



Considerable Questions as to Determination and Enforcement of Maintenance 'Pendente Lite' in the Hindu Marriage Act

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Abstract- *The marital disharmony leads either husband or wife to file a suit or petition against the other seeking matrimonial relief. In such cases, major problem occurs when either one do not have sufficient independent means for his or her maintenance and to bear the costs of the litigation. In order to make sure that any spouse against whom any matrimonial proceedings have been initiated, do not suffer injustice due to poverty, section 24 of the Hindu Marriage Act, 1955 makes provision for the grant of maintenance pendente lite and litigation expenses. In this research paper, the author has examined the points which are considered by the courts in fixing the quantum of maintenance pendente lite. The purpose of this paper is to point out various hurdles due to which the requirement of speedy disposal and execution of interim maintenance orders is not made out. The author has approached the subject in the spirit of constructive criticism. Therefore, some suggestions have been incorporated with the hope that these will help the judiciary in determination of maintenance pendente lite amount and in expeditious disposal of such proceedings and effective enforcement of these orders as well.*

Introduction- Maintenance during the pendency of the proceedings is known as maintenance pendente lite, interim maintenance or temporary maintenance. Section 24 of The Hindu Marriage Act, 1955 uses the first expression i.e., maintenance Pendente lite. It entitles any party to the proceeding to obtain maintenance and litigation expenses during the pendency of the proceeding under the Act. The right conferred by this section can be availed of both by the wife as well as the husband, having no independent source of income. It is a departure from the corresponding provisions in any other enactment relating to matrimonial law in force in any of the countries. Generally, it is only the wife who is entitled to such right and not the husband. For example, section 36 of the Indian Divorce Act, 1869 and section 36 of the Special Marriage Act, 1954, entitle only the wife to obtain maintenance and alimony pendente lite. Section 36 of the Indian Divorce Act, goes to the extent of limiting the jurisdiction of the court to award not more the 1/5th of the net income of the husband to the wife. No such restriction regarding the quantum has been placed in any other enactment in India.

Alimony pendente lite and litigation expenses may be granted in any proceedings under the Hindu Marriage Act, provided that, other conditions for such grant are satisfied. An application under section 24 is an interlocutory application which can be filed in proceedings like restitution of conjugal rights, nullity to marriage, divorce and grant of permanent maintenance and such application is maintainable during these proceedings. It is also maintainable in the proceedings for restoration of setting aside the ex-parte decree and for restoration of the main petition filed under the Hindu Marriage Act.

Purpose- The purpose of maintenance pendente lite under section 24 is to provide financial assistance to the spouse who do not have sufficient financial resources to maintain herself/himself and to meet out the expenses of the court proceedings such as lawyers' fees, travelling expense, stamp fees, court fees etc. This relief is available to both petitioner as well as defendant. The only criterion for consideration by the court for deciding the interim maintenance application is whether the petitioner is capable of maintaining herself or

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himself and have sufficient funds to carry on or defend the litigation, so that the spouse, does not unduly suffer in the conduct of the case for want of funds.

Expeditious disposal of the maintenance pendente lite application- The relief claimed and permissible under section 24 of the Hindu Marriage Act for interim maintenance has its own urgency and normally it is to be granted as soon as possible. Keeping this fact in to consideration, a proviso has been added to section 24 by the Marriage Laws Amendment Act, 2001 to expedite these proceedings. It lays down that "provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall so far as possible be disposed of within sixty days from the service of notice on the wife or the husband, as the case may be." In *Sushila Viresh Chhadva v Vinesh Nagshi Chhadva* the Bombay High Court held that the family court was not right in taking in to consideration the allegation of fraud and deception made in the petition for the purpose of deciding the prayer of interim alimony. 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. The very purpose of an order under section 24 would be frustrated if the matter of granting interim maintenance and of providing requisite expenses for the conduct of proceedings is deferred till the final stage of the proceedings. It further held that it must be decided as soon as it is raised and then only the other matters in controversy can be gone into. The Punjab & Haryana High Court also held that where wife submits petition for maintenance pendente lite and litigation expenses, maintenance can be awarded only if she has no independent and sufficient means to support and for necessary expenses, court could not go into allegations which would clearly introduce extraneous considerations or amount to prejudicing the main issue. An application under section 24 of the Hindu Marriage Act has to disposed of, by and large, by way of summary proceeding . The grant of such relief is not in any case dependent either on the merits of the case or on the ultimate success of the main petition.

Who can apply?- According to Section 24 of the Hindu Marriage Act 'either the wife or the husband ' may apply for interim maintenance. Section 24 applies to both husband and wife equally. Laws has placed both spouses on the same footing for this purpose . The words wife or the husband used in the section 24 show that it is only one of the two spouses who can obtain relief for maintenance pendente lite and expenses of the proceedings and no one else, though various High Courts have held that interim maintenance should include maintenance for the child also. For instance, the Punjab and Haryana High Court in the case of *Kamlesh Arora v Jugal Kishore Arora* held that minor is entitled to maintenance in an application under section 24 of the Hindu Marriage Act. Further, the Patna High Court in *Indu Dhari Singh v Dr. Ritu Singh* held that an order allowing application for maintenance of minor children by their mother is within jurisdiction and no separate application is required to be filed under section 26 of the Hindu Marriage Act. Because it is mere technicality and the court in such matters should never feel bogged down by technicality.

Points to be considered while fixing quantum of maintenance pendente lite- There is no strict formula or an inflexible rule for fixing the interim maintenance. The first thing that has to be considered is, whether the applicant claiming for such allowance has any independent income sufficient for his or her own support and means to meet the expenses of the proceedings or not? If the court finds that the applicant has independent income sufficient for his or her support; it will not grant any maintenance allowance under section 24. Once, however, it is found that the applicant under section 24 has no independent income sufficient for his or her support, the court will consider other factors to fix the quantum of the monthly allowance.

In the case of *Heena v Lakshmina* , the Kerala High Court held that it must take in to consideration income of the spouses and the legitimate needs of the claimant having regard to the status of the parties, their family background, the standard of life to which claimant has been accustomed to, legal and other obligations



of the person liable to make the payment and other relevant circumstances . The Punjab & Haryana High Court also held in *Mrs. Aparna Sharma v Rajinder Sharma* that it has also to be considered while awarding maintenance that one cannot live like a lord and other like a maid nor one can live like a princess and other like a servant. There must be drawn some balance.

The Delhi High Court held that while granting maintenance, after taking into account compulsory deductions from the salary, the remaining income should be divided equally between all the family members entitled to maintenance, with one extra portion/ share being allotted to the earning spouse solely, since extra expenses would necessarily occur. It also held that while granting interim maintenance, the consideration on that same standard of living be enjoyed by wife and children as on date of separation would mean that an endeavour should be made to put the dependents almost at the same position that they would have enjoyed that there had been no separation between spouses. The intention was not to peg it or freeze it to the date of separation.

The Supreme Court laid down the guidelines for fixing interim maintenance in the case of *Smt. Jasbir Kaur Sehgal V District Judge, Dehradun* . It held that "court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under the law and statutory but involuntary payments or deductions. Amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also she does not feel handicapped in the prosecution of her case. At the same time amount cannot be excessive or extortionate." In this case the husband's monthly income was accepted to be rupees twenty thousand. Keeping the fact in view that wife was maintaining the eldest unmarried daughter, the Supreme Court fixed a maintenance pendente lite amount payable to the wife and the daughter with her at rupees five thousand per month, i.e., 25% of the monthly salary of the husband.

The Punjab & Haryana High Court held that where it has come on record that the husband has remarried and has been blessed with one child as well from the wedlock and thus, he has to maintain and support them also, these facts also cannot be ignored while determining the maintenance allowance.

The Rajasthan High Court held in *Govind Singh v Smt. Vidya* that it is true that section 24 entitles either party to move an application for interim maintenance provided such party has no means of subsistence. But it does not mean that the husband, who is otherwise capable of earning his living should stop earning the living and start depending on earning of his wife. It is a well-established maxim of Anglo saxon jurisprudence that no person can be allowed to incapacitate himself. That maxim is applicable to the case of earning husband. A person who voluntarily incapacitates himself from earning is not entitled to claim maintenance from the other spouse.

The Bombay , Calcutta , Jharkhand and Delhi High Courts also set aside the application of the husband for maintenance pendente lite wherein it was found that husband was able bodied person and had no handicap or any impediment to earn bare minimum for himself.

It is common knowledge that in maintenance cases parties rarely disclose their income. It is therefore left to the court to make an assessment by taking various factors in to consideration. One of the most significant guidelines or factor is the status and life style of the parties. In *Radhika v Vineeta Pungta* case, wherein the wife in her application for interim maintenance admitted that she has some nominal income from interest or deposits though she did not state the real income. Accepting wife's appeal the Delhi High Court observed that "experience dictates that where a decision has to be taken pertaining to the claim for maintenance and the quantum to be granted, the safer and surer method to be employed for coming to a



reasonable conclusion is to look at status of the parties, since while income can be concealed, the status is palpably evident to all concerned. If any opulent life style is enjoyed by the warring spouses, he should not be heard to complain or plead that he has a meagre income." Besides that, the amount of maintenance fixed under section 125 of the Cr.P.C. may be taken in to consideration while awarding maintenance pendente lite. Wife can resort to both provisions i.e., one u/s 125 Cr.P.C. and also under section 24 Hindu Marriage Act. Question of adjustment to be granted has to be decided by court considering totality of circumstances, amount granted and capacity of person directed to make payment.

It must also be taken in to consideration that section 24 of the Hindu Marriage Act uses the word 'income', while section 25 of the Act uses the words "income and other property." For the purpose of calculating the amount of interim maintenance, the gross income of the respondent has to be left aside (it is to be kept in view only for judging the standard of living of the applicant) and what is to be taken into consideration is the disposable income of the respondent. The Calcutta High Court held in *Gita Chatterjee v Prabhat Kumar* that the word 'income' in section 24 would not include other property or assets, thus in fixing the amount pendente lite, the court will have regard only to the income of the applicant and not his or her assets or property not yielding any income.

Alteration in Maintenance pendente lite- The quantum of maintenance pendente lite, in its very nature, cannot be taken to be fixed amount forever, which cannot be changed in any circumstances. The change in circumstances relevant to the matter may call for revision of the matter. No doubt section 24 unlike section 26 does not expressly provide that the court may pass order for interim maintenance and litigation expenses from time to time. But there is no express or implied bar in the provision for exercise of jurisdiction in a deserving case. So it will neither be legal nor just and proper to limit wide discretionary power conferred on the court by holding that the court has no power to modify or vary an order awarding interim maintenance even on proof of changed circumstances.

The Family Courts have wide powers to modify, vary or suspend the order of interim maintenance if the changed circumstances so warranted so as to do justice to the parties. Section 10 of The Family Courts Act, 1984 states that:

"Subject to other provision of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 and of any other law for the time being in force shall apply to the suits and proceeding [other than the proceedings under chapter IX of the Code of Criminal Procedure, 1973] before a family court and for the purpose of the said provisions of the code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court."

Thus, the provisions of section 24 cannot be given restricted meaning and if in a given case, an application is made for alteration of the interim maintenance amount already granted, such an application will have to be entertained as an application for review under Order XLVII Rule 1 of the Code of Civil Procedure or in the alternative an application under section 127 of the Criminal Procedure Code before the Family Court.

In *S. S. Bindra v Jasvinder Kaur* the Lower Court granted almost double amount of what the wife had prayed for, the Delhi High Court held that it find no justification to vary that part of the order. In respect of the maintenance, it must again be borne in mind that the claim is relative to the income of the earning spouse. In the present case, income of the husband had increased manifold. Proceedings under section 24 are essentially interlocutory in nature. The normal expectation is that an application would be decided within one month of its being filed. This however is an impossibility keeping in perspective the present strength of judicial officers. It would be unfair therefore to restrict a prayer for maintenance in a mindless manner to what has been made not just several months but years earlier. Orders should be passed keeping the present in perspective and with a view to bringing about justice between the parties. The court does not errant, exactly what is



exactly prayed for, but usually much less by that very yard stick it is not precluded to grant more, if the circumstances call for it.

Enforcement of Maintenance Pendente Lite Order- An order of maintenance pendente lite under section 24 of the Hindu Marriage Act can be enforced like decrees and orders of the court by resorting to execution proceeding as provided under section 28-A of this Act . Yet, it is a well known fact that the path of execution is not easy. Realization of this amount by taking execution proceedings must plunge the indigent spouse into another lengthy and unpleasant litigation . Driving out a penniless wife to initiate a separate execution proceeding for the purpose of recovery of arrears of interim alimony and expenses of the proceedings frustrates the very purpose and spirit of section 24 of the Hindu Marriage Act .

The question for consideration arose before the various High Courts that whether besides section 28-A of the Hindu Marriage Act, such awardee-spouse who is unable to support herself or himself, has any other remedy available in law to enforce order of interim maintenance. The learned single judge of the High Court of Madras (Ratnam J.) in *Narayan Nadar v Jayakodi Ammal* held that the argument that resort to execution proceedings can be had against the defaulting spouse or that the other proceedings can be taken, cannot be countenanced, especially when enforcement of such orders otherwise than by execution is neither prohibited nor excluded by section 28-A of the Act.

The Punjab and Haryana High Court held in *Bani v Parkash Singh* that no doubt, wife can file a petition under order XXI, Rule 37, C.P.C. for the recovery of this amount and husband can be hauled up under the Contempt of Court Act for disobedience of the aforementioned order, but section 24 of the Hindu Marriage Act empowers the matrimonial court to make an order for maintenance pendente lite and for expenses of proceeding to a needy and indigent spouse. If this amount is not made available to the applicant, then the object and purpose of this provision stands defeated. Wife cannot be forced to take time consuming execution proceedings for realizing this amount. The conduct of the respondent husband amounts to contumacy. Law is not that powerless as to not to bring husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to the wife, his defence can be struck out.

Wherein a divorce petition was filed by the husband at 'A' and the application of wife for restitution of conjugal rights was filed before the family court at 'B' and the husband did not comply the maintenance order passed by the family court in wife's favour, the Gujarat High Court held that the proceedings in the divorce petition pending in the court at 'A' should have been stayed. The mere fact that the order of maintenance pendente lite had been passed by the family court at 'B' could not create any legal impediment against the stay of proceedings in the divorce petition pending before the court 'A' .

In *Vanmala v Maroti Sambhaji Hatkar* , the Bombay High Court while deciding an appeal against the judgment and order of the family court held that it appears that the learned judge of Matrimonial Court laboured under the wrong impression that he lacks jurisdiction in the matter of enforcement of the order is the nature of interim alimony. He has completely forgotten the very purpose of section 151 of the Code of Civil Procedure. A court can, in exercise of its powers under section 151 of the CPC, pass an order of staying the petition of divorce if it is found that the husband deliberately and contumaciously flouts the order of the court. There is a power in the court to make such orders as may be necessary for the ends of justice and to prevent any abuse of process of the court. The matrimonial Court, therefore, was under duty to invoke the inherent powers under section 151 of the CPC and should have compelled the erring husband to deposit whole of the arrears of interim alimony and the expenses of the proceedings in the court within certain point of time. If in spite of passing such orders the party flouts the order deliberately. The court can stay the petition or proceedings of divorce if the erring party is a petitioner. Similarly, if the erring party is a respondent, the court can strike off the defence of such party if it is found that the respondent is deliberately flouting the



orders of the court.

Suggestions-

In light of the foregoing discussion, following suggestions are being made-

1- Although, the Marriage Laws Amendment Act, 2001 has added a proviso to section 24 of the Act to expedite the interim maintenance proceedings. It states that such application, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be. But the words "as far as possible" give latitude to our courts to flout this proviso. It is suggested that this proviso should be made mandatory to give teeth to this section. Setting out sixty days time live as mandatory would expedite the disposal of maintenance pendente lite applications and thus achieve the real object of section 24, i.e. providing timely financial assistance during the pendency of the court to the spouse who is unable to maintain herself/himself and to bear litigation expenses.

2- Strict enforcement of interim maintenance order under section 24 is imperative while it can be enforced through execution proceedings under section 28-A of the Hindu Marriage Act, but forcing a poverty stricken spouse to initiate a separate execution proceeding defeats the very purpose and spirit of the law behind award of interim maintenance and litigation expenses. Therefore, such an order should be enforced by more drastic means, such as: stay of the suit, (where the defaulting party is the petitioner in the proceedings), adjournment sine die, striking out the pleadings of the defaulting party, striking off defence under section 151 of the Civil Procedure Code, 1908 (where the party in default is defendant in the main petition), dismissal of appeal of defaulting, party and taking action of contempt against a party in contumacious default.

3- Maintenance pendente lite and litigation expenses amount should be deducted from the defaulting spouse's salary in case he or she is employed in Government/ Public/Private sector. Provision should be made to deduct at least 1/3rd of the salary for providing interim maintenance.

4- In every matrimonial proceeding, it should be made mandatory for the parties to furnish necessary details about their children, namely; their number, sex, age, education, in whose custody they are and which spouse is bearing the responsibility of their maintenance etc. Such information would help courts in ascertaining the interim maintenance allowance and is securing the welfare of children too.

5- Sometimes, due to psychological and financial constraints, a spouse may not be able to initiate proceedings against the other spouse immediately. Keeping this fact in view, it is suggested that liability to pay maintenance pendente lite should be fixed from the date when the duty to pay maintenance was violated and not from the date of institution of the suit.

The aforesaid suggestions, if properly implemented, would help in determination of the maintenance pendente lite and litigation expenses amount, speedy disposal of such applications and would also secure effective and expeditious enforcement of orders passed under section 24 of the Hindu Marriage Act, 1955.

REFERENCES

1. Section 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 proceedings, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceedings 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.
2. Section 36 of the Indian Divorce Act, 1869 states: "In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may



- present a petition for alimony pending suit....."
3. Section 36 in the Special Marriage Act, 1954: Alimony pendente lite: where in any proceeding under chapter V or chapter VI it appears to district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceedings, it may, on the application of the wife, order the husband to pay to her the expenses of the proceedings and weekly or monthly during the proceedings such sum as having regard to the husband's income, it may seem to the court to be reasonable
 4. Proviso to Section 36 of the Indian Divorce Act, 1869 states: "Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be."
 5. Surjeet Singh V. Sheela Bai, (1993) 2 CC Cases 193 (P & H): "Interim maintenance can be granted even during pendency of proceedings under the section 9 of the Act."
 6. Mrs. Aparna Sharma V. Rajinder Sharma & others AIR 2005 NOC 56 (Punjab & Haryana): "The wife cannot be held disentitled for claiming maintenance pendente lite under section 24 even on a prima facie case having been found in favour of the husband that his marriage with her was void." Shiv Kumar V. Pushp Rekha AIR 2004 NOC 253: Wife filed a petition for nullity of marriage on ground of mental and physical cruelty caused on account of failure to consummate the marriage. She also claimed maintenance pendente lite and expenses of the proceedings which was decreed. The husband pleaded non-consumption was due to wife's deliberate avoidance. Thereby disentitling the wife from claiming maintenance. The plea however was negatived and it was held by the High Court: "The grant of relief under section 24 is not dependent on ultimate success of the petition."
 7. Chitra Lekha V. Ranjit Rai, AIR 1977 Delhi 176
 8. Section 8 of the Marriage Laws Amendment Act, 2001: Amendment of Section 24.
 9. Ibid.
 10. AIR 1996 Bom 94
 11. Smt. Rajinder Kaur V. Amarjeet Singh, AIR 1990 P & H 83
 12. Anil Kumar V. Smt. Laxmi Devi, AIR 1994 NOC 61 (Raj)- "The proceeding under section 24 of the Hindu Marriage Act are to be decided in a summary manner and the court is not expected to try the issue at length."
 13. Shiv Kumar V. Pushp Rekha AIR 2004 NOC 253
 14. Hema V. Lakshan Bhatt, AIR 1986 Ker. 130
 15. AIR 1990 P & H 168
 16. (1997)1 B.L.J.R. 133
 17. AIR 1986 Ker. 130
 18. See also, Sumitra Sahu V. Saswat Sahu (Alu), AIR Jan, 2008 (NOC) 227 (CAL)
 19. AIR 2005 NOC 56 (P & H)
 20. S. S. Bindra V. Jasvinder Kaur, AIR 2004 Delhi, 442
 21. AIR 1997 SC 3397
 22. Mrs. Aparna Sharma V. Rajinder Sharma & Others, AIR 2005 NOC (Punjab & Haryana)
 23. Govind Singh V. Smt. Vidya, AIR 1999 Raj 304
 24. Smt. Kanehan V. Kamendra, AIR 1992 Bom 493
 25. Soussena Mitra V. Chandana Mitra, AIR 2004 Cal 61
 26. Sandeep Kumar V. State of Jharkhand, AIR 2004 Jhar, 36



27. Vishesh Mathur V. Neel Kiran Mathur, AIR 2004 NOC 309 (Delhi)
28. AIR 2004 Delhi 323
29. Gita Chatterjee V. Prabhat Kumar Chatterjee, AIR 1998 Cal. 83 (85)
30. Ashok Singh Pal V. Smt. Manju Lata, AIR 2008 MP 139
31. AIR 1988 Cal 83
32. Laxmi Priya Rout V. Kama Parasad Rout, AIR 1992 Orissa 88
33. Mrs. Rajshree R. Dixit V. Rajesh Nagesh Dixit, AIR 2005 Bom 252
34. AIR 2004 Delhi 442
35. Section 28-A, Enforcement of decrees and orders: All decrees and orders made by the court in any proceedings under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.
36. Malkhan Rani V. Krishan Kumar, AIR 1961 Punjab 42
37. Vanmala V. Maroti Sambaji Hatkar, AIR (1999) Bom 388
38. (1990)IDMC 596
39. Bani V. Parkash Singh, AIR 1996 P & H 175
40. Neeta Dhreyas Joshi V. Shrevas Siddharth Joshi, AIR 1999 Guj. 251
41. AIR (1999) Bom 388 at 389, 390
42. Section 24..... Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.
