

## RAJASTHAN HIGH COURT

Popri Bai

Vs.

Treeth Singh

S.B. Civil Revision Petition No. 29 of 2002

(S.K. Keshote, J.)

17.10.2003

### JUDGMENT

**S.K. Keshote, J.**

1. Heard learned counsel for the parties, perused the revision petition and the order dated 10th of September, 2001 of the learned Additional District Judge No. 1, *Bharatpur*.
2. The learned counsel for the petitioner wife also produced certified copy of the order dated 11th of April, 2001 of the learned Additional District Judge No. 1, *Bharatpur*, in Civil Miscellaneous Case No. 71/99. Under this order the application filed by the petitioner-wife under Section 24 of the Hindu Marriage Act has been decided. The learned trial court under the order aforesaid directed the respondent-husband to pay Rupees one thousand per month as interim maintenance to the petitioner-wife. However, in the operative part of the order it is not mentioned from which date this amount is payable.
3. The facts of the case necessary for the decision of this revision petition, are that the respondent-husband filed a petition under Section 9 of the Hindu Marriage Act 1955 on 3rd of February 1999. On 15th of July, 1999 the petitioner-wife moved an application under Section 24 of the Hindu Marriage Act for interim maintenance for herself and for her son. As said earlier, after hearing the learned counsel for the parties, the learned trial court, on 11.4.2001, directed the respondent-husband to pay Rupees one thousand per month as interim maintenance to the petitioner-wife. The respondent-husband got his petition dismissed on 1st of June, 2001 for non-prosecution. The petitioner-wife filed an application on 23rd of August, 2001 for execution of the order dated 11th of April, 2001. In this application, she prayed for

recovery of the amount of interim maintenance from the date of filing of the application. The learned executing court, under the impugned order, held that she is entitled for the maintenance from the date of the order. Thus, this revision petition.

4. The order on the application under Section 24 of the Hindu Marriage Act has been passed on 11th of April, 2001 and I am satisfied that the respondent- husband has deliberately got his petition dismissed for non-prosecution on 1st of June, 2001. If we go by the facts and the order of the learned executing court, the petitioner-wife will get interim maintenance only for one month and few days. It is true that under Section 24 of the Hindu Marriage Act discretion lies with the court as to from which date the interim maintenance is to be granted; it may be granted from the date of filing of the application or from the date of the order or from any other date. However, there cannot be two views that it is a judicial discretion and where the court decides not to grant the interim maintenance from the date of filing of the application, in my considered opinion, reasons are to be recorded in support thereof. In the order dated 11th of April, 2001 the learned trial court has not recorded any reason whatsoever not to grant the interim maintenance to the petitioner-wife from the date of filing of the application.

5. Be that as it may, the learned executing court is correct in its approach that no direction can be given for recovery of the amount of interim maintenance from the date of filing of the application. The learned executing court cannot go beyond the order of which the execution is sought for.

6. It is unfortunate that the poor lady has not been properly advised. On receiving the certified copy of the order, the proper course would have been to file an application for review or to challenge that order in appeal or revision. The respondent-husband acted smart or his advisors are smart one who had advised him to get his petition dismissed for non-prosecution.

7. In these facts and circumstances, in case the respondent-husband is permitted to do injustice and play tricks with the poor petitioner-wife, it will result in failure of justice to her. Not only this, unscrupulous husband, like the present one, respondent will get success in their oblique motives and *mala fide* intentions. The copy of the order dated 11.4.2001 is placed on the record. Having gone through the order dated 11.4.2001, I do not find any justification and propriety therein not to award the interim maintenance to the petitioner-wife, from the date of filing of the application. Not only this the court has not recorded any reason whatsoever not to grant the interim maintenance to the petitioner-wife from the date of the application. I have my own

reservation in this approach of the Judicial Officer who passed the order. It is not required to mention that this order shall be operative or the husband has to pay the interim maintenance to the wife till the date of decision of the petition. In the order, though, this officer has not made it clear from which date it will be effective but taken all the care to add in his own pen in this typed order, the words - "Mool Yaachika Ke Nistaaran Tak". It is a case where in case this order of the learned trial court is allowed to stand, it will not result in failure of justice to this poor wife but it will cause serious prejudice to her. Not only this it will encourage those unscrupulous litigants who made attempts to befool or play tricks with their wives.

8. It is a fit case for the Court has to exercise its powers under Article 227 of the Constitution of India to do the complete justice to the petitioner- wife. Consequently, in exercise of the powers under Article 227 of the Constitution of India, the order dated 11.4.2001 of the learned Additional District Judge No. 1 *Bharatpur* in Civil Miscellaneous Case No. 71/99 is modified to the extent that the interim maintenance shall be payable to the petitioner-wife by the respondent-husband with effect from the date of filing of the application i.e. 15th of July, 1999. The respondent-husband is directed to make payment of the arrears of the interim maintenance and the amount of the legal expenses, if already it is not paid, within a period of one month from the date of receipt of the copy of this order. A copy of this order be sent forthwith to the respondent-husband by registered post AD. The respondent-husband is further directed to produce on record the copy of the receipt of the amount paid by him to the petitioner-wife towards arrears of maintenance.

9. The registry is directed to place the revision petition for orders on 28.11.2003 to see the compliance of the order.

Petition allowed.