

CR No.7298 of 2009 (O&M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CR No.7298 of 2009 (O&M)

Date of decision: 17.2.2011

Harminder Kaur

...Petitioner

Versus

Gurtar Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE RAM CHAND GUPTA Present: Mr.SS Salar, Advocate for the petitioner
Ms.Mridula Seth, Advocate for the respondent ***

Ram Chand Gupta, J.(Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 6.10.2009 passed by learned trial court dismissing the application filed by petitioner- wife for interim maintenance under Section 24 of the Hindu Marriage Act (for brevity 'the Act') in main petition for divorce under Section 13 of the Act filed by the respondent-husband against petitioner-wife. I have heard learned counsel for the parties and have gone through the whole record carefully including the impugned order passed by learned trial court.

Admitted facts are that petitioner-wife is residing in United State of America. The present petition has been filed through her power of attorney. Even in the main petition, petitioner is appearing through attorney. CR No.7298 of 2009 (O&M) 2 It is pertinent to reproduce Section 24 of the Act, which reads as under:

"24. Maintenance pendente lite and expenses of proceedings.- Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be." Very perusal of the aforesaid provision shows that ad-interim maintenance under Section 24 of the Act is to be allowed to a party of the litigation, who is having no independent income sufficient for her or his support and the necessary expenses of the proceedings. However, in the present case, when the petitioner-wife is residing in USA, it cannot be said that she is not having any independent income sufficient for her support and the necessary expenses of the CR No.7298 of 2009 (O&M) 3 proceedings.

Learned trial court dismissed the application filed by the petitioner-wife by observing as under:-

"In view of the foregoing facts, I am also of the opinion that when Gurtar Singh is not in a position to visit USA due to his over stay at the time of his first visit in USA alongwith Harminder Kaur, as such after delivery of a female child on 24.12.2007, it was the duty of Harminder Kaur to come back to India to join the company

of Gurtar Singh. Since 24.12.2007 as sufficient period of about two years has elapsed, as such in case during this period Harminder Kaur was feeling any financial problem and she was holding a return ticket to India, as such she could easily come back to India. But this long stay of Harminder Kaur in USA along with her minor baby leads to the conclusion that actually she has been impressed by the living style of USA and she might be earning sufficient income by doing some job. As such, in case she is out of job, by now she must have come back to India. This long stay of Harminder Kaur in USA shows that actually now she does not want to live in the company of Gurtar Singh and wants to lead an independent life in USA. As such, under these circumstances, in my view Harminder Kaur is not entitled to any maintenance as prayed for and to any CR No.7298 of 2009 (O&M) 4 amount of Rs.2.5 lac as litigation and other expenses. With these observations, the application moved by Harminder Kaur under Section 24 of HMA for grant of maintenance and litigation expenses as prayed for stands dismissed."

Hence, in view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial court in passing the impugned order and that grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

Law has been well settled in Surya Dev Rai vs. Ram Chander Rai and others 2004(1) RCR (Civil), 147 by Hon'ble Apex Court that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction of this Court. This court can interfere only when error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. There is no merit in the present revision petition. The same is, hereby, dismissed.

February 17, 2011 (RAM CHAND GUPTA) gsv JUDGE