
(2002) 10 AHC CK 0094
In the Allahabad High Court
Case No : C.M.W.P. No. 43321 of 1999

Sukhendra Prasad Mishra

APPELLANT

Vs

Family Court and Another

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Hindu Marriage Act, 1955 — Section 24

Citation : (2003) 1 AWC 195

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant; Rahul Chaturvedi and M.S. Tiwari and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India, petitioner-husband challenges the order passed by the Family Court, Allahabad, dated 2.9.1999, a copy of which is annexed as Annexure-1 to the writ petition, in Case No. 101 of 1997, Sukhendra Prasad Mishra v. Mamta Devi.

2. The facts leading to the filing of present writ petition are that the petitioner-husband had filed a petition for divorce, which was numbered as Case No. 101 of 1997, against the contesting respondent Mamta Devi before the Family Court, Allahabad, on 17th March, 1997. During the pendency of the aforesaid divorce petition, the contesting respondent filed an application u/s 24 of the Hindu Marriage Act, 1955, claiming an amount of Rs. 8,000 as the cost for contesting the aforesaid case and Rs. 2,500 per month as an interim maintenance. It is this application, which has been decided by the family court vide order dated 2.9.1999, after hearing learned counsel for the parties, namely, husband and wife thereby family court allowed the application directing the petitioner-husband to pay a sum of Rs. 600 towards the expenses to contest the proceedings in lump-sum and 1,200 per month as an Interim maintenance during the pendency

of the proceedings.

3. Learned counsel appearing on behalf of the petitioner challenging the aforesaid order has placed reliance on different affidavits exchanged ^between the parties before the family court and tried to submit that the findings arrived at by the family court with regard to the payment aforesaid is wholly arbitrary. Section 24 of the Hindu Marriage Act, 1955, which is relevant to decide the present controversy, is reproduced as below :

"24, Maintenance, pendente lite and expenses of proceedings.--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 the petitioner the expenses of 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."

4. A bare perusal of Section 24 of the Act, which is quoted above, clearly demonstrate that the aforesaid payment is only for interim period during the pendency of the petition and I have gone through the different affidavits on the record, which were filed by the parties before the family court. I do not find that any reasonable person can come to the conclusion, which as suggested by learned counsel for the petitioner-husband, that the decision taken by the family court is arbitrary or is not supported by evidence on record. In this view of the matter, since the order impugned in the present writ petition has concluded by finding of facts, it is settled that this Court in exercise of power under Article 226 of the Constitution of India will not interfere with the disputed question of facts and the findings arrived at by the family court as the findings have been recorded by it after considering the material evidence on record, as held by the Apex Court in a decision in *Khatoon Nisa Vs. State of U.P. and Others*,

5. There is yet another reason that since the order impugned is an interim order, this Court further declines to interfere with the impugned order.

6. In view of what has been stated above, this writ petition deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated. However, there shall be no order as to costs.