

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 2015/2019

1. Vijeta Singh W/o Narveer Singh Solanki, Aged About 39 Years, B/c Rajput, R/o D-32, U.i.t. Colony, Pratap Nagar, Jodhpur. (Raj.)
2. Divita D/o Narveer Singh, Aged About 11 Years, (Minor) Through Natural Guardian Mother Smt. Vijeta Singh (Appellant No. 1)
3. Siddhant S/o Narveer Singh, Aged About 12 Years, (Minor) Through Natural Guardian Mother Smt. Vijeta Singh (Appellant No. 1)

----Appellants

Versus

Narveer Singh S/o Late Shri Mohan Singh, Aged About 45 Years, B/c Rajput, R/o 355, Housing Mandal Housing Board Colony, Sirohi (Raj.) At Present Working As Government Teacher Under Principal Government Sr. Secondary School, Kaladari, Sirohi (Raj.)

----Respondent

For Appellant(s) : Dr. Shailendra Kala through V.C.
For Respondent(s) : Mr. Shreyansh Mardia

**HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE RAMESHWAR VYAS
Judgment**

09/09/2020

BY THE COURT: (PER HON'BLE VYAS, J.)

Instant appeal is under Section 19(1) of the Family Courts Act, 1984 for enhancement of maintenance awarded by the Family Court No. 2, Jodhpur (afterwards referred to as 'the trial court') vide order dated 13.06.2019 in Civil Original Case No. 04/2016 (02/2014), whereby, the trial court while allowing the application under Sections 24 & 26 of the Hindu Marriage Act, 1955 (afterwards referred to as 'the Act of 1955') directed the respondent to pay maintenance *pendente lite* in a sum of Rs. 3,000/- per month each to the appellants from the date of

filing application i.e. 17.01.2014. That apart, the respondent was also directed to pay a lump sum Rs. 5,000/- towards litigation expenses to the appellants.

Brief facts giving rise to the instant appeal are that during pendency of the matrimonial proceeding, the appellant – wife herein filed an application under Sections 24 & 26 of the Act of 1955 claiming maintenance *pendente lite* for herself and her minor daughter & son from the respondent; the appellant averred in the application that she has no source of income, whereas, the respondent is working as Teacher at Panchayat Samiti, Revdar, Sirohi and getting salary of Rs. 30,000/- per month; apart from this he is also earning from tuition and getting rent from a house; he is wilfully neglecting to maintain appellant and her children; appellant is living with her father, who is a retired person.

The respondent filed a reply to the application contending that the appellant – wife is working in an educational institution at Jodhpur and earning a sum of Rs. 30,000/- per month; the respondent denied his monthly income as alleged by the appellant.

The trial court after considering the material available on record observed that the marriage between the parties was solemnized on 22.01.2003 at Jodhpur as per the Hindu rites and customs; out of their wedlock one daughter and one son were born on 05.08.2004 and 26.02.2007 respectively at Jodhpur; both are living with the appellant; as per the salary slip of the month of April, 2019 respondent, after deduction, is getting salary of Rs. 41,325/- net per month. The Court observed that as per documents on record, the appellant -wife is working in an institute named Disha and giving education to the deaf & dumb children

and, for that purpose, she is not charging anything from the institute.

After due consideration of the rival submissions and the material available on record the trial court awarded maintenance *pendente lite* as Rs. 3,000/- per month each to the appellants and a lump sum Rs. 5,000/- towards the litigation expenses. It was made clear that if she is getting maintenance money in any other matter then that amount shall be adjusted towards it.

Learned counsel for the appellants submitted that the trial court has erred in law and fact in awarding a meagre sum to the appellants as the respondent – husband is a Teacher posted at Revdar Panchayat Samiti, District Sirohi and earning a sum of Rs. 41,325/- per month. It is submitted that looking to the inflation it is very difficult for the appellant – wife to maintain herself and her two children with Rs. 9,000/- per month. It is prayed that the maintenance amount awarded by the trial court may be enhanced adequately.

On the other hand, learned counsel for the respondent-husband supported the judgment passed by the trial court. It is submitted that the trial court has erred in ignoring the fact that the appellant – wife has her own source of income. Learned counsel further submitted that the trial court has grossly erred in ignoring the fact that the appellant – wife is a working woman and she is B.A., B.Ed. and getting salary per month, which is adequate to maintain herself and her children and, therefore, the order passed by the trial court does not require any interference of this Court.

We have considered the arguments advanced by learned counsel for the parties and perused the material available on record.

Indisputably, the purpose behind Section 24 of the Act of 1955 is to provide necessary financial assistance to the party to the matrimonial dispute who has no independent income of his own sufficient for her or his support or to bear the expenses of the proceedings. While considering the application for award of interim maintenance, the relevant consideration is the inability of the spouse to maintain himself or herself for want of independent income or inadequacy of the income to maintain at the level of social status of other spouse. No hard and fast rule can be laid down for determination of the amount of interim maintenance. (Vide *Gaurav v. Priyanka* : D.B. Civil Misc. Appeal No. 3687/2019, decided on 08.09.2020).

As per the provisions of Section 26 of the Act of 1955 in any proceeding under this Act, the Court may, from time to time, pass such interim orders with respect to the maintenance of minor children.

There cannot be any dispute with the proposition that both mother and father are obliged to contribute in maintenance of their children. The respondent has also the responsibility of upbringing the minor son & daughter, who are residing with the appellant.

In the present case no evidence was brought on record by the respondent to establish the actual income of the appellant – wife; the respondent is not discharging and taking responsibility to maintain his wife, who is living independently from him with their children; she has filed an application under Section 13 of the Act

of 1955 for seeking divorce; the respondent is under an obligation to contribute amount for maintenance of the minor daughter and son, who are 14 and 12 years of age at present. Having regard to the monthly income of the respondent - husband, in our considered opinion, the maintenance awarded by the trial court for the appellant and her minor children is too meagre and, therefore, the same deserves to be reasonably enhanced.

Accordingly, the appeal preferred by the appellants is partly allowed. The respondent shall make payment of Rs. 5,000/- per month each to the appellants towards the maintenance from the date of filing application i.e. 17.01.2014. The arrear of amount of maintenance shall be paid within a period of one month from the date of this order. The order impugned dated 13.06.2019 passed by the trial court is modified to the extent of enhancing maintenance amount to the appellants and rest of the order shall remain intact.

No order as to costs.

(RAMESHWAR VYAS),J

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(SANGEET LODHA),J

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