

Kamlesh Arora v. Jugal Kishore Arora (J. V. Gupta, J.)

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any maintenance, they will be entitled to file a separate suit for the said purpose. In any case, in the event the suit filed by the wife is decreed against her husband, the interests of the minors will be kept in view while passing the decree. With these observations this revision petition fails and is dismissed with no order as to costs. Since further proceedings were stayed at the time of the motion hearing, the parties are directed to appear in the trial Court on June 5, 1989.

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S.C.K.

Before : J. V. Gupta, J.

KAMLESH ARORA,—Petitioner.

versus

JUGAL KISHORE ARORA,—Respondent.

Civil Revision No. 892 of 1989

June 1, 1989.

*Hindu Marriage Act (XXV of 1955)—S. 24—Minor daughter living with mother—Application for the grant of maintenance for minors—Such application—competency of.*

*Held, that the minor daughter was entitled to maintenance in an application under Section 24 of the Hindu Marriage Act, 1955. In not granting any maintenance to the minor child the Ld. District Judge acted illegally and with material irregularity in the exercise of his jurisdiction. Consequently, it is directed that the application filed by the wife under S. 24 of the Act for claiming maintenance for her minor daughter be decided afresh and the necessary maintenance be granted from the date of application.*

(Para 4).

*Petition under Section 115 C.P.C. for the revision of the Order of the Court of Shri K. K. Aggarwal, District Judge, Bhiwani, dated 1st March, 1989 ordering that at least Rs. 1,000 (one thousand) should be paid by the husband to the wife as litigation expenses.*

*Claim:—Petition under Section 13 of Hindu Marriage Act, 1955.*

*Claim in Revision:—For reversal of the order of lower Court.*

O. P. Goyal with S. S. Sallar, Advocates, for the petitioner.

J. C. Nagpal, Advocate, for the Respondent.

## JUDGMENT

*J. V. Gupta, J.*

(1) This petition is directed against the order of District Judge, Bhiwani, dated 1st of March, 1989, whereby in an application under section 24 of the Hindu Marriage Act (hereinafter referred to as the Act), no maintenance *pendente lite* was allowed to the wife and a sum of Rs. 1,000 was granted as litigation expenses.

(2) The learned counsel for the wife-petitioner submitted that as a matter of fact application under section 24 of the Act was filed for grant of maintenance to the minor daughter who was living with her mother but the learned District Judge did not grant any maintenance for the minor daughter and declined the same to the wife on the ground that she was herself an earning hand. According to the learned counsel, in an application under section 24 of the Act even a minor child is entitled to the maintenance *pendente lite*. In support of this contention, he referred to *Smt. Usha v. Shri Sudir Kumar Soneja* (1), *Chand Gupta (Smt.) v. Adarsh Pal Gupta and another* (2), *Pushpa Devi v. Om Parkash* (3), *Thimmappa v. Nagaveni* (4), and *Gulab Chand v. Sampati Devi* (5).

(3) On the other hand, the learned counsel for the respondent-husband submitted that in application under section 24 of the Act, maintenance *pendente lite* would be granted to the wife only and not to the minor child. Since the wife was herself an earning hand, she was not allowed any maintenance. In support of his contention, he referred to *Mohan Singh v. Smt. Pushpa Devi* (6), *Dr. Rajinder Kumar Batta v. Dr. Kanta Kumari* (7), and *Akasam Chinna Babu v. Akasam Parbati and another* (8).

(4) In *Smt. Usha v. Sudhir Kumar (supra)*, a Division Bench judgment of this Court, it was held that —

“There is no doubt that under section 24 of the Act the child cannot claim maintenance and it is only either of the

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- (1) 1975 H.L.R. I.
  - (2) 1986 (1) H.L.R. 460.
  - (3) 1985 (2) H.L.R. 327.
  - (4) 1976 H.L.R. 693.
  - (5) A.I.R. 1988 J&K 22.
  - (6) 1978 H.L.R. 586.
  - (7) 1979 H.L.R. 443.
  - (8) A.I.R. 1967 cri. 163.

Rām Chānder and others v. State of Haryana and others

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two spouses who can make a claim. At the same time, it is clear that a claim can be made for maintenance of a child during a proceeding under the Act and the Court can in exercise of powers vested in it by section 26 of the Act pass such interim orders in any proceeding under the Act, from time to time, as it may deem just and proper with respect to the maintenance and education of minor children, consistently with their wishes, wherever possible."

In view of the Division Bench judgment, the minor daughter was entitled to maintenance in an application under section 24 of the Act. I am bound by the said judgment and, therefore, in not granting any maintenance to the minor child the learned District Judge acted illegally and with material irregularity in the exercise of his jurisdiction. Consequently, it is directed that the application filed by the wife under section 24 of claiming maintenance for her minor daughter be decided afresh and the necessary maintenance be granted from the date of application. The Civil Revision is disposed of accordingly. The wife will also be entitled to the costs of this petition which are quantified to be Rs. 500.

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P.C.G.

Before : A. L. Bahri, J.

RAM CHANDER AND OTHERS,—*Petitioners.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 10069 of 1988.*

July 19, 1989.

*Constitution of India, 1950—Arts. 14 and 226—Pension and gratuity—Entitlement—Period of service with Zila Parishad and District Board prior to joining government service—Whether countable towards pension etc. Government allowing similar benefits in earlier cases—Discrimination—Period spent in provincialised service can be counted towards pensionary benefits.*

**Held**, that when the State Government allowed the benefit of provincialised service to Hazari Lal, it will amount to discrimination