

Before M.M.S. Bedi & Gurvinder Singh Gill, JJ.

LIPI MOHAPATRA—Appellant

versus

VINAY KUMAR—Respondent

CMM No.108 of 2015 in

FAO No.3870 of 2015

January 29, 2018

Hindu Marriage Act, 1955—S.24—Application by wife u/s 24 of the Act for maintenance pendente lite opposed on the ground that she herself was earning and was employed by a publishing house—High Court held that the fact that the wife was capable of earning and was doing constructive work will not disentitle her from claiming maintenance—Further held that wife is entitled to a lifestyle commensurate with the status and earning of husband—Application allowed.

Held that we have taken into consideration all the circumstances. On asking of the Court, it has been informed that the applicant is educated having done Post Graduation in the subject of English. But the circumstances that she is capable of earning and is doing some constructive work for earning will not disentitle her for maintenance *pendente lite* as the said factor will not *ipso facto* disentitle her for the maintenance *pendente lite* as she has to be maintained commensurate with the status and earnings of the husband. Keeping in mind that an amount of Rs.10,000/- had been awarded to the wife vide order dated 5.5.2012, five years back, the same will have to be enhanced, taking into consideration the escalating prices, even if it is presumed that she is capable of earning and a meager amount is indicated in her Income Tax Returns, a sum of Rs.25,000/- per month as maintenance *pendente lite* is considered to be reasonable with effect from the date of the application i.e. April 2015. Ordered accordingly. She is also held entitled to a sum of Rs.55,000/- as litigation expenses. A sum of Rs.25,000/- already paid as litigation expenses will be deductible from the litigation expenses, as assessed by this Court.

(Para 7)

A.S.Chadha, Advocate,
for the appellant.

K.B.Raheja, Advocate,

for the respondent.

M.M.S BEDI & GURVINDER SINGH GILL, JJ.

CM-9522-CII-2016

(1) Civil miscellaneous application is allowed. Rejoinder to the reply to application under Section 24 of the Hindu Marriage Act is permitted to be taken on record.

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(2) This order shall dispose of the application under Section 24 of the Hindu Marriage Act seeking a sum of Rs.1,10,000/- as litigation expenses and Rs.60,000/- per month *pendente lite* for maintenance of the applicant- appellatant.

(3) Learned counsel for the applicant-appellant claimed that the respondent is working as Associate Project Manager in M/s Cognizant Market RX, Gurgaon and is drawing a salary approximately Rs.1,20,000/- per month besides doing business with M/s Amway and earning a commission of approximately Rs.60,000/- per month. The applicant claims that she is unemployed on the date of application.

(4) In proceedings under Section 24 of the Hindu Marriage Act during the pendency of the petition filed before the Family Court, Faridabad, she was earning Rs.45,000/- per month but taking into consideration the standard of living and earning of the respondent-husband, she had been granted maintenance *pendente lite* at the rate of Rs.10,000/- per month and Rs.11,000/- as litigation expenses.

(5) The respondent-husband has filed reply admitting the earnings but it has been vaguely averred that applicant-wife is working as an Editor in some publication house and earning handsome amount. It is urged by counsel for the respondent that she is earning much more than Rs.45,000/- per month and she has wrongly stated that she is unemployed. Counsel for the respondent has also argued that on account of the status of the appellatant on the date of marriage being married she would not be entitled to any maintenance *pendente lite*.

(6) We have considered the facts and circumstances of the case. We do not find any force in the aforesaid contention of learned counsel for the respondent. The wife is entitled to claim maintenance under Section 24 of the Hindu Marriage Act in all the proceedings arising out of the Hindu Marriage Act. The applicant-appellant is thus entitled to the maintenance *pendente lite* and litigation expenses as per provisions

of Section 24 of the Hindu Marriage Act. Taking into consideration the fact that in year 2012 the appellant had been granted maintenance *pandente lite* at the rate of Rs.10,000/- per month but on account of his liabilities in the shape of EMIs for repayment of the car and the house loan the respondent has expressed inability to pay any amount.

(7) We have taken into consideration all the circumstances. On asking of the court, it has been informed that the applicant is educated having done Post Graduation in the subject of English. But the circumstances that she is capable of earning and is doing some constructive work for earning will not disentitle her for maintenance *pendente lite* as the said factor will not *ipso facto* disentitle her for the maintenance *pendente lite* as she has to be maintained commensurate with the status and earnings of the husband. Keeping in mind that an amount of Rs.10,000/- had been awarded to the wife vide order dated 5.5.2012, five years back, the same will have to be enhanced, taking into consideration the escalating prices, even if it is presumed that she is capable of earning and a meager amount is indicated in her Income Tax Returns, a sum of 125,000/- per month as maintenance *pendente lite* is considered to be reasonable with effect from the date of the application i.e. April 2015. Ordered accordingly. She is also held entitled to a sum of Rs. 5,000/- as litigation expenses. A sum of Rs125,000/- already paid as litigation expenses will be deductible from the litigation expenses, as assessed by this Court.

(8) The entire arrears of maintenance would be paid on 25.4.2018 as calculated till 30.4.2018.

(9) It is made clear that if any amount for any month has been paid @ 110,000/- per month in proceedings before the Family Court, the said amount will be deductible from the amount of maintenance awarded to the applicant.

(10) It is not out of place to mention here that an attempt has been made for reconciliation. The appellant is ready to accept the order of the lower Court in case she is given a sum of Rs.130,00,000/- as permanent alimony by the respondent. The said offer can be considered by the respondent on or before the next date of hearing.

P.S. Bajwa