

Court No. - 39

Case :- FIRST APPEAL No. - 239 of 2022

Appellant :- Vishamber Singh

Respondent :- Priyanka

Counsel for Appellant :- Ajay Kumar Srivastava

Counsel for Respondent :- Ravindra Kumar Dwivedi

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Mrs. Sadhna Rani (Thakur),J.

Heard Sri Ajay Kumar Srivastava learned counsel for the appellant and Sri Ravindra Kumar Dwivedi learned counsel for the respondent.

A sum of Rs.7000/- has been fixed by the family court as an interim maintenance to the respondent-wife under Section 24 of the Hindu Marriage Act' 1955 (hereinafter referred as Act' 1955) in the suit for divorce filed by the husband.

Learned counsel for the respondent-wife stated that though in view of the proposal given by this Court, the respondent had agreed to the maintenance of Rs.5000/- per month instead of Rs.7000/- per month but since she is facing serious financial crunch she wants to withdraw her consent.

In view of the said submission, the affidavit dated 04.05.2022 of the respondent-wife is permitted to be withdrawn.

As regards the matter, the parties had entered into a marriage alliance on 11.05.2018 and the respondent-wife is living with her parents since 20.09.2019. Nothing has been paid to the respondent-wife by the appellant towards the maintenance and the divorce suit was filed in the year 2019 itself. The application under Section 24 of the Act' 1955 filed by the respondent-wife was allowed in-part and noticing that the respondent-husband had not produced the bank statement nor any proof of his salary and is claiming himself to be an unemployed person. The income of the respondent-husband was determined as a daily wager which comes to Rs.12,000/- per month. Out of the notional income of Rs.12,000/-, Rs.7000/- has been paid to the wife. The appellant, though challenges the order passed by the family court determining the notional income and the maintenance fixed to the tune of Rs.7000/- per month as excessive but nothing has been brought on record even alongwith the affidavit accompanying this appeal. The averments in the affidavit are that the appellant was working as a office boy in a factory situated at Ghaziabad but he lost his job during pandemic and since thereafter he is doing

nothing. The appellant is aged about 26 years. The bank statement of the appellant to show his financial status has not been brought on record. The financial status of the family of the appellant namely his parents with whom he is residing has not been given in the affidavit accompanying the stay application. There is no description of moveable or immovable wealth of the family or the appellant. No affidavit of the appellant to disclose his assets and liability is on record.

Learned counsel for the appellant vehemently argued that the wife has earlier agreed to Rs.5000/- towards maintenance and she cannot be permitted to withdraw her consent but no material could be placed before us to show as to how the appellant earns his livelihood. The bald denial of the appellant about his source of income saying that he is unemployed without even bringing his bank statement on record is not acceptable.

An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court. Reference para 90.4 of **Rajnish vs Neha reported in 2021 (2) SCC 324.**

As the appellant has not come forward to bring on record the proof of his income, we do not find any good ground to take any adverse view of the order passed by the family court. However, the order of the family court is modified to the extent that the interim maintenance granted by it shall be paid by the appellant to the respondent-wife by 10th of each month by transmitting the amount of maintenance in the saving bank account of the wife, details of which shall be provided by the counsel for the respondent-wife to the counsel for the appellant within the course of the day.

The maintenance shall be paid month by month regularly and any default on the part of the appellant-husband would amount to non-compliance of this order.

The arrears of maintenance from the date of the order dated 27.10.2020 shall be paid within a period of one month from today, failing which, it would be open to the respondent-wife to initiate appropriate proceeding for recovery of the maintenance amount.

Subject to the above observations and directions, the appeal is dismissed at the admission stage itself.

Order Date :- 4.7.2022

Himanshu