

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 28th OF NOVEMBER, 2022

FIRST APPEAL No. 995 of 2022

BETWEEN:-

**MR. NILENDRA SINGH PAWAR, AGED ABOUT 48 YEARS, OCCUPATION:
SERVICE B-87, ANSAL TOWNSHIP, TALAWALI CHANDA, A.B. ROAD
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI SHREY RAJ SAXENA, ADVOCATE)

AND

**DR. SMT. DEEPTI PAWAR, AGED ABOUT 49 YEARS, OCCUPATION:
DOCTOR 337-338, BHANWAR KUAN ROAD (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ROMESH DAVE, ADVOCATE)

*This appeal coming on for orders this day, JUSTICE VIVEK
RUSIA passed the following:*

O R D E R

Heard on I.A. No.3841/2022, which is an application under Section 5 of the Limitation Act for condonation of delay. As per the Registry's report, this appeal is barred by 16 days.

Keeping view of the reasons assigned in the application, which is duly supported by an affidavit, I.A. No.3841/2022 is allowed. Delay in

filing the appeal is hereby condoned.

The appellant / husband has filed this appeal under Section 19(1) of the Family Courts Act, 1984 against the order dated 26.04.2022, whereby the Additional Principal Judge, Family Court, Indore has awarded interim maintenance of Rs.40,000/- per month and Rs.70,000/- as litigation expenses in favour of the respondent/wife.

The decision on preliminary objection:

02. Shri Romesh Dave, learned counsel appearing for the respondent raised a preliminary objection regarding the maintainability of this appeal filed under Section 19 of the Family Court Act. Shri Dave, learned counsel submits that the impugned order has been passed under Section 24 of the Hindu Marriage Act which is in the nature of interlocutory order. The appeal under Section 19 of the Family Courts Act lies only against the judgment or order not being an interim order. The petitioner is having remedy to file a writ petition under Article 226 of the Constitution of India as even the civil revision is also barred in view of the law laid down by this Court in the cases of *Aurna Choudhary v/s Sudhakar Choudhary reported in 2004 (2) MPLJ 101* and *Swarna Parva Tripathy & Another v/s Dibyasingha Tripathy & Another reported in AIR 1998 ORI 173*.

03. Shri Shrey Raj Saxena, learned counsel for the appellant submits that the proceedings initiated under Section 24 of the Hindu Marriage Act seeking interim maintenance and litigation expenses have come to an end, therefore, this order is final in nature, hence, an appeal is maintainable under Section 19 of the Family Courts Act.

04. In order to appreciate the aforesaid contention, Section 19 of the Family Courts Act is reproduced below:-

19. Appeal.—

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties²[or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).]

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.]

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

05. It is correct that the appeal lies against the judgment and the order passed by the Family Court, but if the order is passed on an interlocutory application against which appeal would not lie under Section 19 of the Family Court Act. But the issue which requires consideration is whether the order passed on the application filed under section 24 is in the nature of interlocutory or final in nature ?

06. So far as the provision of Section 24 of the Hindu Marriage Act is concerned, the husband or wife, as the case may be, can seek interim

maintenance and litigation expenses during the pendency of the divorce petition. On the basis of evidence and material available on record, the Court may direct the opposite party to pay interim maintenance during the pendency of the proceedings. The amount payable by way of interim maintenance and litigation expenses is neither returnable nor recoverable after the conclusion of the main proceedings. Even said amount is not liable to be adjusted in the amount payable as permanent alimony. Even if the divorce petition is dismissed or allowed, the order passed under Section 24 of the Hindu Marriage Act shall not be merged into the final order. The evidence for deciding the interim maintenance is separately recorded and can not be taken into consideration while deciding the main petition either filed under Section 9 or 13 of the Hindu Marriage Act. Therefore, proceedings initiated under Section 24 by filing an application either by the applicant or respondent are independent proceedings and the order passed in it is the final order, hence, the appeal under Section 19 of the Family Courts Act is maintainable and objection taken by Shri Romesh Dave is overruled. Whether the appeal is liable to be registered as a first appeal or miscellaneous appeal depends upon the rules framed by the High Court ?

Facts of the case:

07. The marriage of appellant and respondent was solemnized on 09.02.2002 at Indore but at present either party are not residing in Indore, however, their parents are residing in Indore. The appellant is settled in Gurugram and the respondent is in Mumbai and earning their livelihood. The appellant is having qualification of MBA and the respondent is M.B.B.S. M.S. (Gold Medalist) and FRCO London (England). After living certain years together, matrimonial dispute arose between them and they

are living separately since October 2008.

08. After 10-12 years of separation, the appellant approached Family Court, Indore on 08.02.2018 seeking a decree of divorce from the respondent on the ground of cruelty. After receipt of the summon, the respondent appeared and filed an application under Section 24 of the Hindu Marriage Act on 24.07.2018 claiming Rs.2,00,000/- per month as interim maintenance from the appellant. According to the respondent, she was dependent on her parents since last 10 years and they are bearing all expenses including travelling expenses through flights. In the year 2002, the appellant was earning Rs.7.5 lakh per year. His father is retired from the Government Department and his younger sister is married now, therefore, he has no other liability but to maintain his wife. Hence, she is entitled to get Rs.2,00,000/- per month as interim maintenance.

09. Aforesaid application was opposed by the appellant by denying the averments made in the application. According to the appellant, the respondent is highly qualified and has been maintaining herself in Mumbai. Since 2008, she has never claimed any maintenance from the appellant but the moment he filed a divorce petition, she applied section 24 of Hindu Marriage Act seeking interim maintenance. In the year 2018 – 19, she disclosed her annual income Rs.1,16,043/-, and she is paying rent @ Rs.25,000/- per month for a rented house in Mumbai. The appellant has further submitted that he maintaining his aged father who is suffering from various ailments. His monthly income is Rs.1,40,297/- as per the pay slip of February, 2019.

10. On the basis of pleadings and evidence, the learned Family Court has awarded Rs.40,000/- pm as interim maintenance and Rs.70,000/- as litigation expenses in favour of the respondent. Hence, the present first

appeal is before this Court.

Submissions

11. Learned counsel for the appellant submits that the respondent is a highly qualified doctor, she can earn well and it is not possible that for the last 10 years she is surviving in the city like Mumbai upon earning of Rs.7,000/- per month. She has never claimed any maintenance from the appellant since 2008 and all of a sudden she cannot claim maintenance @ Rs.2,00,000/- per month. In support of his contention, he has placed reliance upon a judgment delivered by the Delhi High Court in the case of ***Rupali Gupta v/s Rajat Gupta [MAT. App. (F.C.) 143/2014]***, in which the maintenance has been denied to the wife who was a qualified Chartered Accountant and was in the profession since 2003. The Division Bench observed that interim maintenance under Section 24 of the Hindu Marriage Act to the well-qualified spouse having to earn capacity but desirous of remaining idle should be deprecated. In the judgment delivered in the case of ***Smt. Mamta Jaiswal v/s Rajesh Jaiswal reported in 2000 (3) MPLJ 100*** this High Court has denied the interim maintenance to well-qualified wife. Therefore, interim maintenance awarded @ Rs.40,000/- is not only on the higher side but totally unwarranted and same is liable to be set aside.

12. Shri Romesh Dave learned counsel appearing on behalf of the respondent argued in support of the impugned order and also prayed for enhancement of the maintenance amount by way of filing cross objection in this appeal. Shri Dave submits that the appellant was earning Rs.1.00 crore annually but deliberately he gave up the said job and shifted to low paid job of Rs.24 – 25 lakh annually. Before 2016 – 17, his income was Rs.94,00,000/- per annum and suddenly due to a change of job, the same

has been reduced, therefore, it can safely be presumed that in order to deny the handsome amount of interim maintenance to the wife, he has chosen to work on low paid salary.

Appreciation and conclusions

14. The appellant filed the divorce petition then the respondent filed an application for interim maintenance, otherwise since last 10-12 years of separation she has never claimed any maintenance from the appellant, hence, it cannot be believed that to deny the maintenance to the wife, he has shifted to low paid income job. Had she needed maintenance she would have claimed maintenance during this period of separation by applying Section 125 of the Code of Criminal Procedure, 1973. The appellant and respondent are living separately since 2008. The appellant is residing in Gurugram and the respondent resides in Mumbai. She is maintaining herself for the last 12 years and never claimed any maintenance. She is a highly qualified doctor. She used to travel from Mumbai to Indore by flight as per her declaration. She travelled at least four times a year by flight, therefore, it cannot be said that she is surviving only on an income of Rs.7,000/- per month despite having such high qualifications which is much less than the minimum wage payable to a Class-IV labour. She has not disclosed the earnings and financial status of her parents who are said to have supported her for the last ten years. Therefore, interim maintenance of Rs.40,000/- per month is on the higher side when the appellant is earning Rs.25,00,000/- per annum and the respondent is highly qualified. The amount is hereby reduced to Rs.10,000/- per month. The litigation expense of Rs.70,000/- is also on the higher side, therefore, the same is reduced to Rs.30,000/-.

The First Appeal stands partly allowed and the cross-appeal is

hereby dismissed .

No order as to cost.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

Ravi

