



**HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

**C. Rev. No. 14/2007**

**Date of decision: 29.10.2008**

*Parul & anr.*

***Vs.***

*Rajesh Kumar*

***Coram:***

**MR. JUSTICE J. P. SINGH, JUDGE.**

**Appearing Counsel:**

For Petitioner(s) : Mr. Pawan Kumar Kundal, Advocate.

For Respondent(s): Mr. L.K.Sharma, Advocate.

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|-----|--|---|--------|
| i)  | Whether approved for reporting<br>in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported<br>in Digest/Journal              | : | Yes/No |

During the pendency of Rajesh Kumar respondent's petition under Section 13 of the Jammu and Kashmir Hindu Marriage Act, 1980, hereinafter referred as the "Act", his wife Parul had filed an application under Section 30 of the Act seeking an order on the respondent to pay her Rs.10,000/- as litigation expenses and Rs.5000/- per month

as maintenance pendente-lite for herself, and master Dhruv, the minor son of the parties.

Petitioners' application was allowed by learned Additional District Judge (Matrimonial Cases) Jammu directing the respondent to pay an amount of Rs.2000/- per month as maintenance pendente-lite minus the amount already allowed as maintenance under Section 488 of the Code of Criminal Procedure, to the petitioners from the date of filing of the application, and an amount of Rs.3000/- on account of counsel fee and litigation expenses.

Aggrieved by the lesser quantum of maintenance pendente-lite and the litigation expenses fixed by learned Additional District Judge (Matrimonial Cases) Jammu, petitioners have filed this revision petition calling in question Additional District Judge's order on the ground that finding recorded by the Court that the respondent must be earning Rs.3000/Rs.3500 per month, being a Television Mechanic was unsustainable, besides being unjustified when the respondent had been held belonging to a well to do family and had a shop of his own, by the Court.

Petitioners' counsel, Mr. Kundal submits that in view of respondent's admission in a petition filed by him under

Section 10 of the Guardians and Wards Act seeking custody of minor Dhruv Kumar that “he runs an electronic goods shop at 28-Sarwal Colony, Jammu and being financially sound as compared to the respondent (Petitioner herein) who was not financially well off, can take care of the minor child”, the learned Additional District Judge had erred in fixing lesser quantum of maintenance and litigation expenses. The facts and circumstances of the case, according to the learned counsel warrant enhancement in the amount of maintenance and expenses of the proceedings.

Per contra, Mr. L.K.Sharma submitted that the respondent was reeling under a financial crunch and was unable to pay even the amount which had been sanctioned by the Matrimonial Court in favour of the petitioners and it was because of this reason that he had even withdrawn his petition under Section 13 of the Act as he was unable to bear the burden of maintenance awarded by the Court. Learned counsel produced his client in the Court to demonstrate that he was suffering from various ailments and in view of the facts and circumstances of the case any increase in the amount of maintenance and expenses of proceedings would further aggravate the respondent’s sufferings.

Petitioner-Parul too had appeared in the Court to tell her part of the story in accusing the respondent of intentionally avoiding his responsibility to take care of the petitioner and the minor son of the parties.

I have considered the submissions of learned counsel for the parties and would like to dispose of this petition uninfluenced by what the parties had to say regarding the merits of their matrimonial dispute.

Jurisdiction under Section 115 of the Code of Civil Procedure may be invoked by this Court if any sub-ordinate Court appears to have exercised jurisdiction not vested in it by law or had failed to exercise jurisdiction so vested or had acted in the exercise of its jurisdiction illegally or with material irregularity or its order had caused failure of justice.

The question raised by the petitioners in this petition that the quantum of maintenance and litigation expenses awarded by the Matrimonial Court was inadequate, is essentially a question in the realm of appreciation of evidence which it may not be permissible for this Court to delve into in exercise of its revisional jurisdiction.

The amount which has been awarded to the petitioners as maintenance pendente-lite and litigation expenses by the Matrimonial Court, cannot in any way be said to have caused such failure of justice which may provide cause to the petitioners to invoke the revisional jurisdiction of the Court because the petitioners had not led any evidence before the Matrimonial Court on the basis whereof it may be said with certainty that they had successfully proved as to what was the exact income of the respondent.

Accepting the reasons given by the Matrimonial Court in awarding Rs.2000/- as maintenance pendente-lite and Rs.3000/- as litigation expenses, I do not find any ground to interfere with the order impugned in the revision petition.

There is thus no merit in this revision petition which is, accordingly, dismissed.

**(J. P. Singh)**  
**Judge**

**Jammu**  
**29.10.2008**  
Pawan chopra