

(2012) 08 JH CK 0027**Jharkhand High Court****Case No:** F.A. No. 884 of 2006

Kamlesh Kumar Singh

APPELLANT

Vs

Sudha Devi and Another

RESPONDENT

Date of Decision: Aug. 23, 2012**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 24, 25

Hon'ble Judges: Prakash Tatia, C.J; Jaya Roy, J**Bench:** Division Bench**Advocate:** Manish Kumar, for the Appellant; S.L. Agarwal, for the Respondent**Judgement**

1. Learned counsel for the appellant submitted that appellant was informed about the order dated 23rd July, 2012 by sending information by registered post. However, that registered post has been returned back with endorsement that addressee is not residing on that address. Learned counsel for the appellant further submitted that he himself talked with the appellant and informed him about the order dated 23rd July, 2012 and direction to pay the litigation cost of Rs. 20,000/- to the respondent but he did not contact him. In view of above reasons, the appeal of the appellant is dismissed for non-prosecution and because of non-compliance of order dated 23rd July, 2012. However, it is made clear that the respondent will be entitled to recover the amount of litigation cost imposed on 23rd July, 2012 by this Court..

2. Heard learned counsel for the respondents on the Interlocutory Application being I.A. No. 4015 of 2009 filed u/s 24 of the Hindu Marriage Act for enhancement of alimony and another Interlocutory-Application being I.A. No. 2192 of 2012.

3. Learned counsel for the appellant pointed out that Trial Court awarded interim maintenance to the respondent to the tune of Rs. 4000/- per month vide order dated 22nd July, 2002. However, this amount has been reduced in the appellant's writ petition being W.P.(C) No. 6502 of 2002 vide order dated 24.06.2004 from Rs. 4000/-per month to Rs. 3000/- per month. The respondent-wife thereafter filed

another petition for enhancement of alimony from Rs. 3000/- to Rs. 4000/- per month as the salary of the appellant-husband was enhanced and the cost of living was also increased. But that petition of the respondent-wife was dismissed by the Trial Court vide order dated 19th April, 2007 on the ground that petitioner-husband had already preferred L.P.A. before the High Court and matter is Subjudice.

4. The appellant has preferred L.P.A. before the Division Bench obviously against the order dated 24.06.2004 passed in W.P.(C) No. 6502 of 2002. Be that as it may be, since by order dated 24th July, 2004, the respondent was entitled to maintenance of Rs. 3000/- per month. Now the respondent's contention is that the appellant is drawing salary of Rs. 25,000/- per month. The said statement was made in LA. No. 4015 of 2009 filed on 22nd December, 2009. However, in subsequent filed application for the same relief dated 22nd July, 2012, the respondent-wife submitted that she got her two daughters married in the year 2004 and 2008 by taking loan as she has to spent Rs. 4,00,000/- (four lacs). However marriage of one of her daughters was not successful and now one of her daughters is living with the respondent. In the marriage the appellant did not contribute a single penny. It is submitted that now the appellant is getting gross income of Rs. 50,000/- per month from his employer-Tata Motors Limited, Jamshedpur and his remaining service period is about seven years. Learned counsel for the respondent further submitted that his salary may have now increased from Rs. 50,000/- per month. It is submitted that upon retirement the appellant will get Rs. 30-40 lacs as retiral benefits. In the background of these facts, it is submitted that interim maintenance may be enhanced.

5. Above facts has not been controverted by the appellant and the appeal of the appellant has been dismissed by this order itself. Therefore, we can consider to grant interim maintenance u/s 24 of the Hindu Marriage Act to the extent of dismissal of this appeal by this order with liberty to the respondent to move appropriate application u/s 25 of the Hindu Marriage Act for granting appropriate maintenance without being prejudiced of this interim maintenance, which is being made by this order.

6. Looking to the facts of the case that the respondent was getting interim maintenance of Rs. 3000/- per month from 24.06.2004, therefore, in this appeal filed u/s 24 of the Hindu Marriage Act, we deem it proper to increase the alimony from Rs. 3000/- to Rs. 5000/- per month from 22.12.2009, the date on which the first application (LA. No. 4015 of 2009) was submitted by respondent-wife. Therefore, it is held that the respondent shall be entitled to interim maintenance of Rs. 5000/- per month from 22.12.2009 till the decision of this appeal with liberty to the respondent to move appropriate application u/s 25 of the Hindu Marriage Act and if the respondent wants to take benefit. In case of filing of the application u/s 25 of the Act by the respondent, the trial court will consider the same being uninfluenced by award of the maintenance by this order. Both the Interlocutory Applications are also

accordingly disposed of.