
(1992) 07 GUJ CK 0022
In the Gujarat High Court
Case No : C.R. Application No. 494 of 1991

Pratapbhai V. Trivedi	Vs	APPELLANT
Priyavadu @ Ghanu Pratapbhai Trivedi		RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Hindu Marriage Act, 1955 — Section 24, 9

Citation : (1993) 2 CivCC 365 : (1994) 1 DMC 187 : (1993) 1 GLR 487

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Advocate : P.M. Thakkar, for the Appellant; B.J. Jadeja, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Shah, J.

This revision application raises the interesting question as to the right of the husband to withdraw unconditionally the Hindu Marriage Petition for restitution of conjugal rights instituted u/s 9 of the Hindu Marriage Act, 1956 while the application filed by the wife for maintenance pendente lite and the expenses of litigation is pending before the Court. The Trial Court has by its impugned order granted per mission to withdraw the petition but has ordered that the withdrawal shall be effective after the decision of the Court on application for maintenance pendente lite. This order of the Trial Court has given rise to the present revision.

1. The husband instituted Hindu Marriage Petition u/s 9 of Hindu Marriage Act against the respondent-wife for restitution of conjugal rights being H.M.P. No. 18/87. The respondent-wife appeared and filed reply to the petition for restitution of conjugal rights. She has also filed application at Exh. 8 for grant of maintenance pendente lite and the costs of litigation on 3-4-87. The petitioner-husband has filed reply to the application for maintenance pendente lite, and thereafter, the hearing of said application for maintenance pendente lite was

adjourned, from time to time mostly at the instance of the petitioner-husband. On 22-11-90 the petitioner's husband tendered an application at Exh. 31 for unconditionally withdrawing the HMP and the respondent-wife objected to said withdrawal of the petition, inter alia, contending that u/s 24 of Hindu Marriage Act, 1956 she has acquired right to receive maintenance pendente lite and expenses for litigation and that till said right is determined and maintenance and costs of litigation are paid, no permission to withdraw the petition unconditionally should be granted.

2. Mr. P.M. Thakkar, learned Advocate for petitioner has strenuously urged that Under Order XXIII Rule 1 of C.P. Code the plaintiff has absolute and unfettered right to withdraw the petition unconditionally and it is not necessary for the petitioner to even obtain leave or permission of the Court for such withdrawal. He further submitted that once an application is tendered for withdrawing the HMP, the proceedings before the Court get automatically terminated and there is no right or power in the Court to grant any permission or leave to withdraw the petition or to continue such petition till the right of the wife to receive maintenance pendente lite u/s 24 of the Act is determined. In his submission, the Court acting under Order XXIII Rule 1 C.P. Code has no jurisdiction to withhold the permission or to keep the proceedings of the petition alive till the application tendered by the wife for maintenance pendente lite is determined, and therefore, the order of Civil Court being without jurisdiction is liable to be quashed and set aside.

3. Mr. B.J. Jadeja, learned Advocate for respondent-wife on the other hand, submitted that true it is that ordinarily the plaintiff has unfettered and uncontrolled right to withdraw the suit whenever he pleases, but if during the pendency of suit some right has accrued to the other party, the plaintiff cannot be permitted to withdraw the suit or the proceedings in order to defeat the right which has accrued to the other party. He further submitted that under the provisions of Hindu Marriage Act, 1936 once the petition for restitution of conjugal rights or for judicial separation or for dissolution of marriage or for declaration that the marriage was null and void is filed by either of the spouses, u/s 24 of the Hindu Marriage Act, the wife or the husband, as the case may be has the right to apply to the Court for maintenance pendente lite and expenses of the proceedings. The Court on being satisfied that such applicant has no independent income sufficient to such application to pay to the applicant monthly maintenance and the expenses of the proceedings. The applicant gets right to move the Court for maintenance pendente lite and expenses of the proceedings during the continuance of proceedings. He, therefore, submitted that once the right has accrued to the wife to apply for and to receive monthly maintenance and expenses of the proceedings, the husband should not be permitted to withdraw the petition unconditionally because that would amount to defeating the right which has accrued in the proceedings initiated by the husband, he submitted that in the present case the withdrawal of proceedings is in bad faith and mala fide withdrawal solely with a view to defeat the right of the wife to

receive maintenance pendente lite from the date of her application at Ex. 8 till the petition is withdrawn.

4. In order to appreciate rival contentions of the parties, in my opinion, it would be necessary first to refer to the provisions of Order XXIII Rule 1 of C.P. Code and the nature of right conferred on the plaintiff by the said provisions. Thereafter, it would be necessary for this Court to examine the nature of right which accrues to the applicant u/s 24 of the Hindu Marriage Act, 1956 and the effect of withdrawal of Hindu Marriage Petition on application u/s 24 of the Act.

5. Order XXIII Rule 1 C.P. Code reads as under :--

Withdrawal of suit or abandonment of part of claim :--

"1(1) At any time after the institution of suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon the part of his claim :--

Provided that where the plaintiff is a minor or other person to whom the provisions contained under Rules 1 to 14 of Order XXXII extends, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) The application for leave under the proviso to Sub-rule (1) shall be accompanied by an affidavit of the next friend also, if the minor or such other person is represented by the pleader, by the certificate of the pleader to the effect that the abandonment proposed is in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied--

(a) that the suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of the suit or part of the claim, it may, on such terms as it thinks fit grant the plaintiff permission to withdraw from said suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff...

(a) abandons any suit or part of claim under Sub-rule (3) he shall be liable for such costs as the Court may award and shall be precluded for instituting any fresh suit in respect of said subject-matter or such part of the claim.

(5) Notwithstanding anything contained in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon the suit or part of claim under Sub-rule (1), or to withdraw, under Sub-rule (3) any suit or part of claim without the consent of other plaintiffs."

6. It becomes clear from the aforesaid provision that the plaintiff can abandon the suit or abandon the part of his claim as a matter of right without the permission of the Court. This is known as unconditional withdrawal of the suit by

the plaintiff. When the plaintiff withdraws the suit unconditionally first he becomes liable to pay such costs to the defendant as may be awarded by the Court, and secondly he is precluded from instituting fresh suit in respect of same subject-matter under Sub-rule (3) of Rule 1 of Order XXIII. It is pertinent to note that there is no provision in the C.P. Code which authorises the Court to refuse permission to withdraw the suit in such circumstances and to compel the plaintiff to proceed with the suit. The principle underlying the provision for withdrawal and abandonment is that the law confers upon a man no rights or benefits, who he does not desire, *invito bene ficium non datur*. This principle is based on public policy and it is well established that the law would not ordinarily compel a person to prosecute the proceedings which he does not want to prosecute.

7. In the case of *Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.*, the provisions of Order XXIII Rule of C.P. Code came to be interpreted by the Supreme Court in the context of a suit for rendition of accounts by principal against his agent and when the principal applied to withdraw the suit at a stage when the issues have been framed and substantial evidence has been recorded, but when no preliminary decree for rendition of accounts was passed. The defendant contended before the Supreme Court that in a suit of such nature right has arisen in the defendant to get a decree for the amount found due to him after rendition of account and that he should not be deprived of such right unconditionally. The Court found that the application to withdraw the suit unconditionally was given by the principal at the stage when issues had been framed and some evidence had been recorded, but when no preliminary decree for rendition of accounts had been passed. The Court while dealing with the Order XXIII Sub-rule (1) of Rule 1 of C.P. Code made following pertinent observations :--

"The language of Order XXIII, Rule 1 Sub-rule (1) C.P.C. gives an unqualified right to a plaintiff to withdraw from suit and if no permission to file a fresh suit and if no permission to file a fresh suit is sought under Sub-rule (2) of that Rule, the plaintiff becomes liable for such costs as the Court may award and becomes precluded from instituting any fresh suit in respect of that subject-matter under sub-Rule (3) of that Rule. There is no provision in the CPC which requires the Court to refuse permission to compel the plaintiff to proceed with it. It is of course, possible that different considerations may arise where a set-off may have been claimed under Order 8 CPC or a counter claim may have been filed, if permissible by the procedural law applicable to the proceedings governing the suit."

From the aforesaid observations of the Court it becomes clear that normally the plaintiff of a suit has absolute and unqualified right to withdraw from the suit. His liability is twofold liability, i.e. (i) to pay such costs as the Court may award and (ii) he becomes precluded from instituting any fresh suit in respect of that subject-matter under Sub-rule (3) of Rule 1. Excepting the twin liabilities, the right of the plaintiff to withdraw from a suit is absolute and unqualified. However,

there are certain circumstances where different considerations may arise. As for example, where a set-off is claimed under Order 8 of C.P. Code or where a counterclaim is filed or where in a suit for partition a preliminary decree is passed declaring and defining shares of several parties or where in a partnership suit and suit for accounts defendants too may be entitled to some reliefs in their favour as a result of settlement of accounts. It is pertinent to note that the Supreme Court in the aforesaid case of M/s. Hulas Rai Baij Nath (supra) recognised a class of cases where different considerations may arise and where plaintiff will not be permitted to withdraw from suit unconditionally when such withdrawal is likely to affect some vested right in favour of the other party. When during the pendency of the proceedings u/s 9 of the Hindu Marriage Act, an application is made at Exh. 8 by the wife u/s 24 of Hindu Marriage Act, 1956 and by virtue of statutory right recognised by Section 24 of the Act a right has accrued to the wife to receive maintenance pendente lite at least from the date of her application and the costs of litigation, it shall have to be decided as to whether the right of the plaintiff (petitioner) to withdraw from the suit or petition for restitution of conjugal rights remains uncontrolled and absolute or it gets fettered by the right of the other spouse to get maintenance pendente lite at least upto the date of application for withdrawal of suit/petition.

8. In order to answer the aforesaid question it would be necessary to refer to Section 24 of Hindu Marriage Act, 1956 which reads as under :--

"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."

From the aforesaid provision it becomes clear that the husband as well as wife, as the case may be has a right to move the Court for monthly maintenance and expenses of the proceedings if the Court is satisfied that the applicant had no independent income sufficient for his/her support and the necessary expenses of the proceedings and the Court having regard to the applicant's net income and the income of the respondent may order the respondent to pay to the applicant reasonable amount. The widest discretion is conferred on the Court and order for maintenance pendente lite and the costs of the proceedings can be made in any proceedings under the Act. Of course, the order can be made while the proceeding is pending and not after its termination. The order made u/s 24 cannot ensure after the proceeding is terminated. The order made u/s 24 of the Act thus co-terminates with the proceedings and if the proceedings are terminated by unconditional withdrawal thereof, at least from the date of such termination the right to receive maintenance pendente lite and costs of the proceedings comes to an end. However, the right to receive maintenance till that

date and the costs of litigation is not extinguished and that right shall have to be decided because it is a statutory right recognised by the legislature in the applicant and such right cannot be nullified by act of erring spouse. True, it is, that by judicial order to be passed u/s 24 right to receive maintenance pendente lite and costs of litigation is to be recognised but when once an application is made u/s 24 of the said Act in a petition for restitution of conjugal rights filed by the husband under the said Act, in my opinion, a right has accrued in the applicant u/s 24 of the Act to receive maintenance pendente lite and costs of litigation by an order of the Court and the Court cannot negate such a right in an applicant by delaying the determination therefore for unduly long period. Simply because application of the wife for maintenance pendente lite and costs of litigation has remained pending for a period of more than 3 years the applicant cannot be denied her statutorily recognised right to receive maintenance and the Court shall have to adjudicate upon it and shall have to decide that right before granting permission to the petitioner of Hindu Marriage Petition to unconditionally withdraw the petition.

9. At this stage it would be necessary to refer to Section 21 of Hindu Marriage Act, 1956 which reads as under :--

Section 21 :

10. Subject to other provisions contained in this Act and to sub-rules as the High Court may make in this behalf all proceedings under this Act shall be regulated, as far as possible may be, by the C.P. Code, 1908.

11. From the aforesaid provision it becomes clear that all the proceedings under the Hindu Marriage Act shall be regulated, as far as possible, by the C.P. Code, 1908. Therefore, in matters relating to which there is no provision in the Act and which are not regulated by the Rules made by the High Court, the procedure to be followed under the Act in all the proceedings must be regulated by the C.P. Code. However, when adoption of procedure enacted by the C.P. Code is not practicable or adoption of such procedure is likely to defeat the other provisions of Hindu Marriage Act, in my opinion, it would not be just and permissible to apply the provisions of C.P. Code. The provisions like Section 24 of the Act confer a substantial right on the applicant during the pendency of the proceedings. When such a right has accrued to the applicant and the applicant has applied to the Court for determination of that right in my opinion liability is incurred by the other party and he cannot be relieved of that liability by permitting him to withdraw from the proceedings because that would encourage the erring like Section 24 and the right of the applicant to receive maintenance pendente lite and costs of the litigation. Such an exercise of power would be inconsistent with the very spirit of Section 24 of Hindu Marriage Act and therefore the Court would not permit resort to Order XXIII Rule 1 of C.P. Code and would refuse recourse to that provision because the procedure of CPC is to be applied as far as possible. Therefore, the procedure of unconditional withdrawal of Hindu Marriage Petition under Order 23 Rule 1 of C.P.C. is not permissible if the other party to the

proceeding has already applied for payment of maintenance pendente lite and expenses of litigation u/s 24 of the said Act. The Court is required to decide said right and to determine the entitlement of other party to the amount of maintenance and costs of litigation. Therefore, the procedure of withdrawal of Hindu Marriage Petition under Order XXIII Rule 1 despite objection of other party to the proceedings is not a permissible procedure and in my opinion the Court shall not permit the said withdrawal of Hindu Marriage Petition which would result into nullifying the right of the other party to receive maintenance pendente lite and expenses of litigation.

12. Mr. P.M. Thakkar, learned Advocate for petitioner had relied upon the decision of Division Bench of the All. High Court in the case of Smt. Raisa Sultana Begam and Others Vs. Abdul Qadir and Others, . In the case before the All. High Court a suit was filed by three plaintiffs. Afterwards, one of the three plaintiffs made an application to the Court stating that he had no dispute left with the defendants and further stating that his name may be deleted from the array of plaintiffs. Since the learned Judge of the Court was on leave on that day another Judge who was in-charge of the case did not pass any order on such application. On the next day of adjournment when the case was placed before the learned Judge the plaintiff who had applied for deletion of his name once again applied to the Court that he did not want to withdraw from the suit. The Court, however, allowed his earlier application for withdrawing from the suit holding that once he had withdrawn from the suit and therefrom he could not renege from the withdrawal. Said order passed by the Trial Court was challenged before the Division Bench of Allahabad High Court. The Division Bench of Allahabad High Court dealing with Rule 1 of Order XXIII held that there is no provision conferring the right to revoke the withdrawal and that there is no justification for saying that the right to withdraw includes in itself a right to revoke the withdrawal. It is not necessary for me in this case to express any opinion about the aforesaid proposition laid down by the division Bench of Allahabad High Court inasmuch as the controversy before me is quite different. Even otherwise, I shall have to state that the aforesaid view of the Division Bench of Allahabad High Court is contrary to the decision of the Bombay High Court in the case of Yeshwant Govardhan Vs. Totaram Avasu and Others, . The Division Bench of Allahabad High Court has not agreed with the view of the Division Bench of Bombay High Court in the case of Yashwant Govardhandas (supra) and the decision of the Division Bench of Bombay High Court being prior to 1960 is binding on this Court and therefore must of the efficacy of the decision of the Allahabad High Court is lost. Even otherwise, it must be stated that Mr. P.M. Thakkar has placed reliance upon the observations made in paras 4 & 8 of the Allahabad High Court. In para 4 of its judgment the Division Bench of Allahabad High Court observed as under :--

"It is this right that has been given statutory recognition through Rule 1(1). The right is not fettered by any conditions, it is an absolute right which a plaintiff can exercise at his sweet will at any time before the judgment is delivered. In Nirmla Devi Vs. Ram Dass, the Court described the right as "absolute" and capable of

being exercised "without any permission from the Court". Sub-Rule (4) is a proviso to Sub-Rule (2) which refers to withdrawal with liberty to file a fresh suit which withdrawal only requires permission of the Court. The plaintiff does not need consent of the defendant or permission or confirmation of the Court."

13. While dealing further with the said right, about the power of the Court, the High Court observed as under :

"Next it is to be noted that no act is required to be done by the Court to complete or effectuate a plaintiff's withdrawal of his suit. There is no provision for any act to be done in the suit by the Court for making the withdrawal effective or even after the withdrawal it is not even required to pass any order. Withdrawal of a suit is itself its end. A plaintiff withdrawing his suit is liable for costs as the Court may award, so the Court is empowered to pass an order only in respect of the costs. The liability for costs arises out of the plaintiff's withdrawing his suit; the suit has been withdrawn and consequently he becomes liable. The Court's order awarding costs against him is a consequence of the withdrawal is already complete and effective. The order is not an element of the withdrawal and is not required to complete or effectuate it."

14. About the nature of the act which the plaintiff performs in para 6 of the judgment the Division Bench observed as under :--

"The provision is that "the plaintiff may withdraw his suit" so he has to do an act and it is a unilateral act, i.e. an act to be done solely by him and neither the defendant nor the Court (which are the only other persons concerned with the suit) has any act to do complete or effectuate it. It is even more unilateral than the institution of a suit, which requires co-operation of the Court (unless the Court co-operates in receiving the plaint there is no institution)."

15. Lastly, after considering various decisions of the Court the Division Bench of Allahabad High Court in para 8 of the judgment observed as under :--

"Since withdrawing a suit is unilateral act to be done by the plaintiff, requires no permission or order of the Court and is not subject to any condition, it becomes effective as soon as it is done just as a compromise deed. Any information of it given to the Court is no part of it, so also any order passed by the Court on receiving the information. The act is like a point and not continuous like a line having a beginning and an end. Either it is done or not done incompletely or ineffectively.

16. Based on the aforesaid observations Mr. P.M. Thakkar for petitioner has submitted that once the petitioner-husband applied for withdrawal of his Hindu Marriage Petition under Order XXIII Rule 1 C.P. Code, nothing further is required to be done by him. In his submission, the withdrawal becomes complete and effective the moment application for withdrawal is tendered in the Court. Withdrawal is a unilateral act of the plaintiff. Neither permission of the Court nor the order of the Court is required, submits Mr. Thakkar.

17. In my opinion, the aforesaid submission is too broadly stated and cannot be accepted as an absolute proposition of law. Ordinarily, the right of the plaintiff to withdraw from a suit is absolute and unqualified right. However, as pointed out by the Supreme Court in the case of *Hulas Rai Baij Nath* (supra) where rights of other parties have come into existence, as for example, claim for set-off or counterclaim filed by the defendant, claim to receive some amount in a suit for partition under a preliminary decree already passed or a claim for share of the assets of a partnership firm already determined by preliminary decree in a suit for dissolution and accounts, the suit cannot be withdrawn under Order XXIII Rule 1. The exceptional cases stated hereinabove, other party of the suit may acquire some right. Sometimes a special statute creating rights and obligations of the parties may create some right in favour of other party to proceeding, as for example, Section 24 of Hindu Marriage Act, said right which accrues to the other party to the suit cannot be ignored by the Court nor can it be said that the plaintiff has an absolute and unqualified right to withdraw from the suit irrespective of the right which the other party might have acquired. In such cases, the Court is required to find out from the facts and circumstances of the case as to whether any right has accrued to the defendant, and if withdrawal from the suit is solely with a view to defeat such right and to avoid the liability which the statute has fastened on the plaintiff, in my opinion, the right under Order XXIII Rule I is not absolute and unqualified.

18. Mr. P.M. Thakkar learned Advocate for petitioner has tried to make good his submission by reference to another decision of Punjab & Haryana High Court in the case of *Nirmla Devi Vs. Ram Dass*, . In the case before the Punjab & Haryana High Court the husband filed a petition against the wife for restitution of conjugal rights u/s 9 of Hindu Marriage Act. On service of summons the wife filed application for interim maintenance and expenses of litigation. On the next day of hearing the husband was absent and his petition for restitution of conjugal right was dismissed for default. On the question as to whether the application of the wife for maintenance pendente lite would survive the learned Single Judge of Punjab & Haryana took the view that the main proceedings have terminated and therefore there was no question of passing any order for interim maintenance. Based on the aforesaid reasoning Mr. Thakkar has submitted that once the application for withdrawal is given by the plaintiff the suit stands withdrawn or the proceedings stand terminated, and therefore, there is no question of passing any order for interim maintenance. In my opinion, this decision can have no application to the facts of the present case. Firstly, there was no termination of proceedings in the present case because the Hindu Marriage Petition was not permitted to be withdrawn and the withdrawal was objected to by the wife. Secondly, as found by me hereinabove, the right to withdraw the Hindu Marriage Petition filed under Hindu Marriage Act, 1956 is no an absolute and unqualified right of the petitioner. Such right is controlled by the rights arising in favour of other party to the litigation by virtue of Section 24 of the Act. Therefore unilateral act of the petitioner to withdraw the Hindu Marriage Petition would not

necessarily result into automatic termination of the proceedings. If the other party to the proceedings has already asserted his/her right to receive maintenance pendente lite and costs of litigation, the Court shall have to decide such right and the petitioner cannot be permitted to unilaterally terminate such proceedings by his act of withdrawing the petition, the aforesaid decision of the Punjab & Haryana High Court would therefore not help the petitioner.

19. Lastly, Mr. P.M. Thakkar for petitioner has referred to and relied upon the decision of Delhi High Court in the case of Chitra Lekha Vs. Ranjit Rai, . The facts of the said case were closely identical to the facts of the case before the Punjab and Haryana High Court in the case of Nirmaladevi (supra). The husband applied for judicial separation u/s 10 of Hindu Marriage Act. On receipt of summons the wife appeared and applied for maintenance pendente lite and costs of litigation u/s 24 of the Act. Thereafter the application of the husband was dismissed for defaults, on the question whether the wife was thereafter entitled to interim alimony and expenses of litigation, because the proceedings before the Court have already terminated. The Court took the view that the object behind Section 24 of the Act was to provide financial assistance to the indigent spouse to maintain herself/himself during the pendency of the proceedings and also to have sufficient funds to defend or carry on the litigation. However, since the proceeding itself has terminated came to an end. The reasoning which has found favour with the Delhi High Court was that for exercise of powers u/s 24 of the Act there must be a proceeding which must be pending before the Court. The Court, therefore, found that since the proceeding itself has come to an end because the same is dismissed unconditionally the Court has no power to pass any order for alimony pendente lite. Mr. Thakkar has on the same analogy submitted that once there is an application for withdrawal of petition the proceedings should be treated as having come to an end and there is no right in the wife to receive maintenance pendente lite. For the very reasons for which I have not accepted submission of Mr. Thakkar while dealing with the judgment of Punjab and Haryana High Court in the case of Nirmaladevi (supra) I am of the opinion that the decision of Punjab and Haryana High Court in the case of Nirmaladevi (supra) would not advance the case of petitioner-husband. In my opinion, even if the proceedings are treated as having terminated either on the date on which the order or dismissal for default is passed or when the application for withdrawal of the petition is given, till that date the other party has right to receive maintenance and such right accrues to the other party to the proceedings by virtue of statutory provision enacted in Section 24 of Hindu Marriage Act, 1956 and the Court cannot frustrate the object of that provision by either permitting the petitioner to withdraw from the proceedings or by stating that the proceedings have terminated, and therefore, other party has no right to receive maintenance pendente lite, is my opinion, right to receive maintenance pendente lite has accrued from the date of the application made by the other party for maintenance pendente lite and it has survived till the date of termination of proceedings or the date of withdrawal of petition, and till that date the Court has

right to pass the order for maintenance and there is a right in the other party to receive such maintenance pendente lite and there is also statutory obligation on the part of the person withdrawing the petition to pay maintenance pendente lite and costs of litigation till that date. Such a right cannot be frustrated or rendered meaningless.

20. In view of the aforesaid discussion, I do not find any substance in the submissions made by the learned Advocate for petitioner, and in my opinion, the learned Judge could not have granted permission to the present petitioner to withdraw the petition under Order XXIII Rule 1 so long as the application at Exh. 8 filed by the respondent-wife is decided. However, she will have right to receive maintenance pendente lite and costs of litigation upto the date of application given by the petitioner to withdraw the petition and not for the subsequent period. The Court shall have to decide such application and the amount of maintenance, if any, shall have to be paid by the petitioner to the wife.

21. In the result, this Civil Revision Application fails. Same is dismissed. Rule is discharged with no order as to costs.