

**(1995) 10 BOM CK 0009**

**In the Bombay High Court**

**Case No : Writ Petition No. 3159 of 1995**

Smt. Sushila Viresh Chhadva

APPELLANT

Vs

Viresh Nagshi Chhadva

RESPONDENT

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**Date of Decision : 11-10-1995**

**Acts Referred:**

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

**Citation :** AIR 1996 Bom 94 : (1996) 2 BomCR 531 : (1996) 98 BOMLR 274 : (1996) 1 MhLj 288

**Hon'ble Judges :** A.P. Shah, J

**Bench :** Single Bench

**Advocate :** R.L. Bhatia, for the Appellant; R.T. Parekh, for the Respondent

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## **Judgement**

A.P. Shah, J.—By this petition under Art. 227 of the constitution the petitioner - wife has taken exception to an order passed by the Family Court Bombay, rejecting the petitioner's application for interim alimony and expense of the litigation.

2. Briefly, the facts leading to this petition are:

The petitioner and the respondent got married on February 6, 1991 at Bombay according to Hindu Vedic Rites. Shortly after the marriage, the petitioner was operated for major ovarian tumour and her right ovary was removed. The respondent thereafter filed a petition in the Family court for a decree of nullity of marriage. The respondent alleged that the parties stayed together just for one day after the marriage and then the petitioner stated complaining about severe pains in her stomach thereafter. The respondent contended that the tumour was malignant and the petitioner's left ovary is affected by cancer and that there is no chance of her conception and bearing a child. According to the respondent the petitioner and her parent were well aware of this tumour, which was of a big size, and they intentionally concealed this fact from the petitioner and his family members to get her married. The respondent alleged that the tumour was very

big and she was operated within eight days from the marriage, which goes to show that the operation and the removal of the tumour was urgently required. There was no possibility, according to the respondent of the tumour of such a big size being developed after marriage within eight days. The respondent contended that the petitioner was already undergoing the treatment for the same and this fact was deliberately concealed from him.

3. The petitioner appeared in the Family Court in pursuance of the summons issued to her. She took out Interim Application No. 802 of 1993 for interim alimony at the rate of Rs. 10,000/- per month and expenses of the litigation. The application was opposed by the respondent mainly on the ground that the marriage was clearly void. It is contended that in view of the deception practiced by the petitioner, she is not entitled to interim alimony.

4. The family court rejected the application by passing a cryptic order. The reasons given for rejecting the petitioner's application are in paragraph 6 of the order and they are reproduced as follows:

"In the light of all the above circumstances and that the petitioner is for nullity. I am not inclined to grant any interim relief to the respondent without going into the merit of the case. The fact of operation is admitted by the respondent and hence the case will have to be decided on merit after leading of the evidence."

5. In my considered view, the impugned order of the Family Court is not sustainable in law. In the first place, the Family Court has proceeded on an erroneous assumption that the wife is not entitled to interim alimony because the husband has sued for nullity of marriage. The right of a wife for maintenance is an incident of the status or estate of matrimony. S. 24 of the Hindu Marriage Act, which provides for maintenance pendente lite and expense of proceedings, clearly applies to all proceedings under the Act. An order for maintenance pendente lite and costs of the proceedings can, as the initial words of the section clearly state, be made in any proceeding under the Act, viz., for restitution of conjugal rights, judicial separation, divorce or nullity of void and voidable marriage.

6. When a fact of marriage is acknowledged or proved alimony follows as of course to the discretion of the court in the matter having regard to the means of the parties and it would be no answer to the claim for maintenance pendente lite that the marriage was void ipso jure or was voidable. The Family Court was not right in taking into consideration the allegation of fraud and description made in the petition of the purpose of deciding the prayer of interim alimony. The fact that there is a strong possibility of the marriage being declared as a nullity is no ground for declining even the basis right to claim interim alimony and expense of the litigation. The Family Court was clearly wrong in postponing the determination of interim alimony till the trial of the main petition. The trial court cannot postpone its decision on the application for interim maintenance and costs till the disposal of the main issue in the substantive matter.

7. In enacting S. 24, a special provision is made for ordering interim maintenance and the expense of litigation to be provided for the contesting husband or wife if he or she had not independent sufficient income. The very purpose of an order under S. 24 would be frustrated if the matter of granting interim maintenance and of providing the requisite expense for the conduct of the proceeding itself is deferred till the final stage of the proceeding. The direction for interim alimony and expense of litigation under S. 24 is one of urgency and it must be decided as soon as it is raised and then only the other matters in controversy can be gone into. The object of S. 24 is to provide a monthly income and expense of the litigation to an indigent spouse to enable it to prosecute or defend the proceeding under the Act and the law sees that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds. It is true that the Court exercises wide discretion in the matter of granting maintenance pendente lite, but the discretion is judicial and not arbitrary and capricious. In my opinion, therefore the Family Court was in error in rejecting the interim application of the wife.

8. In the result the petition succeeds. The impugned orders is quashed and set aside. The Family Court is directed to decide the application for interim alimony and expenses of litigation afresh after giving an opportunity of hearing to both the parties. The Family court shall endeavor to dispose of the application expeditiously and in any event, within eight weeks from today. Pending application the respondent is directed to deposit within two weeks from today an ad hoc maintenance at the rate of Rs. 1,000/- per months from the date of application. Needless to say that the petitioner will be at liberty to withdraw the said amount. It is clarified that the amount of Rs. 1,000/- is fixed as and by way of ad hoc amount without prejudice to the right and contentions of the parties. No. order as to costs.

Certified copy expedited.

9. Petition allowed.