



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

D.B. Civil Misc. Appeal No. 1160/2019

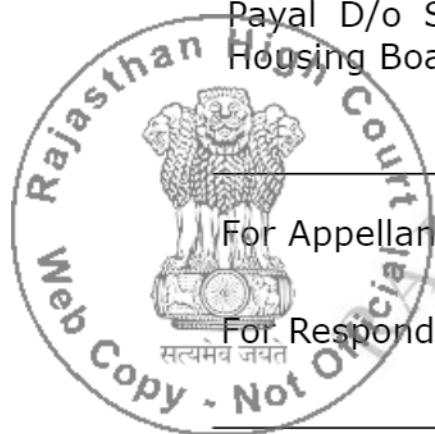
Rana Ram S/o Shri Teja Ram, Aged About 34 Years, B/c Sain,
R/o Village Pochhina, Tehsil And District Jaisalmer, At Present R/o
Cpl Rana Ram, M.t. Section, 1 T.a.c. , Indian Air Force, Opposite
D.i.g. Residence , Mal Road, Jalandha Cant Punjab.

----Appellant

Versus

Payal D/o Shri Girdhari Lal, B/c Sain, R/o 18/620, Chopasani
Housing Board, Jodhpur.

----Respondent



For Appellant(s)	:	Mr. N.L. Joshi with Ms. Kirti Pareek
For Respondent(s)	:	Mr. Shailendra Kala with Mr. Anuj Kala

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

Judgment

04/03/2021

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

This appeal has been filed by the appellant-husband against the order dated 27.03.2019 passed by Family Court No.1, Jodhpur in Civil Original Case No. 271/2018, whereby, the petition under Section 13 of the Hindu Marriage Act, 1955 (‘afterwards referred as ‘HM Act’) filed by the appellant-husband has been dismissed on the ground of alleged non-compliance of the order passed under Sections 24 and 26 of the HM Act.

Brief facts of the case are that during the pendency of the petition under Section 13 of the HM Act filed by appellant-husband against respondent-wife, an order dated 16.10.2014 under Section 24 read with Section 26 of the HM Act was passed in favour of respondent-wife awarding Rs.5,000/- per month as interim



maintenance, Rs.3,000/- as legal expenses and Rs.2,500/- as advocate fees. An application was preferred by respondent-wife for dismissal of petition under Section 13 of the HM Act on the ground that out of Rs. 2,25,000/- outstanding towards the interim maintenance, only Rs.2,000/- has been paid upto 18.08.2017. On the said application, the appellant-husband was directed to pay remaining arrears within a period of three months from the date of order i.e. 20.07.2017; it was further directed by the Court that on failure of paying the arrears within the stipulated period, the divorce petition under Section 13 of the HM Act shall be dismissed. On 24.10.2018 three cheques of Rs.30,000/-, Rs.40,000/- & Rs.35,000/- were given to respondent-wife and proceedings were adjourned for payment of rest of the arrears. On 27.03.2019 the divorce petition was dismissed on account of non-compliance of order passed under Section 24 read with Section 26 of the HM Act.

Being aggrieved by the impugned order this appeal has been filed by the appellant-husband.

Learned counsel for the appellant submitted that admittedly, the maintenance amount of Rs.5,000/- was awarded to the respondent by the Family Court vide order dated 16.10.14 under Section 24 of the HM Act. Later, vide order dated 24.10.17 passed in proceedings under Section 125 Cr.P.C., the amount of maintenance payable to the respondent and her daughter was determined as Rs.10,000/- per month and Rs.5,000/- per month respectively. The amount to be paid under any other proceedings has been specifically directed to be adjusted against the amount of maintenance awarded in proceedings under Section 125 Cr.P.C. Learned counsel submitted that the appellant has already paid an



amount of Rs.4,64,000/- to the respondent by way of cash, cheque and compulsory deduction from his salary and as per the order passed by the Court, a sum of Rs.20,000/- is being recovered from the appellant's monthly salary till this date. It is submitted that in view of the recovery already made, no amount of maintenance is due against the appellant under Section 24 of the HM Act.

Learned counsel for the appellant while relying on the judgment of this Court passed in D.B. Civil Misc. Appeal No.551/2017 : Amandeep Soni v. Smt. Monika Soni, decided on 13.07.2018 submitted that for non-compliance of the direction made in the application under Section 24 of the HM Act, a petition seeking divorce cannot be dismissed and thus, the order under appeal deserves to be set aside.

On the contrary, learned counsel for the respondent-wife contended that for non-compliance of the order passed under Section 24 of the HM Act divorce petition can be dismissed. Counsel for the respondent has produced statement of payment made by the appellant under Section 24 of the HM Act and Section 125 Cr.P.C., according to which, a total sum of Rs. 4,64,000/- has been paid and now upto March, 2021 Rs.3,36,500/- are due against the appellant-husband. It is submitted that unless and until this amount is paid, appellant is not entitled to proceed under Section 13 of the HM Act.

Learned counsel for the respondent-wife relied on the following judgments:-

- (i) Jai Shanker v. Chandresh : 1980 WLN (UC) 82 (Raj.).
- (ii) Pinki v. Jwala Prasad : 2013 (2) CCC 335 (Raj.).
- (iii) Hirachand Srinivas Managaonkar v. Sunanda : 2001 (4) SCC 125.
- (iv) Muraleedharan v. Jincy : 2019 (1) CCC 262 (Kerala).



(v) Jayan v. Suja : 2017 Supreme (Ker.) 490.

Heard learned counsel for the parties and perused the material available on record.

In the case of Amandeep Soni (supra), relied on by learned counsel for the appellant, the Division Bench of this Court held that for non-compliance of the direction by the appellant in the application under Section 24 of the Hindu Marriage Act, a petition seeking divorce cannot be dismissed. At best it can be adjourned sine die. If the appellant pays maintenance to the wife and gives proof to the Court, proceedings can be revived on filing the application.

In the case of Jai Shanker (supra) relied on by learned counsel for the respondent this Court while granting last opportunity to the appellant to comply with the order of the Court awarding maintenance under Section 24 of the HM Act, directed that on failure to deposit the amount, the appeal shall stand dismissed.

In the case of Pinki (supra) the writ petition was disposed of with the direction to the husband to deposit all arrears by 05.02.2013, at the same time it was held that if the amount is not deposited by husband within the prescribed period as directed, his petition for dissolution of marriage be dismissed forthwith.

In the case of Muraleedharan (supra) Kerala High Court held that when the husband willfully makes default in complying with the order passed by a competent court under Section 125 Cr.P.C. granting maintenance to the wife and children, the defence of such person in any proceedings instituted against him by wife in connection with or in relation to matrimonial issues between them,



can be struck off by Court by invoking the power under Section 151 of the Code.

In the case of Jayan (supra) Kerala High Court held that to prevent the abuse of process of court, the court below was justified to strike off the defence, even if, there is no such provision in the Hindu Marriage Act.

After considering the judgments relied on by counsel for the parties, we are in agreement with the view taken by the Division Bench of this Court in the case of Amandeep Soni (supra) that for non-compliance of the direction by the appellant in the application under Section 24 of the HM Act, a petition seeking divorce cannot be dismissed. At best it can be adjourned sine die.

It is true that the Court has inherent power under Section 151 CPC to prevent the abuse of process of the law and for that the Court can strike off the defence but above situation is not there in the present case. The appellant has already paid a substantial amount of maintenance to the respondent and against the arrear and the future payment of maintenance, a sum of Rs.20,000/- is being deducted from the salary of the appellant, which would obviously take care of the arrears of the maintenance as also the future liability of the maintenance payable in terms of the order passed by the Family Court as aforesaid.

In view of the above factual and legal position, the impugned order passed by learned Family Court No.1, Jodhpur deserves to be set aside.

Consequently, this appeal is allowed. The impugned order dated 27.03.2019 passed by Family Court No.1, Jodhpur is set aside. The petition under Section 13 of the HM Act dismissed by the impugned order shall be restored forthwith. It is made clear



that after revival of the petition under Section 13 of the HM Act the respondent shall be entitled to get Rs. 5,000/- per month under Section 24 of the HM Act from the date of restoration of petition under Section 13 of the HM Act, however, the amount payable in terms of the order in proceeding under Section 24 of the HM Act shall be adjustable against the amount of maintenance awarded in proceedings under Section 125 Cr.P.C. which is being recovered by way of deduction from the appellant's salary.

It is made clear that the appellant shall be at liberty to make an appropriate application for varying the order passed by the Family Court regarding deduction from salary once the arrear of maintenance stands satisfied. Further, the disposal of the present appeal shall not preclude the appellant in any manner from questioning the legality of the order passed by the Family Court in proceedings under Section 125 Cr.P.C. and if the order passed by the Family Court in proceedings under Section 125 Cr.P.C. is varied by the order of the court of competent jurisdiction, the appellant shall be at liberty to make an appropriate application before the Family Court regarding the adjustment of the amount of maintenance paid in excess if any.

(RAMESHWAR VYAS),J

(SANGEET LODHA),J

AK Chouhan/-

