

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Civil Revision No. 98 of 2012.
Decided on: 31.5.2013**

Anurag Sharma

.... Petitioner.

Versus

Smt. Pratibha Sharma

... Respondent.

Coram

The Hon'ble Mr. Justice V.K. Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner. : Petitioner with Mr. C.S. Thakur, Advocate.

**For the respondent. : Respondent with Ms. Ritta Goswami,
Advocate.**

V.K. Sharma, Judge (Oral)

The parties to the present petition are husband and wife, respectively. Owing to marital discord between them, the former is seeking divorce under Section 13 (i-a) of the Hindu Marriage Act, 1955 on the twin grounds of adultery and cruelty. The proceedings are pending adjudication in the court of the learned District Judge, Kullu, H.P. It was during pendency of the petition that the wife has been granted monthly maintenance pendente lite @ ` 5,000/-, besides expenses of the proceedings to the tune of ` 10,000/-. Being aggrieved, the petitioner is in revision before this court under Section 115 of the Code of Civil Procedure, 1908 (in short 'CPC').

¹ Whether reporters of the local papers may be allowed to see the judgment? Yes.

2. Before hearing the parties, an endeavour was made to bring out reconciliation between them, but the same could not succeed.

3. Heard. The sole contention raised on behalf of the petitioner is that he is already paying monthly maintenance of ` 8,000/- to the respondent, as per orders passed by the learned Judicial Magistrate 1st Class, Court No.1, Mandi, H.P. in a proceeding under the Protection of Women from Domestic Violence Act, 2005 (in short 'Domestic Violence Act'). It being so, the impugned order dated 7.7.2012 saddling him with further liability of monthly maintenance pendente lite to the tune of ` 5,000/- in the divorce proceedings with a further direction to pay a sum of ` 10,000/- as expenses of the proceedings, is manifestly on the higher side.

4. It is admitted on behalf of the parties that the petitioner, who is M.A. L.L.B with Diploma in Labour Laws is employed as Labour Officer and presently posted in district Kinnaur at Recong Peo (H.P.) and drawing monthly salary of ` 35,000/- with carry home salary of ` 30,000/- approximately. The respondent, who is M.A. B.Ed., is unemployed and residing with the parents of the petitioner, who are maintaining her. Thus, it is apparent that the petitioner has no other liability, except to sustain himself and support the respondent, who is his wife. The father of the petitioner has retired as Joint Director (Food and Civil Supplies), Himachal Pradesh and is receiving pension and is thus able to

maintain himself and his wife. The petitioner submits that he has been disowned by his father and disinherited from his estate. However, it is not going to make any difference on the merits of the proceedings in hand.

5. Keeping in view the monthly income of the petitioner, which in any case cannot be said to be less than ` 30,000/- and that he has no other liability except to maintain the respondent, a sum of ` 8,000/- being paid by him to her under the Domestic Violence Act and a further sum of ` 5,000/- as monthly maintenance pendente lite in the divorce proceedings cannot be said to be on higher side by any stretch of imagination. The contention that the learned Additional District Judge has not taken into consideration the monthly maintenance of ` 8,000/- being paid by the petitioner to the respondent in the proceedings under the Domestic Violence Act, appears to have been made so as to be simply rejected, as this aspect of the matter has been duly considered and discussed in the impugned order dated 7.7.2012. Thus, the petitioner cannot seek any support from the law laid down by this court in ***Vivek Sharma Vs. Smt. Rajni Bala, 2012 (2) Shim. LC, 1111.*** Rather to the contrary, this court has held in ***Kamlesh Kumari Vs. Aman Kishore, Latest HLJ 2012 (HP), 626*** that existing liability to pay maintenance under Section 125 of the Code of Civil Procedure, is no bar for grant of maintenance pendente lite under the Hindu Marriage Act, 1955. On the same analogy maintenance under the Domestic Violence Act can also

not be a bar for grant of maintenance pendente lite under the Hindu Marriage Act, 1955.

6. In view of the above, the petition is dismissed being without any merit. The parties through their learned counsel are directed to appear before the learned Trial Court, that is, the court of the learned District Judge, Kullu, H.P. on 21.6.2013. The requisitioned record be returned forthwith so as to reach well before the date fixed.

**(V.K. Sharma),
Judge.**

31st May, 2013.
(ksg)