

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. CIVIL MISC. APPEAL NO.4223/2015
S.B. CIVIL MISC. STAY APPL. NO.2920/2015
MAHESH CHAND VS. SMT. ASHA @ SAROJ

DATE OF ORDER : : 30th January, 2016

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Ms. Anuradha Upadhyay for the appellant
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This appeal has been filed against the order dated 13.07.2015 passed by the learned Additional District Judge, Sawaimadhopur in divorce petition u/s.13 of the Hindu Marriage Act, 1955.

Appellant filed a divorce petition u/s.13 of the Hindu Marriage Act, 1955 against the non-appellant with the averments that marriage of appellant and non-appellant had taken place on 6.5.2012. Thereafter, non-appellant came with the appellant at his parental home and started to reside with family of the appellant. The behaviour of the non-appellant was abnormal and she behaved very strangely. She used to run from home and even sometime tried to jump from the roof of the appellant's house. Appellant claimed that he came to know that the non-appellant is an unsound person and she has mental disorder, but this fact was not disclosed by the non-appellant family before the marriage. Appellant

stated that he tried to her medical treatment and visited Governmental Mental Hospital, Gautam Hospital and Research Centre, Jaipur where the medical test of the non-appellant were taken place and it was found that she has mental disorder and her I.O. is 62%. Notices of the petition were issued. During the pendency of the divorce petition, the non-appellant has filed an application u/s.24 of the Hindu Marriage Act. Appellant filed reply to the application and stated that the family of the non-appellant has concealed the fact that she has unsound mind and her disease is not curable. The financial condition of non-appellant's family is very sound while appellant is a poor newspaper distributor and his financial condition is not good and his monthly earning is only Rs.5,946. The matter was listed on 13.7.2015 and the learned Additional District Judge has allowed the application filed by the non-appellant and ordered the appellant to give Rs.2000 + Rs.200 monthly and an amount of Rs.5,000 as lump sum amount for expenses to the non-appellant.

Ms. Anuradha Upadhyay, learned counsel for the appellant submitted that the learned court below has not considered and appreciated the fact that the non-appellant is of unsound mind since birth and her disease

is incurable. This fact was concealed by the family of the non-appellant from the appellant. The appellant is therefore cheated by the non-appellant's family. The marriage thus being ab-initio void, the non-appellant is not entitled to any maintenance.

It is contended that the responsibility of old mother and widow sister is on the appellant. His earnings is not enough. He is only a newspaper distributor and his monthly salary is only Rs.5946. He spent Rs.1,500 on rent, Rs.1,000 on conveyance and, therefore, he is not able to pay the amount fixed by the learned court below. It is therefore prayed that the impugned order dated 13.07.2015 be quashed and set aside.

I have heard learned counsel for the appellant and perused the impugned judgement.

The learned Additional District Judge in its judgement found that it is admitted fact that the appellant is working in Rajasthan Patrikia and non-appellant has no source of income to survive. The non-appellant by way of application u/s.24 of the Hindu Marriage Act has only prayed for amount of maintenance and conveyance for herself and for one attendant till disposal of the main divorce petition. The court below

has awarded Rs.5,000 per month for her maintenance and Rs.200 for conveyance per hearing and lump sum amount of Rs.500 for expenses till disposal of the divorce petition. The impugned order was passed only on application u/s.24 of the Hindu Marriage Act. The argument of the learned counsel for the appellant regarding unsound mind of her wife and cheating on him, are open to be considered at the time of disposal of the divorce petition, which is still pending. The amount awarded by the court below cannot be said to be excessive.

I, therefore, do not see any ground for interference in the impugned judgement. However, the court below is directed to decide the divorce petition within six months from the date copy of this judgement is produced before it.

The appeal is dismissed. Stay application also stands disposed of.

(Mohammad Rafiq),J.

RS/49