

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 356 of 2010

Smt. Pratiksha Arya

W/o Sri Deepak Kumar Arya

D/o late Shri Mahesh Chandar Arya

R/o Staff House Compound, Mallital,

Nainital, District Nainital.

... . Appellant

Versus

Sri Deepak Kumar Arya

S/o Sri Daulat Ram

R/o Teachers Colony, Kichcha,

Tehsil Kichcha, Distt. Udham Singh Nagar.

... . Respondent

Mr. Akhil Kumar Sah, Advocate, present for the appellant. Mr. D.S. Mehta, Advocate, present for the respondent.

Coram : Hon'ble Prafulla C. Pant, J. Hon'ble V. K. Bist, J.

Hon. Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 19 of the Family Courts Act, 1984, is directed against the order dated 16.08.2010, passed by Principal Judge, Family Court, Nainital, in Civil Suit No. 148 of 2009, whereby said court has directed the appellant to pay maintenance at the rate of ` 2,500/- per month to her husband 2

(respondent) under Section 24 of the Hindu Marriage Act, 1955.

2) Heard learned counsel for the parties.

3) Brief facts of the case are that parties to this appeal are in litigation before the trial court where respondent Deepak Kumar Arya has filed a petition for divorce against the present appellant Pratiksha Arya. In said suit, he moved an application under Section 24 of the Hindu Marriage Act, 1955, for maintenance at the rate of ` 10,000/- per month from his wife Pritiksha Arya. The application was contested by the wife, who alleged that her husband runs a computer center at Kichcha, and owns property worth lakhs of rupees there.

4) Section 24 of the Hindu Marriage Act, 1955, applies equally to both spouses. It provides that where in any proceeding under the Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support, it may, on the application of wife or the husband, order

the other party to pay monthly maintenance during the proceeding initiated under the Act. Normally, in the Indian society, we see husband as an earning member in the family and wife dependent on him. But Section 24 takes note of all kinds of situation including the one in which husband is unable 3

to maintain himself and dependent on his wife. As such, as far as maintainability of the application moved by the husband is concerned, the same was maintainable, seeking maintenance from the wife.

5) However, whether actually in the present case, the husband was entitled for maintenance under Section 24 of the Hindu Marriage Act, 1955, is required to be examined. The husband has moved an application for maintenance on the ground that his wife is a teacher and earning ` 18,000/- per month (actually found ` 9,300/- per month). He has pleaded that he is not employed anywhere. On the other hand, in the objections filed before the trial court by the present appellant it is specifically pleaded that her husband Deepak Kumar Arya (present respondent) runs a computer center in Kichcha. It is also pleaded by her that her husband owns property worth lakhs of rupees. The trial court has simply taken note of the fact that since the present appellant is a teacher in a primary school and getting salary of ` 9,300/- per month, it directed the appellant to pay maintenance at the rate of ` 2,500/- per month to her husband. The trial court has ignored the economic status of the husband. It is nowhere categorically discussed nor concluded by the trial court that the husband does not run the computer center or does not own any property, as alleged by his wife. It is also evident from the impugned order that present appellant 4

(wife) is a teacher in a primary school at some interior place of posting.

6) Having considered submissions of learned counsel for the parties and after going through the papers on record, we are of the view that though the application by the husband was maintainable under Section 24 of the Hindu Marriage Act, 1955, but in the facts and circumstances of the present case, it is not a fit case for granting maintenance to the husband by the wife. Therefore, without observing any opinion as to the final merits of the case pending before the trial court, this appeal is allowed, and the order dated 16.08.2010, passed by Principal Judge, Family Court, Nainital, in Civil Suit No. 148 of 2009, is set aside so far it relates to the direction to the present appellant to pay maintenance at the rate of ` 2,500/- per month to her husband. Costs easy.

(V.K. Bist, J.) (Prafulla C. Pant, J.)

Dt. March 17, 2011.

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