

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3333 of 2008

Date of decision: 27.2.2009

Jaspal Kaur

.....Petitioner

Versus

Gurpreet Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR GARG

* * *

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

Mr. Vivek Goyal, Advocate for the respondent.

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Rakesh Kumar Garg, J.

This revision petition has been filed by the petitioner challenging the order dated 21.3.2007 whereby her application for payment of maintenance pendente lite to her and her minor son has been declined.

As per the averments made in the petition, the marriage of the petitioner was solemnized with the respondent on 26.11.2002 as per sikh rites and ceremonies and out of the wedlock a male child was born. The petitioner was thrown out of the matrimonial house by the respondent. The respondent filed a petition for dissolution of marriage by way of decree of nullity of marriage on the ground that the petitioner was earlier married with one Surjit Singh and the said marriage of the petitioner was still subsisting.

During the pendency of the aforesaid petition, the petitioner filed an application under Section 24 of the Hindu Marriage Act for payment of maintenance pendente lite and litigation expenses etc. The said petition was contested by the respondent on the ground that the petitioner was

already married with one Surjit Singh at the time of her marriage with the respondent and thus, her marriage with the respondent was void and therefore, she was not entitled to any maintenance. The Additional District Judge, Faridkot vide order dated 21.3.2007 dismissed the aforesaid application filed by the petitioner.

Challenging the aforesaid order, learned counsel for the petitioner has vehemently argued that vide impugned order, the claim of the petitioner has been rejected wrongly as the Additional District Judge, Faridkot has pre judged the issue which is still pending before the Court and the petitioner cannot be denied her right to claim maintenance pendente lite on the ground that her marriage with the respondent is void as the said question is yet to be decided.

I have heard learned counsel for the petitioner.

A perusal of the impugned order clearly spells out that the maintenance has been declined to the petitioner as well as her minor son on the ground that the petitioner prior to her marriage with the respondent, was already married to one Surjit Singh and the said marriage was never dissolved. The question whether earlier marriage still subsists, is a question which cannot be decided in proceedings under Section 24 of the Hindu Marriage Act, 1955. Moreover, no reasons whatsoever have been given in the impugned order for declining the maintenance to the minor son. There is no dispute with regard to the fact that the respondent is the father of the aforesaid minor son born out of the wedlock of the petitioner with him.

In view of the judgment of the Kerala High Court in **Subramaniam v. Sreelatha** 1985(2) HLR 308, wife and husband used in Section 24 of the Act are only description of the parties and not indicative of their status.

The expression wife and husband as used in Section 24 should not be given literal meaning as to convey only legally married wife and husband, but in the context of the Section and Scheme of the Act, it should mean a person claiming to be a wife or husband.

In view of the aforesaid reasons, I accept this revision petition and set aside the impugned order and direct the Additional District Judge, Faridkot to decide the application filed by the petitioner under Section 24 of the Hindu Marriage Act afresh.

February 27, 2009
ps

(RAKESH KUMAR GARG)
JUDGE

