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High Court Of Punjab And Haryana At Chandigarh

Case No: R.A.-C.R.-66-CII of 2009 (O and M) in C.R. No. 429 of 2008

Tarlochan Singh		APPELLANT
	Vs	
Veerpal Kaur and Another		RESPONDENT

Date of Decision: Oct. 28, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 38 Rule 5, Order 39 Rule 1, Order 39 Rule 2, 151, 94
- Constitution of India, 1950 - Article 227
- Hindu Adoptions and Maintenance Act, 1956 - Section 18
- Hindu Marriage Act, 1955 - Section 11, 24

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Alok Singh, J.

Husband-Petitioner has filed the present review petition seeking review of the order dated 15.12.2008 passed by this Court (Hon''ble Mr. Justice H.S. Bhalla, as the Lordship then was), whereby petition under Article 227 of the Constitution of India filed by the husband challenging the order dated 12.11.2007 passed by the Civil Judge (Sr. Division), Barnala, thereby granting pendente-lite maintenance to the wife @ Rs. 2500/- p.m. in a suit u/s 18 of the Hindu Adoption and Maintenance Act, was dismissed.

2. Brief facts of the present case are that wife has filed one civil suit in the Court of learned Civil Judge (Sr. Division), Barnala u/s 18 of the Hindu Adoption and Maintenance Act (for brevity ''the Act''), claiming permanent maintenance from the husband. In a suit, wife has moved one application under Order 38 Rule 5 read with Order 39 Rules 1 and 2 CPC praying to attach the property of the husband,

mentioned in the application, or alternatively the husband be restrained from alienating the property by way of sale or mortgage etc. during the pendency of the suit for ensuring claimed maintenance.

3. Learned trial Court vide order dated 12.11.2007 has directed the husband/review applicant to pay the pendente-lite maintenance to the wife @ Rs. 2500/- p.m. observing therein that charge stand created on the property of the husband pertaining to the payment of pendente-lite maintenance. Order of the learned Civil Judge dated 12.11.2007 was challenged before this Court invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India in a Civil Revision No. 429 of 2008. Revision petition so filed by the husband/review applicant was dismissed by this Court vide order dated 15.12.2008.

4. I have heard learned Counsel for the parties and perused the record as well as relevant law.

5. Mr. K.S. Boparai, learned Counsel for the husband/review applicant argued that neither Order 38 nor Order 39 CPC empowers the learned trial Court to grant pendente-lite maintenance in a suit u/s 18 of the Hindu Adoption and Maintenance Act. He further argued that in the application under Order 38 Rule 5 read with Order 39 Rules 1 and 2 CPC no relief for pendente-lite maintenance was claimed, hence, learned trial Court has committed jurisdictional error while granting pendente-lite maintenance. He further argued that this Court has also not taken into consideration the fact that no relief can be granted by the learned trial Court which was never claimed in the application. He further stated that this Court while passing the order dated 15.12.2008 has failed to take into consideration the fact that pendente-lite maintenance cannot be granted either under Order 38 Rule 5 or under Order 39 Rules 1 and 2 Code of Civil Procedure. Learned Counsel for the Petitioner-husband fairly stated that although pendente-lite maintenance can be granted in a suit u/s 18 of the Hindu Adoption and Maintenance Act in view of Section 151 Code of Civil Procedure, however, in the present case, since no application was moved u/s 151 CPC and no maintenance was claimed in the application, hence, Court had absolutely no jurisdiction to grant pendente-lite maintenance.

6. Undisputedly, the pendente-lite maintenance in a suit filed by the wife against the husband u/s 18 of the Hindu Adoption and Maintenance Act can be granted by the Court while invoking inherent jurisdiction u/s 151 CPC read with Section 94(e) CPC .

7. Section 94 CPC reads as under:

94. Supplemental proceedings: In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed-

(a) issue a warrant to arrest the Defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply

with any order for security commit him to the civil person;

(b) direct the Defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.

8. From the perusal of Section 94(e) Code of Civil Procedure, I have absolutely no doubt in my mind that Civil Court has every jurisdiction to pass such interlocutory orders which appear to the Court to be just and convenient in the interest of justice. In a suit claiming permanent maintenance u/s 18 of the Act if interim maintenance is not granted invoking Section 94(e) CPC read with Section 151 CPC then it would be very harsh for the wife and she may reached to the stage of starvation. Hence, in the interest of justice, Court is competent to pass interlocutory/interim order granting pendente-lite maintenance in a suit u/s 18 of the Act. Now question comes, as to whether power u/s 94(e) CPC read with Section 151 CPC can be invoked by the Court when wife has moved an application under Order 38 Rule 5 read with Order 39 Rules 1 and 2 CPC for attaching the property of the husband or restraining the husband not to alienate the property without claiming any ad-interim maintenance in such application. I have absolutely no doubt in my mind that even if a wrong provision is quoted in the application and Court finds that relief claimed is just and proper then Court has every power to grant such relief. I am of the further opinion that even if in an application relief for ad-interim maintenance has not been sought by the wife and wife has sought only attachment of the husband''s property or has sought restraint order against the husband not to alienate the property in dispute, then Court has every jurisdiction that instead of attaching the property or to pass restraint order, direct the husband to pay pendente-lite maintenance which would be just and proper in view of Section 151 CPC read with Section 94(e) CPC Hence, I do not find any error in the order under review.

9. Learned Counsel for the Petitioner at this stage states that wife has also getting ad-interim maintenance u/s 24 of the Hindu Marriage Act in a petition filed u/s 11 of the Hindu Marriage Act @ Rs. 2500/- p.m., hence, granting of maintenance @ Rs. 2500/- p.m. in the present suit would amount to payment of Rs. 5000/- p.m. for the same period which is on higher side. I do not agree with learned Counsel for the Petitioner. In today''s time, Rs. 5000/- p.m. is a merger amount. It is not denied that husband is having agricultural income and is reasonably a good landlord. Keeping in mind the status of the husband, if wife is getting Rs. 5000/- p.m. in toto including the

amount of maintenance u/s 24 of the Hindu Marriage Act, it cannot be said to be on the higher side.

10. Review petition is dismissed accordingly.