consequence of dispensation with the procedural provisions of Section 62 of the Act is irresistably and in every case of such notification to follow. No discretionary power has been vested in the Government to make a choice either in dispensing with the procedure laid down in Section 62 of the Act or in following it. The doing away with the procedural provision of Section 62 of the Act is imminent and automatic consequent upon notification issued under sub-section (3) of Section 62-A of the Act. Thus the question of either the statutory provision of sub-section (3) of Section 62-A of the Act or the notification thereunder being discriminatory and consequently contravening Article 14 of the Constitution does not arise.

(10) In the result, the writ petition fails and is disallowed with costs of Rs. 100 payable by the petitioners to respondent No. 1.

N.K.S:

LETTERS PATENT APPEAL

Before Harbans Singh, C.J., and R. S. Narula, J.

USHA,—*Appellant.*

versus

SUDHIR KUMAR,—*Respondent.*

Letters Patent Appeal No. 199 of 1969.

March 8, 1971.

Hindu Marriage Act (XXV of 1955)—Sections 24, 26 and 28—Maintenance pendente-lite *and litigation expenses—Court—Whether has discretion not to grant—Fixation of quantum of such allowance and expenses—Criteria for—Stated—Allowance* pendente lite *for the child—Whether can be claimed—Grant of allowance to the wife—Whether should be near to one fifth of the income of the husband—Maintenance to which a wife is otherwise found entitled—Whether can be reduced on the ground of her living with her parents.*

Held, that although in the matter of fixation of quantum of litigation expenses and maintenance *pendente lite,* a good deal of discretion lies with the trial Court, yet in so far as the question of the grant of maintenance allowance and litigation expenses are concerned, there is practically no discretion with the Court. If it is found in a proceeding under the Hindu Marriage Act, 1955, that the applicant under section 24 has no independent income

sufficient for the applicant's support and the necessary expenses of the proceeding, the Court must normally on the application of such a spouse order the respondent to pay the applicant the expenses of the proceeding and a reasonable monthly allowance. Though the word used in Section 24 is "may", it would be only in extraordinary circumstances that a Court would refuse to grant an application under that provision if the conditions precedent for grant of such allowance are fully satisfied. (Para 4).

Held, that in the matter of fixation of quantum, different criteria are laid down for litigation expenses on the one hand and the maintenance allowance on the other. So far as the litigation expenses are concerned, the Court must normally direct the payment of "the expenses of the proceeding" and no question of Court's own idea about such expenses comes into the picture. While deciding the question of such expenses also, the Court is, however, not expected to be led away by any figures which the applicant may suggest. The trial Court is expected to know the amount of expenses required for Court fees, cost of judicial papers, typing expenses, process fees and diet money for witnesses, commission fees, fees of some medical or other expert wherever such a witness has to be examined and the usual fees charged by counsel in that particular Court for undertaking the prosecution or defence of such cases. Once the Court finds that the applicant has no independent income sufficient to meet the necessary expenses of the proceeding, it has no discretion in the matter of judging the reasonableness of the proper amount of litigation expenses. (Para 4).

Held, that the amount of monthly maintenance allowance cannot be fixed with any rigidity as in the case of litigation expenses. Section 24 itself requires the Court to give a direction for payment monthly during the proceedings such sum as it considers to be reasonable having regard "to the petitioner's own income and the income of the respondent". This shows that the statutory provision does not require the Court to make any mathematical calculation to arrive at any definite proportion of the respondent's income. In the matter of fixing the monthly allowance, the first thing that has to be considered is whether the applicant for such allowance has any independent income sufficient for his or her own support or not. If the Court finds that the applicant has independent income sufficient for her or his support, it has no jurisdiction to grant any maintenance allowance under section 24. Once, however, it is found that the applicant under section 24 has no independent income sufficient for her or his support, the Court must then embark on the enquiry to fix the quantum of the monthly allowance: For that purpose, the first thing to be seen is the respondent's income. The gross income of the respondent has to be kept in view only for judging the standard of living of the applicant. For the matter of calculating the amount of maintenance the gross income has to be left aside and what is to be taken into account is the disposable income of the respondent. Disposable income is arrived at by deducting from the gross income only such items of expenses over which the respondent has no control of any kind such as direct taxes like income

tax etc. Only deductions of compulsory deposits are to be made before calculating what is due to the wife as maintenance *pendente lite* and not of voluntary payments like insurance premia and contribution to provident fund etc. As soon as the disposable income of the husband has been determined the Court then sets upon finding as to how much should be the reasonable amount out of it, which the wife must get in order to maintain herself during the proceeding. For calculating that amount, the husband's status and position has to be kept in view in order to justify certain expenses which would be necessary for persons of a particular status but would be unnecessary for a person of another position. Similarly, other circumstances of the applicant such as her necessity to maintain an infant child have also to be taken into account. (Paras 5 and 7).

Held, that a claim can be made for maintenance of a child during a proceeding under the Act and the Court can in exercise of powers vested in it by section 26 of the Act pass such interim orders in any proceeding under the Act, from time to time, as it may deem just and proper with respect to the maintenance and education of minor children, consistently with their wishes, wherever possible. Even if no application under section 26 is made and a wife makes an application under section 24 and claims that the amount which she necessarily requires to maintain herself includes the provision for necessities for her infant child, the same can no doubt be taken into account in fixing the quantum of allowance under that provision. (Para 7).

Held, that the amount of maintenance allowance to be fixed under section 24 of the Act need not be as near as one-fifth of the income of the husband. No such ceiling on the amount of maintenance to be paid to an applicant has been fixed in any provision of the Act. Thus, there is no justification whatever for imposing such ceiling on the quantum of maintenance allowable to a spouse under section 24 of the Act. (Para 8).

Held, that parents have no obligation to maintain their married daughters. A wife who is unable to live with her husband during a proceeding under the Act is not expected to stay in the street in order to justify a claim for maintenance which should normally include a reasonable sum which she has to spend in order to find some shelter. Courts should never lose sight of the fact that except in certain exceptional cases a Hindu wife never normally leaves the house of her husband and is never enmoured of staying with her parents after giving up her matrimonial home. Thus, maintenance to which wife is otherwise found entitled cannot be reduced on the ground that she is living with her parents. (Para 11).

Letters Patent Appeal under Clause X of the Letters Patent of the High Coutr against the judgment, dated the 21st of February, 1969, passed by Hon'ble Mr. Justice Prem Chand Jain, in F.A.O. No. 4-M of 1969, modifying that of Shri Man Mohan Singh Gujral, District Judge, Chandigarh, dated 26th October, 1968 (holding that the petitioner is entitled to Rs. 300

per month to maintain herself and the child. Besides this, she is also entitled to Rs. 1,000 *as expenses for litigation. The amount of maintenance should be paid from the date of application under section* 24 *and the respondent should deposit the amount by the next day of hearing) to the extent that the respondent will be entitled to an amount of Rs.* 500 *as litigation expenses and Rs.* 200 *per mensem as maintenance* pendente lite. *If not already paid, the appellant is directed to pay the litigation expenses and the arrears of the maintenance amount within one month from 21st February,* 1969. *Thereafter the maintenance amount shall be paid by the 10th of every month and leaving the parties to bear their own costs.*

G. C. MITAL AND PARKASH CHAND JAIN, ADVOCATES, for the appellant.

K. S. SACHDEVA, ADVOCATE, for the respondent.

JUDGMENT

The Judgment of this Court was delivered by :—

NARULA, J.—(1) In this Letters Patent appeal against the judgment of a learned Single Judge of this Court dated February 21, 1969, reducing (in an appeal under section 28 of the Hindu Marriage Act, hereinafter called the Act) the amount of maintenance *pendente lite* and the amount of litigation expenses allowed by the order of the District Judge, Chandigarh, dated October 26, 1968, from Rs. 300 per mensem and Rs. 1,000 to Rs. 200 per mensem and Rs. 500 respectively, it has been strenuously urged by Mr. Gokal Chand Mital, the learned counsel for the appellant (hereinafter referred to as the wife) that (i) the maintenance to which the wife is otherwise found to be entitled cannot be reduced on the ground that "she is living with her parents", (ii) in calculating the disposable income of the husband deductions from his gross income have normally to be allowed only for compulsory exactions like income tax etc., and not for voluntary contributions to provident funds or life insurance premia or instalments for repayment of loans taken from provident funds or from the Government etc. and that (iii) there is no warrant whatever for absolutely restricting the jurisdiction of a Court under section 24 of the Act to the grant of maintenance allowance to the wife subject to a maximum of 1/5th of the net monthly income of the husband. Arguments have also been addressed by counsel incidentally about the circumstances in which this Court may justifiably interfere in an appeal under section 28

of the Act with the orders passed by the trial Court in exercise of its discretion under section 24 of the Act in so far as the reasonableness of the quantum of litigation expenses or maintenance allowance are concerned. These questions have arisen in the following circumstances :—

(2) After her marriage to the respondent, the wife gave birth to a daughter in March, 1966. In June 1968, she filed a petition against the respondent under section 10 of the Act for the grant to her of a decree for judicial separation. She also made an application under section 24 of the Act for a direction to the respondent to pay her a sum of Rs. 3,700 as expenses for litigation etc., and for payment of Rs. 780.50 paise as maintenance *pendente lite* for herself and her child. The manner in which she had worked out the amount of expenses and the maintenance allowance was detailed in schedules attached to her application. She had claimed Rs. 245 per month for the maintenance of her child and Rs. 535.50 Paise for herself. The schedules further show that out of the litigation expenses claimed by her Rs. 1,850 was shown as expenses of the litigation itself and another sum of Rs. 1,850 for periodical expenses connected with the litigation. The claim under section 24 was resisted by the respondent. In his order dated October 26, 1968, the learned District Judge, Chandigarh gave a finding to the effect that the wife had no independent income to maintain herself. That finding was not seriously contested before the District Judge and has not at all been contested at any stage thereafter. The District Judge further found that there was not much difference between the salary of the respondent mentioned in the affidavit of the wife (Rs. 880 per month) and the salary disclosed by the respondent himself in his affidavit (Rs. 850.25 paise per month). After considering the facts and circumstances of the case, the District Judge directed the respondent to pay Rs. 300 per month for maintenance and Rs. 1,000 as expenses for litigation to the wife. Dissatisfied with the quantum of the amounts directed to be paid by him, the husband preferred an appeal to this Court under section 28 of the Act against the order of the learned District Judge.

(3) The learned Single Judge who heard the husband's appeal (F.A.O. 4-M of 1969) observed in his judgment dated February 21,

1969, that the husband who was employed as an Assistant Engineer (Mechanical) in the Heavy Engineering Corporation, Ranchi was in receipt of a basic salary of Rs. 700 and allowance of Rs. 150 per mensem. He took into account the salary which the husband was receiving in September, 1968, and after allowing him deductions on account of house-rent paid by him, electricity charges incurred by him, contribution to the provident fund and other miscellaneous expenses arrived at the figure of Rs. 669 per month. The learned Judge then observed that "there is no test prescribed in section 24 of the Hindu Marriage Act for awarding maintenance. Though usual proportion which is adopted is one-fifth as a suitable allowance yet it has been the practice, when the income of the husband is large not to regard the question of proportion so much as to fix a sum which appears to be adequate having regard to the wife's position in life and necessities. The award of maintenance is in the discretion of the Court and depends upon a number of circumstances which may vary in each case." The learned Judge in chambers criticised the judgment of the District Judge on the ground that the District Judge had not given any reasons for fixing Rs. 300 per month as maintenance *pendente lite* for the respondent and her child. The learned Judge further observed that no evidence had been led by the wife and in the absence of any positive evidence it was very difficult to place absolute reliance on her affidavit. He then took specific-notice of the fact that the wife was admittedly living with her parents in Chandigarh. This appears to have substantially influenced the mind of the learned Judge in reducing the amount of maintenance allowance which was brought down to Rs. 200 per mensem without giving any specific reason justifying that reduction except for the comments made by him, which have already been mentioned by us. As regards the litigation expenses, it was observed that the details given in the wife's affidavit were very much exaggerated and that since only four witnesses were left to be examined in the case, on her behalf, she was not entitled to more than Rs. 500 as litigation expenses.

(4) Whereas Mr. Mittal vehemently argued that the learned Single Judge should not have interfered with the discretion of the trial Court in the matter of the quantum of litigation expenses and maintenance allowance, Mr. K. L. Sachdev; on the other hand submitted with equal vehemence that sitting in exercise of appellate

jurisdiction under Clause X of the Letters Patent we should not interfere in the discretion exercised by the learned Single Judge. There is no doubt that in the matter of fixation of the quantum of the litigation expenses and maintenance allowance a good deal of discretion lies with the trial Court. In so far as the question of the grant itself is concerned, there is practically no discretion with the Court. If it is found in a proceeding under the Act that the applicant under section 24 has no independent income sufficient for the applicant's support and the necessary expenses of the proceeding, the Court must normally on the application of such a spouse order the respondent to pay the applicant the expenses of the proceeding and a reasonable monthly allowance. Though the word used in section 24 is "may", it would be only in extraordinary circumstances that a Court would refuse to grant an application under that provision if the conditions precedent for grant of such allowance are fully satisfied. In the matter of fixation of quantum, different criteria are laid down for litigation expenses on the one hand and the maintenance allowance on the other. So far as the litigation expenses are concerned, the Court must normally direct the payment of "the expenses of the proceeding" and no question of Court's own idea about such expenses comes into the picture. While deciding the question of such expenses also, the Court is, however, not expected to be led away by any figures which the applicant may suggest. The trial Court is expected to know the amount of expenses required for Court fees, cost of judicial papers, typing expenses, process fees and diet money for witnesses, commission fees, fees of some medical or other expert wherever such a witness has to be examined and the usual fees charged by counsel in that particular Court for undertaking the prosecution or defence of such cases. Once the Court finds that the applicant has no independent income sufficient to meet the necessary expenses of the proceeding, it has no discretion in the matter of judging the reasonableness of the proper amount of litigation expenses.

(5) The amount of monthly maintenance allowance cannot, however, be fixed with any such rigidity. The section itself requires the Court to give a direction for payment monthly during the proceeding such sum as it considers to be reasonable having regard "to the petitioner's own income and the income of the respondent". This analysis of section 24 shows that the statutory provision does

not require the Court to make any mathematical calculation to arrive at any definite proportion of the respondent's income. In the matter of fixing the monthly allowance, the first thing that has to be considered is whether the applicant for such allowance has any independent income sufficient for his or her own support or not. If the Court finds that the applicant has independent income sufficient for her or his support, it has no jurisdiction to grant any maintenance allowance under section 24. Once. however, it is found that the applicant under section 24 has no independent income sufficient for her or his support, the Court must then embark on the enquiry to fix the quantum of the monthly allowance. For that purpose. the first thing to be seen is the respondent's income. The gross income of the respondent has to be kept in view only for judging the standard of living of the applicant. For the matter of calculating the amount of maintenance the gross income has to be left aside and what is to be taken into account is the disposable income of the respondent. Disposable income is arrived at by deducting from the gross income only such items of expenses over which the respondent has no control of any kind such as direct taxes like income tax etc. In working out the disposable income, no deduction should be made from the gross income in respect of running the household of the respondent, paying house rent or electricity or water charges, paying the salaries of his domestic servants, payment by him of life insurance premia or for voluntary savings such as provident fund or purchase of National Savings Certificates etc. We agree with the observations made by Gujral, J. in *Dr. Yoginder Pal Soni* v. *Smt. Padma Soni* (1), that only deduction of compulsory deposits are to be made before calculating what is due to the wife as maintenance *pendente lite* and not of voluntary deposits because voluntary payments like insurance premia and contribution to provident fund etc., are the savings of the person concerned which it is open to him to reduce or increase at his will. We also agree with the observations of the learned Judge in *Dr. Yoginder Pal Soni's case* (1), to the effect that if such voluntary deductions were allowed to be deducted by the respondent before calculating the amount payable to the wife it may cause great hardship as by making larger contributions from his pay to provident fund or life insurance premia the husband can seek to deprive the wife of her due share in his income.

(1) I.L.R. (1972) II Pb. & Hr. 687—1970 P.L.R. 878.

(6) In the instant case. the husband has filed his affidavit dated February 3, 1971, before us wherein he has sworn that he is working as an Engineer in Heavy Engineering Corporation, Ranchi. With that affidavit he has attached a statement giving details of the salary received by him from January, 1968 to December, 1970. The detailed statement shows the basic pay, the dearness allowance, the project allowance and the gross salary received by him and the house rent, the electricity consumption charges, the income tax, the provident fund contribution. deduction on account of long term loans and miscellaneous expenses incurred by him at source. That statement shows that in September, 1968, his gross emoluments were Rs. 850.25 paise out of which the only compulsory deduction was of Rs. 40 per mensem on account of income tax. The other amounts shown by him include Rs. 83.13 Paise per mensem on account of house rent and electricity charges. In December, 1970, his gross emoluments were Rs. 1,007.70 Paise per mensem out of which the compulsory deduction of income tax amounted to Rs. 50 per mensem only. The present disposable income of the husband in the instant case, therefore, comes to more than Rs. 900 per mensem. His disposable income in September, 1968, was about Rs. 810 per mensem.

(7) As soon as the disposable income of the husband has been determined the Court then sets upon finding as to how much should be the reasonable amount out of it which the wife must get in order to maintain herself during the proceeding. For calculating that amount, the husband's status and position has to be kept in view in order to justify certain expenses which would be necessary for persons of a particular status but would be unnecessary for a person of another position. Similarly, other circumstances of the applicant such as her necessity to maintain an infant child, as in the present case, have also to be taken into account. There is no doubt that under section 24 of the Act the child cannot claim maintenance and it is only either of the two spouses who can make a claim. At the same time, it is clear that a claim can be made for maintenance of a child during a proceeding under the Act and the Court can in exercise of powers vested in it by section 26 of the Act pass such interim orders in any proceeding under the Act, from time to time, as it may deem just and proper with respect to the maintenance and education of minor children, consistently with their wishes, wherever possible. But even if no application under section 26 is made and a wife makes

an application under section 24 and claims that the amount which she necessarily requires to maintain herself includes the provision for necessities for her infant child, the same can no doubt be taken into account in fixing the quantum of allowance under that provision. In the present case, the claim of the wife for Rs. 535.50 Paise per mensem for herself and Rs. 245 for maintaining her child no doubt appears to us to be erring on the higher side. The estimate of Rs. 300 per mensem formed by the learned District Judge seems to be quite a fair one. The trial Court which has the advantage of seeing the parties, their way and standard of living and the conduct of the parties in a proceeding is normally in a better position to decide what would, in the circumstances of a given case, be reasonable to award to an applicant under section 24 of the Act. This does not mean that an appellate Court cannot interfere in the matter of quantum, but such interference must, in the nature of things, be restricted to only those cases where the discretion vested in the trial Court by section 24 has not been exercised in accordance with sound judicial principles or there is some glaring error in the manner in which the quantum of maintenance or litigation expenses has been calculated. Appellate Courts will also not hesitate to interfere in orders of this type where the whole approach of the Court below in the matter of fixing the quantum has been erroneous or contrary to settled legal principles or has resulted in grave injustice to the aggrieved party.

(8) In the present case, the learned Single Judge appears to have reduced the maintenance allowance from Rs. 300 per mensem to Rs. 200 per mensem because he thought that the amount to be fixed under section 24 has to be as near one-fifth of the income of the husband as may be practicable. It may be noticed that no such ceiling on the amount of maintenance to be paid to an applicant under section 24 has been fixed in any provision of the Act. The idea of this ceiling appears to have been imported into some judgments on account of section 36 of the Indian Divorce Act. That provision reads as below:—

> "36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied on the truth of the statements therein contained, may make such order on the husband for the payment to the wife of alimony pending the suit as it may deem fit :

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be."

Section 24 of the Act, with which we are concerned, is in the following terms :—

"24. Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable."

There are various points of distinction between the two provisions. Whereas under section 36 of the Indian Divorce Act it is only the wife who can claim maintenance, even a husband can claim such allowance under section 24 of the Act. Whereas the power of the Court to grant allowance under section 36 of the Indian Divorce Act is not made conditional on a finding about the wife not being able to maintain herself such a condition precedent is attached to the exercise of jurisdiction under section 24 of the Act. The third distinction is the one with which we are directly concerned. Section 36 of the Indian Divorce Act limits the jurisdiction of the Court to award no more than one-fifth of the net income of the husband to the wife. Though the Indian Divorce Act had been in force for a long time before the Hindu Marriage Act was passed, the Legislature consciously and deliberately avoided to put any such ceiling in the allowance that can be fixed under section 24 of the Act. We are, therefore, unable to find any justification whatever for imposing such ceiling on the quantum of maintenance

allowable to a spouse under section 24 of the Act. To do so would amount to legislate which is not the function of Courts and which function must be left to those to whom the Nation entrusts that task. In *Pratima Bose* v. *Kamal Kumar Bose* (2), it was observed by a Division Bench of the Calcutta High Court that in the absence of any express provision as to the maximum alimony in the Hindu Marriage Act the discretion vested in Court in determining a reasonable amount of maintenance should not be controlled by importation of principles from the Indian Divorce Act. Their Lordships of the Calcutta High Court further observed that there should not be any hard and fast rule in the matter of assessment of maintenance and each case should be determined on its own facts. It was also stated in the judgment that the amount of maintenance can include the amount required by the wife for the maintenance and education of her child. We are in respectful agreement with all the abovementioned observations of the Division Bench of the Calcutta High Court in *Pratima Bose's case* (2). In Mulla's 'Hindu Law' (Thirteenth Edition by Sunderlal T. Desai) it is stated at pages 730-731 as below :—

> "Any decision under the present section (section 24) on the subject of alimony must necessarily turn on the circumstances of each case and no fixed rules can be expected on the question. In case of ordinary or small incomes a rough working rule adopted by some courts in India under some analogous legislation is to assess the amount at one-third of the aggregate income of the husband and wife less the wife's income. It is submitted that in cases falling for determination under this section there can be no datum line but this rough working rule may be of some use in fixing the amount of interim maintenance in proceedings under the Act. In case of very large income the court would not have regard to any notional rule in exercising its discretion in the matter and the proportion may be less. It is essential to note that there can be no rigid rule in maintenance as to the proportion to be given and it would be an error to decide first what the proportion should be and then to examine the other relevant factors. The court will take all the circumstances of the case into account and arrive at a proper solution having particular regard to the factors which are mentioned in the section."

(2) 68 C.W.N. 317.

Referring to the practice in England, the learned Author observes at pages 731-732 as under :—

> "Where the parties are unable to agree, the normal proportion of the amount of alimony allotted to the wife is one-fifth of the total income of the husband and wife less the wife's income. The more recent trend in England, however, is not to lay stress on any such rigid arithmetical rule but have regard to the disposable income of the husband and the income of the wife and assess the amount after taking into consideration all the facts and circumstances of the case including the conduct of the parties."

(9) For calculating the amount of maintenance *pendente lite* to which a wife may be entitled under section 24, we see no harm in applying the rough working rule stated by Mulla to have been adopted by some Courts in India under some analogous legislation to assess the amount at one-third of the aggregate income of the husband and wife less the wife's income. This working rule can serve as a good guide in normal cases where the husband has an ordinary income i.e., an income up to about Rs. 1,000 per month. When it is seen, as observed in Mulla's 'Hindu Law', that even in England, where the guiding rule of giving the wife one-fifth of the total income of the husband originated, the more recent trend is not to lay stress on any such rigid arithmetical rule but have regard to the disposable income of the husband and the income of the wife and to assess the amount after taking into consideration all the facts and circumstances of the case, we see no justification at all for importing into section 24 a ceiling which the Legislature, in its wisdom, did not want to fix. We, therefore, hold that there is no warrant whatever for imposing on the discretion vested in a Court, under section 24 of the Act, any fetter of the maximum maintenance which can be allowed to a wife.

(10) After coming to a decision about the total amount reasonably required by the applicant, for her or his maintenance, the Court will deduct therefrom the amount of net income of the applicant. It is the reasonableness of the figure thus arrived at which has to be considered by the Court before issuing a direction under section 24.

(11) The only other consideration which appears to have led the learned Single Judge to reduce the quantum of maintenance

payable to the wife is the fact that the wife is admittedly living with her parents in Chandigarh. Even the learned counsel for the respondent conceded that parents have no obligation to maintain their married daughters. A wife who is unable to live with her husband during a proceeding under the Act is not expected to stay in the street in order to justify a claim for maintenance which should normally include a reasonable sum which she has to spend in order to find some shelter. Courts should never lose sight of the fact that except in certain exceptional cases a Hindu wife never normally leaves the house of her husband and is never enamoured of staying with her parents after giving up her matrimonial home. In *Mukan Kunwar* v. *Ajeetchand* (3), Jagat Naryan, J. enumerated some of the factors which are not sufficient to deprive an applicant under section 24 of the Act of maintenance allowance and expenses of the proceedings. One of those factors was stated to be that the applicant was being supported by her father. The learned Judge also held that the fact that the wife was refusing to live with her husband was also no ground for dis-entitling her to alimony *pendente lite*. We have with those observations also. To the same effect are the observations of a Division Bench of the Mysore High Court in *N. Subramanyam* vs. *Mrs. M. G. Saraswathi* (4). There it was held that the Court cannot take note of the fact that the father is supporting her and helping her in her studies and that it is only the independent income of the wife that can be aken into account. It was further observed in that case that help rendered by the father or other relatives of the wife is in its very nature at the will of such person. Having regard to the facts and circumstances of the present case, the District Judge had awarded to the wife almost one-third of the disposable income of the husband. According to the present emoluments of the husband, the sum of Rs. 300 per mensem is really less than even one-third of his disposable income as calculated by us. We cannot lose sight of the fact that out of this amount, the wife has to maintain her infant child for whom admittedly the respondent is not paying anything to the wife separately. Both the considerations which weighed with the learned Single Judge viz (1) the maximum amount payable under section 24 being one-fifth of the respondent's income and (2) the consideration of the wife living with her parents in Chandigarh,

(3) A.I.R. 1958 Raj. 322.
(4) A.I.R. 1964 Mysore 38.

having been found by us to be not relevant, the order of the learned Judge reducing the amount of maintenance cannot be sustained.

(12) So far as the question of litigation expenses is concerned, there does not appear to us any justification whatever for upholding the reduction of the amount from Rs. 1,000 to Rs. 500. Merely because the wife has to produce only four more witnesses in the trial Court does not, in our opinion, justify the ignoring of the expenses already incurred by her on the litigation in question. She has given details of the rates at which she has been paying her counsel in the trial Court. She has also given details of expenses incurred on court fees and typing charges etc. Her counsel showed to us receipt of Rs. 100 on account of commission fee and Rs. 50 paid to the counsel for the husband for examining one single witness on commission who could not appear in Court. The learned Single Judge has not given any reason for reducing the amount. The amount could no doubt be reduced by dealing with each item of expenses mentioned in the schedule attached by the wife with her application and finding out as to what should have been the expenses. Normally, a good advocate would charge about Rs. 1,000 for prosecuting a case under the Act in the trial Court. The very fact that the wife presented the petition in June, 1968, which has still not been disposed of, shows the long drawn litigation which the wife has to face. Considering all the circumstances of the case, we have no doubt that the sum of Rs. 1,000 which had been fixed by the District Judge as litigation expenses was a fair estimate of the wife's actual expenses and was not unreasonable from any point of view.

(13) For the foregoing reasons, we allow this appeal, set aside the judgment and order of the learned Single Judge and restore the order of the learned District Judge. As a result, the wife would be entitled to payment of a total sum of Rs. 1,000 as her litigation expenses for the trial Court and would be entitled to get from the husband Rs. 300 per mensem with effect from the date of her application till the disposal of the case pending before the District Judge. Of course, the husband would be entitled to the credit of the amounts which he has already paid to her towards maintenance and towards the expenses incurred in the trial Court. The costs of the appellant incurred in this Court shall be borne by the respondent.

N.K.S.