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FA-1135-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 21st OF JULY, 2026FIRST APPEAL No. 1135 of 2024

BG

Versus

VG

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Appearance:

Shri Manish Sharma - Advocate for the appellant.

Shri Surendra Singh Parihar, learned counsel for the respondent.

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ORDER

Per. Justice Anuradha Shukla

This first appeal has been preferred to challenge the order that was passed on 06/12/2021 by Principal Judge, Family Court, Morena in RCS/HM No. 40/2016, dismissing an application filed by appellant under section 24 of Hindu Marriage Act,.

2. For the decision of this appeal, it is admitted that parties were married in the year 2008 and their dispute started immediately thereafter in the year 2009 with a divorce petition filed by husband in that year, although it was later withdrawn. Admittedly, a joint petition for divorce with consent was filed by them as case No. 343-A/2013, but that too was dismissed for non-compliance of agreed terms. Though the order of dismissal was challenged in High Court, but with no favourable result. A



petition under section 13 of Hindu Marriage Act was filed by husband again in the year 2014 but that again was withdrawn. He filed the third divorce petition in the year 2016, in which, impugned order has been passed.

3. During pendency of third divorce case registered as RCS/HM No. 40/2016, appellant filed an application under section 24 of Hindu Marriage Act claiming that she was harassed for dowry and was ousted from her matrimonial house with no arrangement made for her maintenance. It was claimed that respondent had a medical store and earned Rs. 50,000/- per month, therefore, appellant should be allowed monthly maintenance of Rs. 20,000/- with other ancillary expenses.

4. The respondent, who had filed the divorce petition, contested the application, claiming that after the death of his first wife from cancer, he married the appellant, but from the inception of relationship, appellant started threatening him that she would implicate him in a dowry harassment case. The respondent has two daughters from his first wife, but appellant did not show any love or affection to them. Some time after the marriage, she deserted the respondent and even took away valuables. It was denied that respondent ran any medical store. His two daughters were also under the care of his father, who was a provider to them. Claiming that appellant was earning not less than Rs. 30,000/- per month by working as an Advocate, a request was made to dismiss the application.

5. Learned trial Court after considering the submissions made by both the sides dismissed the application for interim maintenance.



6. Appeal has been preferred on the ground that dismissal of the application for seeking interim maintenance was against the established principles of law. No documents were produced before the trial Court to show that appellant was earning any substantial amount for her livelihood. She is not a legal practitioner and was earning some money by working as Commissioner appointed for recording evidence, but now that practice has been stopped. A request has, therefore, been made to allow the appeal and consequently, also the application under section 24 of Hindu Marriage Act.

7. Per contra, learned counsel for the respondent has opposed the appeal asserting that appellant was never willing to establish matrimonial relationship and under a joint petition for seeking divorce she also received an amount of permanent alimony, but later on she refused to accord consent for divorce. It is submitted that respondent is being harassed since the date of marriage, therefore, appeal should be dismissed.

8. Learned counsel for the rival parties have been heard and the record has been perused.

9. This appeal was heard in the presence of the appellant, who not only pressed upon the submissions made in the appeal memo, but also requested to allow additional maintenance amount of Rs. 15,00,000/-, in the light of medical documents, filed by her on record along with I.A.No.5751/2026, to show her ailment and treatment regarding cancer. These documents reflect that she is taking treatment in a private hospital, , and one of the documents dated 07/03/2026



makes a reference to her Ayushman Card number. This shows her entitlement to the medical benefit available under Ayushman Card. It is not disclosed anywhere what financial constraints, she is still facing in her medical treatment, despite holding the Ayushman Card. Thus, request for maintenance towards medical treatment cannot be accepted.

10. Admittedly, parties married in the year 2008 and for both of them it was their second marriage, which had seen troubles since inception, with series of litigations instituted against each other. The worst part of it surfaced in paragraph No.15, as an admission made during cross examination recorded on 17/03/2023 wherein she fairly conceded that her marriage with respondent was not consummated till that date and things have not changed for better even thereafter. Thus, the parties to an unconsummated marriage have spent a significant period of their lives in court litigation and are still warring factions.

11. From various documents available on record, it is confirmed that in almost all proceedings whether it be relating to Hindu Marriage Act or The Protection of Women from Domestic Violence Act, appellant filed petition for her maintenance and no favourable order was passed in her favour. Admittedly, she filed a joint petition, seeking divorce with consent, under which she was paid permanent alimony by respondent, however, after receiving it, she refused to accord consent. The order sheet dated 06/05/2022 of the Court of JMFC, Gwalior in RCT No. 1877/2021 discloses that total Seven Lakhs Fifty Thousand were paid to the appellant as permanent alimony and it was agreed that she would accord consent for divorce, but ironically divorce petition under section



13 of Hindu Marriage Act is still pending between the parties.

12. It would not be out of place to observe here, that respondent was acquitted in a criminal case lodged by the appellant regarding dowry harassment and three successive petitions were filed under the provisions of The Protection of Women from Domestic Violence Act with last one registered as RCT No. 1877/2021. The latest was dismissed observing that petition was not maintainable, and we can imaging the fate of earlier two also. Even in a case under Section 125 of Cr.P.C. appellant was not allowed any maintenance.

13. From the above facts, it can be understood that appellant was not successful in any proceedings filed for seeking maintenance, however, she had received a substantial amount of permanent alimony. She again moved an application for maintenance before the trial Court which was rejected by order impugned herein. Although appellant has insisted that circumstances regarding her earning capacity have taken some radical turn after the impugned order was passed, but those circumstances have not been placed before us, therefore, we cannot take cognizance thereof. The only additional documents that were placed for consideration were regarding her ailment and we have already considered them to conclude that even on the basis of said documents, no maintenance amount can be awarded to the appellant.

14. It is pertinent to mention here that by way of amendment, the appellant introduced a new ground in her pleadings, asserting the unsoundness of mind of the respondent. Generally, a wife cannot claim maintenance from a husband of unsound mind, unless it is established



that his mental illness does not cause any functional incapacity to earn an income. Thus, the appellant's own pleadings have placed her claim in jeopardy.

15. In conclusion, keeping in view all the relevant variables, it is held that the appeal deserves to be dismissed and the appellant is not entitled to any interim maintenance under section 24 of Hindu Marriage Act.

16. The appeal, accordingly, fails and is hereby dismissed.

17. Copy of this order be sent to the trial Court along with its record.

(G. S. AHLUWALIA)
JUDGE

(ANURADHA SHUKLA)
JUDGE

Durgekar