

ORDER

A.S. Venkatachalamoorthy, J.

1. Petitioner herein, who is the husband of the respondent herein, filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 as H.M.C.O.P.54 of 1999 on the file of Sub Court, Trichy, praying the Court to issue an order in his favour by dissolving the marriage between him and the respondent, solemnized on 3.6.1982 at Neelakanda Swami Koil, Padmanabhapuram, Thakkalai, Nagercoil, according to Hindu custom and rites prevailing in the community. The respondent herein resisted the said petition on various grounds and the petition is now pending. While so, respondent herein filed two applications viz., (a) I.A.274 of 1999 praying the Court to direct the petitioner herein/husband to pay the respondent/wife a sum of Rs.500/- per month towards alimony pendente lite, and (b) I.A.275 of 1999 praying the Court to direct the petitioner herein/husband to pay the respondent/wife a sum of Rs.5,000/- towards litigation fees. Petitioner herein resisted both the petitions. The said applications were disposed of by the trial Court by two separate orders dated 24.8.2001. Being aggrieved by the said orders, present revision petitions are filed by the petitioner/husband.

2. In the affidavit filed in support of the applications, respondent has stated that the petitioner is an employee of BHEL, Trichy and getting a regular and fabulous income of Rs.60,000/- per annum and that taking into consideration the claims made by her are quite reasonable, those applications may be ordered.

3. The petitioner herein resisted those applications contending that the respondent has no right to claim alimony and litigation expenses from the petitioner/husband since respondent is employed in Kadhi Craft at 'B' Sector Shopping Centre, Township, BHEL, Trichy and that she is earning a sum of Rs.4,500/- per month as salary, besides bonus amount paid by Kadi Craft.

4. The learned Subordinate Judge, who considered the respective claim of the parties, passed the order awarding a sum of Rs.500/- per month towards alimony and a sum of Rs.500/- towards litigation expenses for the respondent/wife.

5. The learned counsel appearing for the petitioner/husband contended that the respondent gave birth to two children through the petitioner/husband in the years 1983 and 1985 respectively and that now the petitioner alone is maintaining those children, meeting their expenses. The learned counsel also placed before this Court a xerox copy of the proceedings of the Tamilnadu Kadhi Village Industries Board dated 23.8.1993 and submitted that in fact the respondent is employed in Kadhi Board and drawing a salary of Rs.4,500/- per month. In fact, such an averment has been made in paragraph 5 of the counter affidavit filed in I.A.274 of 1999, but the petitioner failed to substantiate the same.

6. The learned counsel Mr. A. Muthukumar, who has been appointed by this Court as Amicus Curiae to defend the respondent/wife, since she is absent even after receiving Court notice, would contend that inasmuch as the document is a xerox copy that cannot be looked into and that further nothing prevented the petitioner to examine the concerned official from the office in which the respondent is alleged to be working.

7. This Court perused the materials available on record. The petitioner has in fact, in paragraph 6 of the affidavit filed in support of I.A.275 of 1999, has categorically stated that the respondent is working in Kadhi Board and drawing a salary of Rs.4,500/- per month. Normally speaking, he could have summoned the concerned official from that department, who would have placed before the Court the required materials. It is not known as to why the respondent/wife, even after receiving notice from the Court, has not turned out.

In the circumstances of this case, this Court feels that it might be that she has not appeared before the Court so that, she can avoid divulging about her employment in Kadhi Board to this Court. In fact, in the revision petition also petitioner has raised a specific ground that the respondent is employed in Kadhi Board. Even though, normally this Court will not come to the rescue of the litigant who failed to reasonably prosecute the matter, that is to say in this case, marking appointment order or salary certificate or summoning the concerned official from the Kadhi Board, this Court in the peculiar facts and circumstances of the case is inclined to give one more chance to the petitioner/husband to prove his claim viz., the respondent/wife is employed in Kadhi Board, BHEL, Trichy.

8. This Court is inclined to give one more opportunity to the petitioner by remitting the matter since if petitioner is ultimately able to prove that the respondent is drawing a sum of Rs.4,500/- the court may not be inclined to award any amount towards alimony or litigation expenses. In this context, it is absolutely necessary to refer to the relevant provision in the Hindu Marriage Act (i.e.) Section 24, which reads as under,

"Where in any proceedings 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."

A plain reading of the above provision would show that the only condition required for grant of maintenance pendente lite is the party should not have sufficient independent income for her/his support. If it is found that the applicant has sufficient income for his/her support, no amount can be allowed as maintenance pendente lite as per section 24 of the Act. But of course, if it is found that the applicant has no sufficient independent income for his/her support, such application can be considered and suitable maintenance amount can be awarded pendente lite.

9. In this view of the matter, the impugned orders in I.A.274 and 275 of 1999 in H.M.C.O.P.No.54 of 1999 are set aside. The matter is remitted back to the trial Court for fresh disposal. It is open to both parties to let in oral and documentary evidence. Consequently, C.M.P.Nos.22023 and 22024 of 2001 are closed.

10. This Court place on record the valuable service rendered by Mr. A. Muthukumar, Amicus Curiae, appointed by this Court.