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**(2004) 03 P&H CK 0142**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Revision No. 436 of 2003 (O and M)

Prabhdyal Dhiman

APPELLANT

Vs

Anita Dhiman

RESPONDENT

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**Date of Decision :** 19-03-2004

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Hindu Marriage Act, 1955 — Section 24

**Citation :** (2004) 3 CivCC 73 : (2005) 1 DMC 128 : (2004) 2 RCR(Civil) 831

**Hon'ble Judges :** M.M. Kumar, J

**Bench :** Single Bench

**Advocate :** Amit Rawal, for the Appellant; Amarjit Markan, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

M.M. Kumar, J.—This petition filed under Article 227 of the Constitution prays for setting aside order dated 21.11.2002 passed by Civil Judge (Junior Division), Ludhiana, allowing an application of the respondent-wife u/s 24 of the Hindu Marriage Act, 1955 (for brevity "the Act") awarding maintenance @ Rs. 4,500/- till the decision of the case and litigation expenses of Rs. 5,500/-.

2. Brief facts of the case are that marriage between the parties was solemnized on 17.11.1984 at Ludhiana according to Sikhs religious rites. The parties cohabited as husband and wife at Nakodar resulting into birth of two children namely Printa and Akhilash. The petitioner-husband filed a divorce petition against the respondent-wife in the year 1997. During the pendency of the divorce proceedings, an application filed by respondent-wife u/s 24 of the Act was dismissed by the learned Additional District Judge, Jalandhar vide his order dated 21.4.1999 (Annexure P-I). The divorce petition was dismissed by the learned Additional District Judge, Jalandhar on 3.2.2001 and even the appeal filed by the petitioner-husband has been dismissed as withdrawn. As a consequence on 5.8.2002, the respondent-wife filed a petition u/s 9 of the Act and also filed an application u/s 24 of the Act claiming a sum of Rs. 22,000/- as

litigation expenses and Rs. 40,000/- as maintenance by pleading the income of the petitioner-husband at Rs. 2.00 lakhs p.m. It is alleged that material facts have been concealed inasmuch as no reference has been made with regard to dismissal of her application on 21.4.1999 filed by the respondent-wife when the petitioner-husband had filed divorce petition. It is further alleged that respondent-wife did not intentionally disclose her income, which she has been earning from running an institute. The petitioner-husband opposed the application. In his reply, he stated that the respondent-wife is owner of firm known as M/s. Dhiman Industrial Corporation and she has a permanent income tax No. PAN No. AAL-PD-3438L, which shows that she has been an income tax assessee. Reference was also made to her current bank account and that she is owner of various properties at Ludhiana. Her income was pleaded to be Rs. 10,000/- p.m. The petitioner-husband also disclosed his approximate income to be Rs. 17,000/- p.m. after making necessary and legal deductions. He is also to look after his parents and two children, who are residing with him and are aged 13 and 12 years respectively. The petitioner-husband has appended the photographs down loaded by him from web site of the school being allegedly run by the respondent-wife under the name and style of Khushboo School of Art, Dashmesh Nagar, Ludhiana (Annexure P-4). A copy of income tax return for the year 2002-2003 showing gross income of Rs. 2,59,000/- approximately and total income after deductions at Rs. 2,48,000/- has been attached. Bank account at Hindu Urban Cooperative Bank Ltd. Nakodar has also been appended to show the income of the respondent-wife.

3. The Civil Judge, Ludhiana, rejected the argument that mere dismissal of earlier application filed u/s 24 of the Act by the Additional District Judge, Jalandhar on 21.4.1999 would not constitute a final verdict for all times to come because the economic status of the respondent-wife has to be considered for the relevant period only when the application was filed or the period during which the main petition was pending. He also came to the conclusion that real owner of M/s. Dhiman Industrial Corporation, Nakodar continued to be the petitioner-husband and in this regard, Additional District Judge placed reliance on photocopies of documents, which prima facie show that transactions whereby the amount was transferred from the Dhiman Industrial Corporation under the signature of the petitioner-husband, who is also an authorised signatory in respect of Dhiman Industrial Corporation. It was further observed that a businessman usually run his business under the name of his wife and actually the business was being run and even today being carried out by the petitioner-husband. Therefore, he took the view that the respondent-wife was entitled to Rs. 4,500/- as maintenance and also litigation expenses of Rs. 5,500/-.

4. Before dealing with the respective contentions raised by the learned Counsel for the parties, it would be appropriate to point out that efforts were made for amicable settlement between the parties by the intervention of this Court as is evident from the orders dated 14.5.2003 and 5.8.2003. Both the learned Counsels have also conceded that such efforts in great details were made but

29.8.2003, it has to be stated that reconciliation between the parties is not possible.

5. Mr. Amit Rawal, learned Counsel for the petitioner has argued that there is ample evidence on record showing huge income of the respondent-wife. In support of his submission, the learned Counsel has placed reliance on the order dated 21.4.1999 (Annexure P.1) passed by the Additional District Judge, accepting that the respondent-wife had sufficient income from M/s. Dhiman Industrial Corporation to maintain herself and to contest the litigation. The learned Counsel has then referred to the photographs (Annexure P-4) showing that respondent-wife is running a school known as Khushboo School of Art, Dashmesh Nagar, Ludhiana. He has also referred to income tax return (Annexure P-6) in respect of the assessment years 1997-98 and 1996-97. In both the income tax returns, the gross income of respondent-wife mentioned is Rs. 1,02,173/- and Rs. 94,280/-. He has also placed reliance on a certificate issued by the Nakodar Hindu Urban Cooperative Bank Ltd. (Annexure P-7) where respondent-wife is maintaining an account showing balance of Rs. 11,928/- as on 9.10.2000 and other documents showing membership of the afore-mentioned bank having shares of 20,120/-. The learned Counsel has submitted that once respondent-wife possesses sufficient income to maintain herself, there is no reason for directing payment of maintenance from her husband. In support of his submission, the learned Counsel has placed reliance on a judgment of this Court in *Krishan Dev v. Smt. Madhu Bala*, 1996 (3) RCR 194. He has then argued that in her application filed u/s 24 of the Act, the respondent-wife has failed to disclose all these facts, which itself should be sufficient to reject her application as has been held by Delhi High Court in *Shakti Pershad Vs. Ratna Pershad*, and a judgment of the Supreme Court in the case of *Smt. Jasbir Kaur Sehgal v. District judge, Dehradun*, 2 (1997) DMC 338 :1997 (4) RCR 65.

6. Mr. Amarjit Markan, learned Counsel for the respondent-wife has argued that name of the petitioner in the firm known as M/s. Dhiman Industrial Corporation has been put in benami whereas the petitioner-husband has been carrying on the business as a Power of Attorney. He has also referred to photocopies of the Power of Attorney submitted to the Punjab & Sind Bank, Ludhiana on 16.5.1997 and 2.11.1996. The authority to operate the current account No. 19 was also with the petitioner-husband, which power has been given to him by the respondent-wife vide Power of Attorney dated 24.10.1996. The learned Counsel has also pointed out that the afore-mentioned firm is a dead firm and is facing a recovery suit pending in the Court of Civil Judge, Nakodar titled as *Punjab & Sind Bank v. M/s. Dhiman Industrial Corporation*. He has also pointed out that all the correspondence etc. from the said account has been made by the petitioner-husband. He has referred to payment of Rs. 1.00 lakh vide cheque No. 523381 dated 5.10.1996 and another payment of Rs. 50,000/- vide cheque No. 523384 dated 8.10.1996 to the firm M/s. Dhiman Systems Private Limited, which admittedly belonged to the petitioner-husband. He has then referred to withdrawal of Rs. 30,000/- vide cheque No. 651511 dated 27.11.1997 signed by

the petitioner-husband in his capacity as a Power of Attorney furnishing proof of a number of benami transactions by the petitioner-husband in the name of respondent-wife. Similar argument has been raised with regard to the transaction in Nakodar Hindu Cooperative Bank Ltd. and reference has been made to cheque No. 51327 dated 4.1.1997 for an amount of Rs. 1,90,000/-. It is further stated that the petitioner-husband as well as his father are carrying on their independent business in the name of M/s. Dhiman Industries at Nakodar.

7. The learned Counsel has referred to Annexure R-3 the statement of the petitioner-husband where he has admitted that he has been running the factory under the name of Dhiman Indian Systems Ltd. and the annual turnover of factory is Rs. 90.00 lakhs. Mr. Markan has relied upon a judgment of this Court in Smt. Samriti Sharma v. Chander Kumar Sharma 1985 MLJ 218, a Division Bench judgment of this Court in Sohan Lal Vs. Kamlesh, and a judgment of the Supreme Court in the case of Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others, and argued that the order granting or refusing maintenance u/s 24 of the Act is co-terminus with the main proceedings and such an order cannot have a permanent binding effect on any subsequent proceedings as it cannot operate beyond the date on which the main proceedings terminated. According to the learned Counsel, the order dated 21.4.1999 passed by the Additional District Judge, Ludhiana, declining the prayer of the respondent-wife cannot be binding on her for all times to come and comes to an end when the proceedings initiated by the petitioner-husband for dissolution of marriage were terminated. The learned Counsel has also argued that it has been sufficiently shown by cogent evidence that in order to obtain benefits, the petitioner-husband has been using the name of respondent-wife in various business transactions as has been found by the learned Civil Judge. Mr. Markan has emphasised that proceedings u/s 24 of the Act are summary in nature and this Court in its supervisory jurisdiction would not be inclined to interfere even if there is error of law let alone an error of fact. For the aforementioned proposition, the learned Counsel has placed reliance on a judgment of the Supreme Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, .

8. After hearing the learned Counsel for the parties at a considerable length and perusing the documents placed on record, I am of the view that this petition deserves to be dismissed. It is not uncommon that in large number of cases, the name of the female like the wife, mother, sister and even the daughter is used in the business transactions in order to avail benefits under various laws. It has been sufficiently proved on record that M/s. Dhiman Industrial Corporation, which is a dead concern but the same was being run by the petitioner-husband. The Power of Attorney executed by the respondent-wife in favour of the petitioner-husband and the issuance of cheques by the petitioner-husband go a long-way to show the real face of the afore-mentioned firm. For the purposes of taking a decision on an application filed u/s 24 of the Act, it is not necessary to record a conclusive finding and it is sufficient if the Court comes to a conclusion which a reasonable man in the facts and circumstances of the case would reach

after taking into consideration the ground realities. In the instant case, it cannot be said that the Civil Judge has not taken the correct view of the facts placed before him. She was rightly concluded that respondent-wife would not have sufficient source of income and has rightly awarded a sum of Rs. 4,500/- p.m. to her along with the litigation expenses.

9. It appears to be well settled that dismissal of earlier application does not have a binding effect so as to conclude that a fresh application u/s 24 of the Act arising in fresh proceedings is also liable to be dismissed because the earlier order is coterminus with the proceedings in the main case. In this regard, reliance may be placed on a Division Bench judgment in Sohan Lal's case (supra). In the afore-mentioned judgment, the view of the Supreme Court in Capt. Ramesh Chander Kaushal (supra), has been followed and relied.

10. I am further of the view that in fixing the maintenance pendente lite u/s 24 of the Act, no hard and fast formula could be laid down. However, the same has to be determined on the basis of status of the parties, their respective needs, capacity of husband to pay having regard to reasonable expenses for his own maintenance, etc. as has been observed by the Supreme Court in Smt. Jasbir Kaur Sehgal's case (supra). Accordingly, I find that there is hardly any justification to interfere in the impugned order because according to the status of parties, an amount of Rs. 4,500/- p.m. maintenance pendente lite is quite reasonable and by no standard could be held to be on higher side. Moreover, under Article 227, the jurisdiction of this Court could be exercised only in cases where grave injustice is caused to a party challenging such an order. There is no such element of grave injustice present in this case, which may warrant exercise of jurisdiction under Article 27. For the aforementioned view, reliance can be placed on the judgment of the Supreme Court in Mohd. Yunus' case (supra).

For the afore-mentioned reasons this petition fails and the same is dismissed. However, there is no order as to costs.