

## Niloy alias Niloy Ghosh Vs Smt. Debolina

**Court:** KARNATAKA HIGH COURT

**Date of Decision:** April 20, 2016

**Acts Referred:** Constitution of India, 1950 - Article 226

Hindu Marriage Act, 1955 - Section 24

**Citation:** (2016) 3 AirKarR 150

**Hon'ble Judges:** A.S. Bopanna, J.

**Bench:** Single Bench

**Advocate:** L. Harish Kumar, Advocate, for the Appellant; R.A. Devanand, Advocate, for the Respondent

**Final Decision:** Disposed Off

### Judgement

@JUDGMENTTAG-ORDER

A.S. Bopanna, J.â€”The petitioner is before this Court assailing the order dated 15.07.2014 passed in M.C.No.745/2013 impugned at

Annexure-C to the petition.

2. The petitioner is the husband of the respondent. The relationship between the parties is not in dispute. Due to certain marital discord, they have

been residing separately, The petitioner herein has instituted the petition in M.C.No.745/2013 seeking dissolution of marriage. In the pending

proceedings, the respondent has filed an application under Section 24 of the Hindu Marriage Act seeking interim maintenance. The Court below

by order dated 15.07.2014 has directed the petitioner to pay the monthly maintenance of Rs. 15,000/- in addition to Rs.3,500/- which the

petitioner is stated to be paying to the respondent. Apart from the said amount, litigation expenses of Rs.20,000/- is ordered. The petitioner

claiming to be aggrieved by the same is before this Court in this petition.

3. The petitioner while assailing the order passed by the Court below would contend that the maintenance as ordered is on the higher side. It is

contended that the Court below in fact has taken note of the fact that a sum of Rs.3,500/- was being paid and yet a sum of Rs. 15,000/- is

ordered, though the net salary of the petitioner was accepted at Rs.45,662/- as noticed by the Court below. It is the further contention of the

learned counsel for the petitioner that the Court below has also not taken into consideration that the rental is also being paid by the petitioner and in

that view, a consideration was required to be made. It is also contended by the learned counsel that the respondent is a qualified law graduate and

as such, she has her own income and even if she has no income, she has the capacity to earn and therefore the Court below ought to have kept this

aspect also in view and thereafter a conclusion ought to have been reached.

4. Learned counsel for the respondent however would seek to sustain the order passed by the Court below. It is pointed out that though a

contention is raised on behalf of the petitioner that the respondent has her independent income, no material whatsoever is placed on record. In that

light, it is contended that when there is no dispute with regard to the relationship between the parties and the employment of the petitioner and the

income thereof, the maintenance as ordered is justified. The learned counsel would also point out that though at the point when the Court below

made the consideration, the salary was Rs.82,791/-, there has been increment in the salary and the income as disclosed for the purpose of income

tax is much higher and therefore the order does not call for interference.

5. In the light of the rival contentions, I have perused the petition papers including the order impugned in this petition. As noticed, there is no

dispute with regard to the relationship between the parties. Further, as rightly contended by the learned counsel for the respondent, the petitioner

has not placed any material on record to indicate that the respondent has her independent income. Though there is no serious dispute with regard

to the fact that the respondent is a qualified law graduate, the contention on behalf of the respondent that she does not have her independent

income and in that circumstance, if only the petitioner had brought material on record, the same could have been taken into consideration. Further

the contention of the learned counsel for the petitioner that (he respondent has the capacity to earn though can be taken note of, in a circumstance

where no material is brought on record to indicate that she is employed in any particular capacity or that she has declined to take up employment

or practise, though it was possible to do so or unless it is shown that she has income, at this juncture, such consideration in any event cannot weigh

in the mind of this Court to deny the maintenance.

6. That apart, the Court below while taking note of the rival contentions has taken note of the avocation of the petitioner and as on the date of the

consideration, the salary was in a sum of Rs.82,791/-. Though the net salary indicated in the salary certificate was Rs.45,662/-, the deduction in

any event was to ensure to the benefit of the petitioner himself. Therefore in that circumstance, when such income was available and the net salary

itself was Rs.45,662/- certainly the Court below was justified in awarding about one-third of the same amounting to Rs. 15,000/- to the

respondent towards her maintenance.

7. However, to the extent of the Court below directing that the said amount of Rs. 15,000/- would be in addition to the sum of Rs.3,500/- would

not be justified since the Court below while taking note of the fact that a sum of Rs.3,500/ was being paid towards maintenance ought to have

included the same and thereafter appropriate maintenance should have been granted.

8. Since I have arrived at the conclusion that one-third of the net pay which had been taken note at that point in time would be just and proper, the

order impugned dated 15.07.2014 is therefore modified to hold that the interim maintenance payable by the petitioner to the respondent shall be at

the rate of Rs. 15,000/- per month from the date of the application which will include the sum of Rs. 3,500/- being paid. The said amount shall be

continued to be paid by the petitioner to the respondent during the pendency of the proceedings before the Court below and the arrears shall also

be paid at the said rate, if already not paid. Insofar as litigation expenses as ordered, the same does not call for interference.

9. With the said modification to the impugned order, the petition stands disposed of.