Nos. 1 to 3. Both the Courts returned the findings against the appellant. No ground is made out for interference in this appeal which is accordingly dismissed with costs throughout.

(6) It may not be out of place to mention that serious efforts were made by the Court for reconciliation between the parties and at one stage the appellant-husband agreed to pay a sum of Rs. 80,000 to the respondent for getting mutual divorce in terms of Section 13-B

of the Hindu Marriage Act, 1955 (for short the 'Act') but on the adjourned date he withdrew from the offer and expressed his inability to make the payment of the aforesaid amount. It is, therefore, proved that the husband himself is responsible for the withdrawal of the society from the respondent and cannot be permitted to take advantage of his own wrong under Section 23 of the Act.

(7) *Vide* Civil Misc. Application No. 1373 of 1992, the respondent-wife prayed for issuance of a direction to the appellant-husband for payment of maintenance pendente lite at the rate of Rs. 500 p.m. as was granted by the Court,—*vide* order dated 1st February, 1989. It is submitted that in her application filed under Section 24 of the Act she was granted litigation expenses of Rs. 1,000 and monthly maintenance allowance at the rate of Rs. 500 which was directed to be paid by 10th of every month. The appellant-husband continued to make the payment of maintenance pendente lite till 28th August, 1991 when the appeal filed by him was dismissed and thereafter stopped making any payment. As the case was directed to be re-heard, the wife filed an application with the prayer as stated herein above. The application was resisted by the husband on the grounds that as the wife had herself deserted, she was not entitled to the grant of any maintenance. The wife thereafter filed afresh application being Civil Misc. No. 860 of 1993 unler Section 25 of the Act for grant of permanent alimony. She has also claimed maintenance for the child namely Miss Kanchal Bala. The respondent-wife is claimed to be employed as J.B.T. Teacher in a Government School and was drawing salary of Rs. 2,300 p.m. Another application under Section 25 of the Act was filed for the grant of maintenance allowance to the minor daughter of the parties. The husabnd has, however, submitted that he has paid a total sum of Rs. 27,357-00 as maintenance to the respondent-wife from March, 1985 to August, 1991, the details of which are given in Annexure A-1/3. A certificate issued by the Principal, Government Senior Secondary School (Girls), Mahilpur, Hoshiarpur has also been filed with the objections to Civil Misc. No. 860 of 1993, as Annexure A-1/4.

(8) While granting the relief under Section 25 of the Act, the Court has to keep in mind the following considerations :—

(i) Husband's own income ;

(ii) Income of the husband's other property ;

(iii) Income of the applicant ; and

(iv) Conduct of the parties.

The object of providing maintenance is that none of the parties should suffer to get adequate justice from the Court on account of his or her financial difficulties and should not be deprived of maintaining himself or herself after the decree. While awarding the maintenance the Court is required to keep in view as to whether the spouse claiming the maintenance was himself or herself earning so that the other party could not be saddled with the monetary burden. In the instant case, however, it is admitted even by the respondent-wife that she was drawing a salary of Rs. 2,300 p.m. being a J.B.T. teacher. She has, however, claimed the maintenance for the child. No maintenance allowance to the child can be granted under Sections 24 or 25 of the Act. As the respondent-wife is proved to have sufficient income, the appellant-husband cannot be directed to pay any maintenance. The applications of the respondent-wife for the grant of the maintenance allowance or permanent alimony are dismissed.

J.S.T.

Before Hon'ble R. P. Sethi & Sat Pal, JJ.

HINDU EDUCATION SOCIETY (REGD.), ROHTAK & OTHERS,—*Appellants.*

versus

SHYAM SUNDER PASRIJA & OTHERS,—*Respondents.*

L.P.A. No. 771 of 1993

15th November, 1994.

Letters Patent Appeal Clause X—Code of Civil Procedure, 1908—*Section* 11—*Haryana Affiliated Colleges (Security of Service) Act,* 1979—*Section* 7—*Principle of constructive* Res-judicata.

Held, that we have given our anxious consideration to the submissions made by the learned counsel for the appellant as well as by the respondent, who appeared in person and have perused the records of the case. As stated earlier, the Director, Higher Education, Haryana, Chandigarh, by his order, dated 5th September, 1985, accepted the proposal of the Management to the extent of imposition of penalty of termination of services of the respondent. The said order in revision was set aside by the then Education Minister by her order, dated 6th April, 1987, and the respondent was directed to be reinstated in service with all benefits .Thereafter, the Management challenged the aforesaid order dated 6th April, 1987,