

I.A. No.80/2013

(Arising out of C.P. 263/2013)

23.07.2014

The petitioner-wife has filed an application with prayer to grant interim maintenance of Rs. 40,000/- per month and litigation expenses of Rs. 50,000/- from the Opp. Party-husband. The petitioner has filed the original application under Sec.13 (i) (a) of the Hindu Marriage Act, 1956 (hereinafter be referred as the Act, 1956) for dissolution of marriage.

2. The parties have admitted their relationship as married spouses whose marriage was solemnized on 19.01.2013 and the petitioner has left the company of the respondent since 17.03.2013.

3. The case of the petitioner is that the respondent and his family members tortured her for non fulfillment of additional demand dowry soon after marriage and as the torture was unbearable she left her matrimonial home and since then she has been residing with her parents. In the meantime, the respondent has sent a pleader notice to her for dissolution of marriage on 15.04.2013. The petitioner has averred that she has no means of income and her father is unable to maintain her. The Opp. Party is getting salary of Rs.80,000/- per month and having sufficient means, he is neglecting to maintain her.

4. The Opp. Party in his objection has questioned the maintainability of the main proceedings as well as this incidental proceeding on the ground that the main petition for divorce is filed before expiry of one year of the marriage and therefore, in view of the interdiction contained u/s. 14 of the Act, 1956, the main petition is not maintainable and when the main petition is not maintainable, the present proceeding is also not maintainable. He has further averred that the petitioner and her family members demanded a sum of Rs.50,00,000/- from him and without any rhyme and reason lodged an FIR at Mahila Police Station. He has stated that the petitioner left the matrimonial home i.e. Nagpur on 17.3.2013

and started living in the company of her parents at Bhubaneswar. The Opp. Party in his objection has further averred that the petitioner is rowdy woman who has always created disturbance in the house. Since the petitioner herself, has deserted him, he is not liable to provide any maintenance to the petitioner. He has further stated that he has no independent source of income being jobless. He is being the only son of his parents, he is being looked after by his parents. The petitioner is a well educated lady and is doing the job of teachership from where she earns handsome amount. The petitioner being self sufficient and he has having no income, he is not liable to give any maintenance to the petitioner.

5. The petition was heard on 16.07.2014.

6. Carefully considered the rival contentions and perused the record. The first contention of the Opp. Party is that the present proceeding is not maintainable due to inhibition contained in section 14. Expatiating his point, he submitted that no petition for divorce to be presented within one of year of marriage. The marriage between the parties was solemnized on 19.01.2013 and the divorce petition was filed on 17.05.2013. The application u/s. 24 of the Act being the incidental proceeding of the main proceeding, both the petitions are not maintainable. Now, it contextualizes to reproduce section 14 of the 1956 for better appreciation of the point. It reads as follows:-

“Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of a divorce,1[unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage.

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented 1[before one year elapsed] since the date of marriage on the ground that the case in one of

exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the 2[expire of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the 3[expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the 2[expire of one year] from the date of the marriage, the court shall have regard to the interests of any children to the marriage and to the question whether there is a reasonable probability of reconciliation between the parties before the expiration of the said 4[said one year.]

7. A bare reading of this section, there is no cavil of doubt that no petition for divorce should be presented within one year of marriage. However, the restriction has been removed by the Sub section. A reading to proviso to section 14 of the Act reveals that a petition for divorce can be entertained only by the court only when it satisfied that “exceptional hardship” or “exceptional depravity” will be caused to a party if petition for divorce is not entertained before completion of one year of marriage. Herein in the instant case, the main proceeding was admitted on 08.08.2013. The respondent has not challenged this order before any higher Court. When this court has admitted the main proceeding, despite the fact, the petition is filed before expiry of one year of the marriage an inference can readily be drawn that the court is satisfied that “exceptional hardship” or “exceptional depravity” would be caused if the petition for divorce would not be entertained before completion of one year of the marriage, of course, the order dated 08.08.2013 is not explicit on this point yet, such an inference can readily be available as the same remain

unchallenged. Therefore, this contention of the respondent being sophistry stands rejected.

8. Section 24 of the Act is socio economic piece of litigation. Its underlying object and purpose are that the wife who is unable to maintain herself and is living separately from her husband during the pendency of matrimonial dispute in court has to be given a reasonable sum towards the interim maintenance. It is not the legal duty but a pious obligation of the husband to maintain his wife and not leave her at the mercy of her parents. What is material under Section 24 is that the party who applies under Section 24 has no independent income sufficient for her or his support. It is only when it is established that the party applying has no independent income sufficient for her or his support that an order for pendente-lite maintenance can be made against the non applicant. Admittedly in this case the petitioner has been residing separately from the Opp. Party since 17.03.2013. She has no independent source of income. The Opp. Party has argued that the wife herself is working as a teacher and has independent source of income. He has further argued that he is jobless and depending upon the income of his parents. I am not gullible to buy such an argument because the Opp. Party has failed to produce any evidence to show that she is working in school. Had that been so, a certificate could have been secured from that a school to substantiate that submission. Admittedly, the wife is a qualified lady and even if she is making an attempt to earn an money to support her, this would not be a factor which would disentitle her from claiming maintenance for herself from the husband because she is entitle to live in the same life in terms of social and financial status in which she would have enjoyed if she continued to live with her husband. Whether she was forced to live her matrimonial house because of cruelty of the husband and his family members or was it her act of desertion, is the matter which has to be decided by the court at the time of finial decision of the main petition. The order which the court passes u/s. 24 is not an order

granting relief in matrimonial cause. It is an order incidental to the matrimonial cause. A proceeding under this section is of a summary nature and the scope of the enquiry is limited. The end sought to be achieved is the removal of the disability of the party without sufficient income. Having dispelled all the contentions of the Opp. Party, now, I embark upon to fix the quantum of maintenance. It is stated by the petitioner that the Opp. Party in his facebook at the time of marriage has mentioned his monthly salary as Rs. 80,000/-. The petitioner has singularly failed to file that document in order to establish the said fact. Be that as it may, the Opp. Party is an able bodied young man hails from a business family/class. Therefore, the status of the respondent is much better than an ordinary labourer. He is also a qualified man. Keeping these facts into consideration and spiraling or sky-rocketing prices of essential commodities, to my conscience, it appears just and proper to allow interim maintenance of Rs. 15,000/- to the petitioner besides litigation expense of Rs. 10,000/-. Hence, ordered:

O R D E R

The interim application is allowed in favour of the petitioner on contest. The Opp. Party is directed to pay Rs.15,000/- only as interim maintenance per month to the petitioner from the date of the i.e. 17.05.2013. The Opp. Party is further directed to pay the current monthly interim maintenance to the petitioner within first week of each succeeding month. He is further directed to pay the arrear maintenance dues to the petitioner within two month from the date of this order. Besides, he is also directed to pay Rs.10,000/- towards cost of litigation expenses. Any deviation in payment of maintenance dues, the petitioner is at liberty to realise the same through the process of law.

Dictated and corrected by me

Judge, Family Court,
Bhubaneswar.