
(1977) 11 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 63 M of 1976

Mrs. Sarita Mehta

APPELLANT

Vs

Captain Arvind Kumar Mehta

RESPONDENT

Date of Decision : 07-11-1977

Acts Referred:

Hindu Marriage Act, 1955 — Section 10

Citation : (1977) 11 P&H CK 0011

Hon'ble Judges : K.S. Tiwana, J

Bench : Single Bench

Advocate : R.L. Aggarwal, for the Appellant; B.K. Bali, for the Respondent

Judgement

K.S. Tiwana, J.—This F.A.O. has been directed against the order of the Senior Subordinate Judge, Chandigarh dated June 14, 1976 for awarding Rs. 225 per mensem to the petitioner by way of maintenance pendente lite in her petition for judicial separation.

2. The petitioner, who is legally wedded wife of the respondent has filed a petition u/s 10 of the Hindu Marriage Act for judicial separation against her husband in the Court of the Senior Subordinate Judge, Chandigarh. The petition is being contested by the respondent. Pending the petition, the petitioner, filed an application u/s 24 of the Hindu Marriage Act for awarding her maintenance pendente lite and expenses of litigation. It was stated in the application that the respondent, who is in the Indian Army, was drawing Rs. 1,500/- as monthly pay and has an annual income of Rs. 30,000/- from his agricultural land. The petitioner demanded Rs. 500/- per mensem by way of maintenance and Rs. 2,000/- as litigation expenses.

3. The respondent contested the claim of the petitioner and stated that his gross monthly income is Rs. 1,593/-. According to him after the necessary deduction, of Rs. 125/- and Rs. 176/- provident fund his gross salary was Rs. 1,392- p.m., but his carry home pay-package was only worth Rs. 897/50 paise p.m. from his

land he did not get any income more than Rs. 2,000/- per annum.

4. Pending this petition, an order made by the Government of India, allowing Rs. 225/- per mensem to the petitioner as maintenance u/s 90(1) of the Army Act was produced. Vide this order deductions are made of Rs. 225/- p.m. from the salary of the respondent from February; 1976 payable in March and onward for payment to the respondent.

5. The learned Trial Judge did not hold a regular enquiry into the conflicting claims of the parties about the income of the respondent. He held that as she was drawing this amount as maintenance under a legal order by the Government of India there was no necessity of making a separate order on her application u/s 24 of the Hindu Marriage Act, The petitioner, feeling dissatisfied with the order, has approached this Court for enhancement of the amount of maintenance to Rs. 500/- p.m. and also the litigation expenses which were allowed to her by the Senior Subordinate Judge.

6. An objection was raised on behalf of the respondent that after the amendment of the Hindu Marriage Act, no appeal against an order passed u/s 24 of the Act lies. The learned counsel for the appellant conceded to this objection and both the parties agreed that this petition be treated as a revision and consequently, I treat this appeal as a revision.

7. The scope of a revision is limited u/s 115 of the CPC and the revisional Court can interfere in the order under revision only if the Subordinate Court has failed to exercise the jurisdiction vested in it, or has exercised the jurisdiction which is not vested in it by law, or has any way exercised the jurisdiction with material irregularity. I have heard the counsel for the parties and do not find any of the grounds for interference mentioned in section 115 of the code is found to exist in the order under revision. The learned counsel for the petitioner argued that the amount allowed by way of maintenance and litigation expenses by the Senior Subordinate Judge, Chandigarh was low and the trial Court has not allowed the amount of maintenance from the date of application. So far as the first argument is concerned, it is a matter of discretion which, in my view, has not been wrongly or capriciously exercised by the learned Senior Subordinate Judge. Taking into consideration the income of the husband, the petitioner has been allowed Rs. 225/- p.m. by way of maintenance. The order u/s 24 of the Act is of temporary nature which operates only during the pendency of the proceedings. In case of the petitioner in the main case, the Court has an independent right, uninfluenced by the order u/s 24 of the Act, to pass any order fixing the maintenance or alimony to which she would be entitled " by the Court. I am of the view that the trial judge did not act illegally or with material irregularity in taking into account the order of the Government of India produced before him to fix the maintenance of the petitioner during the proceedings. In case, for any reason, the Government of India withdraws that order or makes any change in it, that amount shall be taken to be fixed for maintenance for the purpose of section 24 of the Hindu Marriage Act and shall remain operative during the pendency of the

proceedings. I do not feel inclined to alter this amount of maintenance.

8. The other contention of the learned counsel for the petitioner is that the order of the maintenance has to be passed from the date of the application made to the Court and not from February, 1976. Mr. Bali, learned counsel for the respondent, does not concede to this position and states that there is no rule in support of it. In the Hind. Marriage Act this salutary provision of section 24 was enacted to provide financial assistance to the wife whom the husband has driven to litigation. In order to avoid starvation or destitution, monthly maintenance was provided. This is a departure from the general law by which the wives who, in most of the cases, were not in a happy financial position, were to be supported during the litigation. In this background, the word "during the proceedings" u/s 24 of the Hindu Marriage Act ate of great significance. This term would cover the proceedings from the start till end to atleast from the date the application is made till the termination of proceedings in the Court. I derive support to this view of mine from Smt. Kamla Rani v. Raj Mukaar (1971) 73 P.L.R. 912. In this view of the matter, the order of the learned Senior Subordinate Judge should have been for payment of maintenance from the date of application after deducting the amount paid to the petitioner by the husband under the order of the Government of India To this extent, the order under revision is amended. I do not think if the expenses of the litigation are insufficient or the amount of maintenance is meagre. To this extent, the revision is allowed. No order as to costs.

9. The parties through their counsel have been directed to put in appearance in the Court of the Senior Subordinate Judge, Chandigarh on the 23rd day of November, 1977.