

Rajasthan High Court

Bhanwar Lal vs Smt. Kamla Devi on 21 January, 1983

Equivalent citations: AIR 1983 Raj 229, 1983 WLN 322

Author: D Prasad

Bench: D Prasad

JUDGMENT Dwarka Prasad, J.

1. This appeal has been filed against an order passed by the learned District Judge, Pali on an application under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act').

2. It is not, disputed by the learned counsel for the appellant that under the amended provisions of Section 28 of the Act, no appeal lies against an order passed on an application under Section 24 of the Act. He, however, prays that the appeal may be treated as a revision petition. Learned counsel for the respondent has no objection to the appeal being treated as a revision petition, but he also urges that he has filed cross-objection, which may also be treated as a separate revision petition, inasmuch as the respondent has paid full court fees payable on a revision petition and has also filed a copy of the order passed by the learned District Judge, Pali, along with the cross-objections and further the said cross-objections were filed within the time prescribed under the law for filing a revision petition in this Court. I, therefore, direct that the appeal filed by the appellant and the cross-objections filed by the respondents may be treated as separate revision petitions and may be separately numbered. Both the revision petitions were heard together as they are directed against the very same order passed by the District Judge, Pali.

3. The principal question, which has been argued by learned counsel for Bhanwarlal, who will hereinafter be referred to as "the husband", is that the trial court had no jurisdiction to pass an order regarding payment of arrears of interim maintenance after the petition for divorce filed by the husband is unconditionally withdrawn by him. The facts, which are relevant to the present dispute, are that the husband filed a petition on Dec. 21, 1979 under Section 13 of the Act seeking a decree for divorce in the Court of District Judge, Pali. During the pendency of the proceedings, Smt. Kamla Devi, who will now be referred to as "the wife", filed an application on April 25, 1980 under Section 24 of the Act for grant of interim maintenance. The learned District Judge passed an order on May 25, 1981 granting Rs. 400/- per month as interim maintenance to the wife from the date of the application. The husband filed a revision petition in this Court, which was allowed by a learned single Judge by his order dated July 27, 1981 and the matter was remanded to the learned District Judge with the direction that he should permit the cross-examination of the deponents, who had filed affidavits in support of the application under Section 24 of the Act and similar opportunity of cross-examination should also be afforded to the other party. The parties were directed by this Court to appear before the learned District Judge, Pali on August 10, 1981 for further proceedings. On that day, when the parties appeared, the husband filed an application seeking permission to withdraw the petition filed by him under Section 13 of the Act for a decree for divorce. The husband also filed another application on that date stating that no interim maintenance could be awarded to the wife since he was withdrawing the main petition for divorce. A copy of the aforesaid applications was supplied to the learned counsel for the wife on August 31, 1981. Thereafter the husband and his counsel withdrew themselves from the proceedings and failed to appear before the learned District

Judge on the subsequent date fixed in that court. On Oct. 1, 1982, the learned District Judge, Pali heard learned counsel for the wife in respect of the application for withdrawal filed by the husband and also in respect of the application for grant of interim maintenance under Section 24 of the Act and passed two separate orders. By one of these orders he dismissed the petition for divorce under Section 13 of the Act, as withdrawn. By another order passed on the same day, the learned District Judge awarded Rs. 400/- as interim maintenance to the wife from December 21, 1979 (o Aug. 31, 1981 i.e. from the date when the divorce petition was filed up to the date when the notice of the application for withdrawal was given to the wife. Now, both parties have filed revision petitions against the order passed by the learned District Judge directing payment of interim maintenance to the wife at the rate of Rs. 400/- per month,

4. The contention of the learned counsel for the husband is that as the order allowing the withdrawal of the main petition under Section 13 of the Act was passed earlier by the trial court, the trial court became functus officio and it could not have thereafter proceeded to pass another order under Section 24 of the Act.

5. Learned counsel drew my attention to the provisions of Section 24 of the Act which runs as under:--

" 24. Maintenance pendente lite and expenses of proceedings.-- Where in any proceedings under this 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 and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable."

The submission is that the section begins with the expression "in any proceeding" and further goes on to say that interim maintenance was to be awarded for the period "during the proceeding" and thus the order for interim maintenance passed by the trial court could have been passed only during the period when the proceedings under the Act remained, pending before that court. Learned counsel for the husband placed reliance on the decision of the Punjab and Haryana High Court in *Nirmala Devi v. Ram Dass*, AIR 1973 Puni & Har 48. and of the Delhi High Court in *Smt. Chitralekha v. Ranjit Rai* AIR 1977 Delhi 176, and also of the Delhi High Court in *Rita Mago v. V.P. Mago* (1981) 1 DMC 1 in support of his aforesaid con-ten Hon.

6. Learned counsel for the wife however, contended that what was necessary under Section 24 of the Act was that an application for awarding interim maintenance should have been made during the pendency of the proceedings under the Act, but the subsequent determination of the proceedings under the Act cannot debar the court from passing an order, even later, on the pending application and reliance was placed on the decision of the Punjab and Haryana High Court in *Amrik Singh v. Smt. Narinder Kaur*, AIR 1979 Puni & Har 211 in support of the aforesaid contention.

7. In *Nirmala Devi's* case AIR 1973 Puni & Har 48 the husband filed a petition for restitution of conjugal rights under Section 9 of the Act. After notices were served on the wife, she filed an application for interim maintenance and expenses of litigation on January 14, 1970. On the next date of hearing i.e. Feb. 19, 1970 the husband was absent and his petition under Section 9 of the Act was dismissed with costs in default of his appearance. The court took notice of the fact that the interim maintenance could have been granted for a very short period of a little over a month and further that the main proceedings having come to an end, the wife could pursue her normal remedies under the law for determination of her maintenance allowance on a more permanent basis. The learned Judge also observed that costs had already been awarded by the court while dismissing the husband's petition. The learned Judge of the Punjab and Haryana High Court refused to pass an order for interim maintenance and observed that the necessity for passing any interim orders would come to an end with the termination of the main proceedings and there would be no question of the wife trying to defend any proceedings after the husband had withdrawn from the contest and therefore there was no occasion for making an interim provision for the defence of a case, which has already been concluded. Another reason which was advanced by the learned Judge for refusing to pass an order regarding interim maintenance was that the main sanction behind an order for interim maintenance and expenses of litigation was that in case of non-compliance, the defaulting party can be debarred from prosecuting or defending the proceedings further. When the proceedings in the main petition came to an end, the means for the enforcement of an order granting provisional maintenance would be lost and a court should avoid passing such orders which could not be effectively enforced.

8. In *Smt. Chitra Lekha's* case (AIR 1977 Delhi 176) the husband filed a petition for judicial separation under Section 10 of the Act. The wife filed an application for grant of interim maintenance and litigation expenses under Section 24 of the Act, which was contested by the husband. But thereafter the husband absented himself and the main petition for judicial separation was dismissed with costs. After some time, the wife moved another application before the trial court to the effect that her earlier application for interim alimony should be allowed and interim maintenance and litigation expenses should be awarded to her. The learned Judge of the Delhi High Court observed as under in *Chitra Lekha's* case (at p. 177):--

"A bare perusal of the statutory provisions shows that it is a condition precedent that there must be proceedings pending under the Act and it should appear to the court that the applicant has no independent income sufficient for support and necessary expenses of the proceedings, then it may pass an order for payment of expenses of the proceedings and monthly during the proceedings such amount as it may seem to the court to be reasonable. The object behind the provision of law is to provide financial assistance to the indigent spouse to maintain herself (or himself, as the case may be) during the pendency of the proceedings and also to have sufficient funds to defend to carry on the litigation, so that the spouse does not unduly suffer in the conduct of the case for want of funds ..... The purpose of Section 24 was to enable the court to see that the indigent spouse was put in a financial condition in which the party concerned might produce proper material and evidence in the case and that a party was not handicapped in or prevented from bringing all the relevant facts before the court for decision of the case because of his or her poverty. It is, therefore, clear that orders on Section 24 application can be passed if the applicant has to prosecute or defend

some proceeding under the Act. Its object is not to provide maintenance or damages to the party outside the scope of the proceedings. For such purpose, provisions of law are to be found elsewhere, and separate remedy is to be pursued. In the instant case, there was nothing left for the appellant to defend, as the main petition had terminated and so the grant of the application of the appellant at this stage would take us outside the purview of the object of the statutory provision."

However, the learned Judge himself proceeded to observe further as under:--

"This is not to say that the applications for interim alimony should be allowed to lapse. In fact, orders on such applications should be passed as expeditiously as possible and the party should not be encouraged to continue with the proceedings by deferring orders or implementation of orders under Section 24. This should, however, be done before the proceedings are concluded. But, if there is no legal proceeding left to prosecute or defend at any stage and in any court, then certainly no order under Section 24 of the Act can be passed."

9. In Rita Mago's case (1981-1 DMC 1) another learned Judge of the Delhi High Court took the same view as was taken by that court in Smt. Chitra Lekha's case (AIR 1977 Delhi 176). The learned Judge expressed the view that the court can pass an order under Section 24 of the Act directing payment of interim maintenance, only during the proceedings, and there was no jurisdiction to make an order under Section 24 after a decree is passed in the main petition. At the later stage, such an order can be passed only under Section 25 of the Act. In that case the learned Judge also observed that it was brought to his notice that an application made by the wife under Section 25 was pending. In Rita Mago's case, the wife commenced proceedings for divorce. The husband appeared at the initial stage, but later on the case proceeded ex parte against him and a decree for divorce was passed. At that stage no reference was made to the application for interim maintenance and litigation expenses. The learned Judge also took notice of the fact that throughout the proceedings at no point of time, notice of the application under Section 24 of the Act was ordered to be issued to the husband and even at the final stage when the judgment was delivered by the court dissolving the marriage between the parties, no objection was taken on behalf of the wife about the failure of the court to dispose of the application for interim maintenance. In view of these facts, the learned Judge observed as under:--

"But, here the application for interim maintenance was never brought to a hearing, and the question of making an order did not arise. As I have said, the application must be deemed to have been abandoned by the conduct of the wife and her advisers. The position is thus the same as if no application had ever been made. To make an order for interim maintenance, now, in revision, would be as if to make an order at first instance after the main proceeding for divorce had terminated. That would be directly contrary to Section 24 of (the Hindu Marriage Act)".

In that case, the learned Judge refused to accept the contention advanced on behalf of the wife that the final judgment in the divorce petition may be considered as an implied order rejecting the application for interim maintenance and observed that when the notice of the application for interim maintenance was never issued to the husband, no adjudication on the application can be attributed to the Judge passing the final order.

10. In *N. Subramanyam v. Mrs. M.G. Saraswati* AIR 1964 Mys 38 a Bench of the Mysore High Court observed as under (at p. 39) :--

"It is no doubt true that, in the case on hand, the duration of the proceedings was short, mainly on account of the fact that there was no contest on the question of divorce. But that in itself was no reason for deferring decision on the respondent's application to the final stage. Nor can it be said that since the proceedings had themselves terminated, there was no occasion to grant interim maintenance or expense. The right to those items, if established, cannot be defeated by allowing time to elapse and the pendency of the proceedings to end. The party concerned may have provided herself with the requisite means in some other way and she is entitled to reimburse herself or to repay others if she has raised the means from others."

11. In that case, an application for interim alimony and expenses of the proceedings was made during the pendency of the petition for divorce, but the trial court while granting a decree of divorce, refused to grant interim alimony to the wife and simply observed that no direction was made regarding interim alimony or costs of defending the application. It was held that the court could not simply reject the application for grant of interim alimony and litigation expenses without assigning any reason for doing so. Although it is a matter of discretion, yet there must be some indication that the discretion was being exercised judicially and when it was found that the wife had no independent source of income the court should have awarded her both interim maintenance and some suitable amount for expenses, it was also observed that, the trial court should promptly pass an order on the application for award of interim alimony and litigation expenses, otherwise ;he very aspect of making such a provision would be defeated.

12. In *Amrik Singh's case* (AIR 1979 Punj and Har 211) the earlier decision Of that court in *Nirmala Devi's case* (AIR 1973 Punj and Har 48) was distinguished on the ground that the period for which interim maintenance could have been granted was very short and that had weighed with *Suri, J.* In *Amrik Singh's case* the learned Judge observed as under (at p. 212):--

"For no default of the wife, her petition under Section 24 of the Act remained pending for 6/7 months. If the view is that the provisions of Section 24 of the Act were intended by the legislature to enable the indigent spouse to secure wherewithal to defend the proceedings against oneself and to maintain oneself during the pendency of the proceedings, then it is incumbent upon the Courts to take an immediate decision upon the petition under Section 24 of the Act, otherwise the delay would defeat the very purpose. Otherwise in a case where the Court delays the decision on the application till the fag-end of the trial of the main case, right to maintenance and litigation expenses would be denied to the applicant on the specious argument that she had been able to prosecute the litigation for all that long period and had survived and so she was not entitled to favourable order on her application, for the litigation expenses and the interim maintenance under Section 24 of the Act was intended merely to meet the contingency of an indigent spouse not being able to prosecute the case and survive during the pendency of the proceedings, which contingency would no longer exist when the proceedings had reached the stage of conclusion though not finally concluded, I do not think that the interim maintenance and litigation expenses could be denied to the applicant on such a ground when the application had been filed during the pendency of proceedings and it is the court

which delayed its decision thereon If the relief could not be denied in the above situation then surely the applicant would not be denied the same relief even after the conclusion of the main petition."

13. In *Mythili Raman v. K.T. Roman* AIR 1976 Mad 260 during the pendency of a petition for judicial separation an application for 'interim alimony and expenses of proceedings was filed in the year 1967 and the trial of the main petition reached the final stage in November 1968, yet in spite of several applications by the indigent wife no order was passed by the trial court on the application under Section 24 and on the last date of hearing in the year 1968, the counsel for the wife ultimately stated that he was prepared to argue the application under Section 24 but was not ready to argue the main petition. But the trial court insisted on deciding the main petition, ignoring the pendency of the application under Section 24. The learned counsel for the wife, therefore, reported no instructions in the main petition and still insisted that the application under Section 24 should be decided and the main petition may be adjourned to a subsequent date, Notwithstanding the fact that the learned counsel for the wife withdrew himself in these circumstances and the wife was also absent, the trial court proceeded ex parte and after examining the husband gave a decree for judicial separation. A learned Judge of the Madras High Court held in the aforesaid case that the course adopted by the trial court was contrary to the provisions of the Act and though there were no specific words in Section 24 that the application under that Section has to be disposed of prior to the main petition being taken up for trial yet the intention of the framers of the law was clear that the application under Section 24 ought to be disposed of in the first instance. The learned Judge observed in *Mythili Raman's* case as under (at p. 261):--

"Therefore, it is clear that an application under Section 24 is to be disposed of during the pendency of the proceedings viz. the main petition. It is not right to say that because there are no words specifically saying that an application under Section 24 has to be heard in the first instance, before even the main petition is taken up for trial, the court is at liberty to tack on the application with the trial of the main petition itself. The object of Section 24 is to provide necessary funds to the needy spouse to prosecute the proceedings as well as to maintain himself or herself during the pendency of the proceedings. Therefore, there is no room for the court not passing any orders on the application and relegating the same to be taken up with the main petition itself."

14. The consequential order passed by the trial court that as the main petition itself has been decided, the application under Section 24 of the Act was dismissed, was set aside by the High Court and interim alimony and expenses of the proceedings in the trial court were awarded.

15. It appears from a bare perusal of the provisions of Section 24 of the Act that the provision has been made in order to provide means to the spouse who has no independent source of income to contest a matrimonial proceeding. The indigent spouse should be allowed to obtain the requisite maintenance and litigation expenses from the other party, soon after the filing of the application under Section 24 of the Act, in order that the indigent spouse could maintain herself during the pendency of the proceedings, and also incur the legitimate expenses for contesting the matrimonial dispute. If the proceedings under Section 24 of the Act are allowed to linger on and are unreasonably delayed on account of the dilatory tactics adopted by 'he other party or on account of lack of vigilance o" prompt action on the part of the trial court, then the very purpose of inserting

the provisions of Section 24 in the Act would be defeated. The indigent spouse might have provided herself with the requisite means to fight out the matrimonial cause in some other way, but she is entitled to reimburse herself or to repay the debt taken from others, if she has raised the money from others. Undoubtedly, the expression "where in any proceeding", with which Section 24 begins leads to the conclusion that the order granting interim maintenance and litigation expenses should be passed during the pendency of the proceedings in the main petition. As a matter of fact, it is expected that when an application under Section 24 of the Act is filed during the pendency of a matrimonial cause, the court should proceed to decide the application as expeditiously as possible and should not postpone the decision on that application up to the last stage of deciding the main petition. The application under Section 24 is no doubt an interlocutory application, which may not survive after the date the matrimonial cause comes to an end. But such petition moved for interim maintenance and litigation expenses should be decided during the pendency of the proceedings under the Act soon after it is filed and the right of the indigent spouse to obtain interim alimony and litigation expenses from the other party could not be defeated by allowing time to lapse or by postponing the decision of the application under Section 24 of the Act to the far-end of the trial of the main case. Of course, it would be different if the application under Section 24 of the Act is not pressed by the wife until the final conclusion of the matrimonial case, as was done in Rita Mago's case (1981-1 DMC 1), leading to the inference that the said application must be deemed to have been abandoned, on account of the conduct of the wife. In Smt. Chitra Lekha's case (AIR 1977 Delhi 176) the learned Judge of the Delhi High Court himself observed that the application for interim alimony should not be allowed to lapse, but if the application is allowed to lapse and passing of orders on such an application under Section 24 is deferred until the far-end of the proceedings in the matrimonial case, then the aggrieved wife cannot be left with a remedy. With utmost respect to the learned Judge, I may observe that if the view taken in Chitra Lekha's case is accepted, then as soon as the main petition is withdrawn, or is allowed to be dismissed in default, the application for interim alimony would automatically come to an end which would lead to the conclusion that if the proceedings are deferred for a long time and the main petition thereafter abruptly comes to an end, then the indigent wife would be deprived of her right under Section 24 of the Act to obtain interim alimony and expenses of litigation for no fault of hers. The necessity of deciding an application for interim maintenance and litigation expenses filed under Section 24 of the Act as early as possible after the same is filed, and ordinarily before the trial, of the main petition begins, at least during the pendency of the main petition, must be emphasised. The decision of the application under Section 24 of the Act for interim alimony and litigation expenses can in no event be postponed until the final disposal of the main petition and in all circumstances it must be disposed of before the termination of the proceedings in the main petition. Even in Chitra Lekha's case referred to above, it was held that the application under Section 24 should be decided judicially as expeditiously as possible and parties should not be encouraged to continue with the proceedings for interim maintenance and litigation expenses by deferring orders on such application. Thus, it needs to be emphasised that the court dealing with a matrimonial case for divorce or judicial separation or restitution of conjugal rights or any other proceedings under the Act, where the respondent spouse has a right to claim interim maintenance and litigation expenses under Section 24, on the ground that he or she has no independent income sufficient for support and the necessary expenses for the proceedings and an application under Section 24 of the Act is moved during the pendency of the proceedings under the Act, then it is the bounden duty of the court to decide the application for interim maintenance and

litigation expenses as expeditiously as possible before the trial of the main petition begins and at any rate definitely before the decision of the main petition. The proceedings in respect of an application under Section 24 of the Act should not be frequently adjourned and deferred for some reason or the other or without any reason until the trial of the main petition comes to an end, as the principal object for which interim alimony has to be granted would itself be frustrated if the respondent spouse is not put into possession of the necessary funds for maintaining herself and to meet the expenses of the litigation soon after the application under Section 24 is moved. That is why Section 24 speaks of "it appears to the court" instead of providing that "it is proved before the court" and as such Section 24 application can be and should ordinarily be disposed of on the basis of affidavits produced by and on behalf of the parties. One of the reasons given in *Nirmala Devi's case* (AIR 1973 Punj and Har 48) as to why the order on the application under Section 24 of the Act cannot be passed after the decision of the main petition was that in case the order for payment of amount relating to interim maintenance and litigation expenses is not complied with then the aggrieved party would not be able to enforce such an order, I may with great respect observe that Section 28A of the Act provides the procedure for enforcement of decrees and orders passed by the court in any proceedings under the Act and by virtue of Section 28A an order passed under Section 24 of the Act can be enforced as a money decree. Of course, if the order under Section 24 is passed during the pendency of the main petition and the same is disobeyed, in 'addition to the enforcement of the order as a money decree by virtue of the provisions of Section 28A, the court could stay the proceedings in the main petition, strike out the defence of the defaulting party or dismiss the main petition, as it may consider appropriate in the circumstances of the case. There can be no doubt that it is imperative that an application under Section 24 of the Ad should be decided in any event before the disposal of the proceedings in the main petition under the Act.

16. However, the question which arises in this case is that if the trial court committed the error of disposing of the main petition before deciding the application under Section 24, is this court absolutely powerless and cannot rectify the error committed by the court below? In this respect I am inclined to take the view as was taken by Ramaswami J. In *Mythili Raman's case* "(AIR 1976 Mad 260) which appears to be an extreme case illustrative of the situation. As mentioned earlier, in that case, the counsel for the wife insisted that Section 24 application should be disposed of before the main petition for judicial separation was decided while the trial court continued to : insist that the main petition would be heard and disposed, of first. Thereupon the counsel for the wife withdrew and ex parte proceedings were taken against her and a decree for judicial separation was passed and thereafter the application for interim alimony was dismissed as having become infructuous. Thus, in the aforesaid case the trial, court deliberately persisted in making the interim -alimony application infructuous, in spite of protests by the counsel for the wife. Would it be proper to interpret the provisions of Section 24 in such a manner as to leave the respondent at the mercy of the trial court and allow that court to defeat its very purpose by deferring the decision of the application under Section 24 until the main proceedings under the Act are disposed of? If such a view is taken then in a case like *Mythili Raman's case* the court would become functus officio by its own inaction and no relief can be granted to the wife, who has done everything legitimately within her power in moving an application under Section 24 during the pendency of the proceedings under the Act and in vigilantly pursuing such application. If the trial court adopts such an attitude which is unwarranted by law and has no legal sanction and proceeds to decide the main petition, deferring the disposal of



the application under Section 24 until the last moment, in my view even then the indigent wife could not be allowed to be deprived of her legitimate right of obtaining interim alimony and expenses of litigation, merely at the whim of the court or on account of the indiscretion exercised by the Court.

17. I am not prepared to accept such an interpretation of the provisions of Section 24 which would deprive the litigant of her remedy without any fault on her part. The question in my humble view should be viewed in a broader perspective that it is the first and the highest duty of the court to take care that an act of the court should not prejudice the rights of any party or cause any injury to a party. The principle has aptly been described by the maxim "*Actus curiae neminem gravabit*" (an act of the Court shall prejudice no man). Such a principle is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. The court by its laches or mistake cannot take away the right of a party or cause an injury to the party so as to leave it without interest or remedy. This principle was accepted by the Judicial Committee of the Privy Council in *Jai Berham v. Kedar Nath Marwari*, AIR 1922 PC 269 and it was observed in that case that it was inherent in the general jurisdiction of the Court to act rightly and, fairly according to, the circumstances towards all parties involved. Their Lordships of the Privy Council quoted with approval the following observations of Grains, L.C. in *Rodger v. Comptoir de Escopte de Paris* (1871) 3 PC 465: 17 ER 120.

"One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression 'the act of the Court' is used, it does not mean merely the act of the primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."

18. The same principle was reiterated by their Lordships of the Supreme Court in *Jang Singh v. Brij Lal*, AIR 1966 SC 1631 wherein Hidayatullah, J., as he then was observed as under (at p. 1633):--

"There is no higher principle for the guidance of the Court than the one that no act of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim: "*Actus curiae neminem gravabit*."

19. A Division Bench of this Court in *Thakar Lal v. Nattiulal*, ILR (1964) 14 Raj 333: (AIR 1964 Raj 140) also relied upon the same principle and made the following observations (at p. 146):--

"The same conclusion in our opinion could perhaps be come to on the well-settled principle in our jurisprudence that it is one of the first and the highest duties of a court to take care that the act of the court does no injury to any of the suitors before it. See *Rodger v. Comptoir d' Escopte de Paris* (1871) 173 PC 469."

20. Thus, it is well settled that the court by its action or inaction, deliberate or mistaken, cannot take away the right of a party or take away a remedy which was otherwise available to the litigant, as that would amount to causing an injury to the litigant by an act of the court. If the court goes on

deferring the disposal of the application under Section 24 of the Act for interim alimony and litigation expenses, knowingly or unwittingly, until the main proceedings under the Act come to an end and thereafter dismisses the application under Section 24 on the ground that it has become infructuous as the main petition has been disposed of, it would certainly cause injury to one of the suitors for no fault of his and such an illegal action on the part of the court must be held to be without jurisdiction. The court has jurisdiction to decide the matters before it according to law, but not in violation of law or to defeat the rights of a party by its action or inaction. In such circumstances this Court is bound to interfere in the revisional jurisdiction with the order dismissing the application for interim maintenance and litigation expenses and determine the amount of interim alimony and litigation expenses while hearing the revision petition.

21. In the present case, as I have already mentioned above, the application under Section 24 of the Act was moved by the wife on April 25, 1980 during the pendency of the petition for divorce. The application was duly pressed by the wife and an order for interim maintenance was passed by the trial court on May 25, 1981, although no order was passed for litigation expenses and the decision of that question was deferred. Then the husband approached this Court in revision, which was allowed on July 27, 1981 and the matter was remanded and the parties were required to appear before the trial court on August 10, 1981 for further proceedings, in accordance with the directions of this Court in respect of the application under Section 24. But on August 10, 1981 the husband submitted an application for withdrawal of the main petition instead of taking proceedings, as directed by this Court, for determination of the amount of interim alimony. It was incumbent upon the trial court at that stage to decide the application for interim alimony and litigation expenses, in accordance with the directions of this Court contained in the order dated July 27, 1981, before closing the proceedings in the main petition. It appears that the trial court heard both the matters together, namely, the question of withdrawal of the main petition as also the question of grant of interim maintenance and litigation expenses and the survival of the petition for interim maintenance after the application for withdrawal of the main petition was filed. The trial court should have decided the application under Section 24 first before proceeding to pass the final order allowing the withdrawal of the main petition. The emphasis of the learned counsel for the husband is that although both the orders fixing interim maintenance as also allowing withdrawal of the main petition were passed on the same day, yet a reading of the two orders shows that the order allowing the withdrawal of the divorce petition was passed earlier in point of time as the same finds a reference in the order fixing the amount of interim maintenance. Learned counsel appears to be right in his submission, but the trial court was definitely wrong in disposing of the main petition earlier to the application under Section 24 and in this revision petition I am not prepared to hold that the court is powerless to decide the question of interim maintenance notwithstanding the fact the main petition was disposed of earlier by the trial court on the same day. The wife in the present case had vigilantly prosecuted her application under Section 24 and merely because of the indiscretion of the trial court, she could not be deprived of her right to "obtain interim maintenance, and litigation expenses.

22. Now, coming to the question of quantum of interim maintenance, the trial court has accepted the version of the wife and fixed Rs. 400/- per month as interim alimony from December 21, 1979 to August 31, 1981. Learned counsel for the husband submits that the income-tax assessment order of the husband in respect of the year 1980-81 has been placed on record, which showed that the

income of the husband was Rupees 9,134/- during the year, including his share of profits from the partnership business as also his income from the other business. The affidavit of the wife stated that the income of the husband during the year was Rs. 30,000/- out of which Rs. 15,000/- was his share of profits from the partnership business, while 15,000/- was the income from the other business. It has also been stated on behalf of the wife that there are houses and shops belonging to the husband, which were fetching rental income but no details in respect thereof have been supplied. The affidavit of the wife about the income of the husband being Rupees 30,000/- per year cannot be accepted in view of the fact that the husband has produced the income-tax assessment order, which shows that the Income-tax authorities accepted the income of the husband from the partnership business and from the other business as Rs. 9,134/- during the assessment year 1980-81. The husband filed an affidavit in the trial court in which he has admitted that his income was Rs. 9,000/- to 10,000/- per year. The Income-tax assessment order relating to the assessment year 1980-81 has been produced, while we are concerned with the subsequent assessment year 1981-82. It may be considered that there might be slight increase in the income of the husband during the next following year, but it cannot be presumed in the absence of any cogent material that there was a steep rise in the husband's income in the next following year, after the year for which income-tax assessment order has been produced. In the face of the affidavits of the parties and the income-tax assessment order produced by the husband, it appears that the income of the husband could be fairly considered to be about Rs. 12,000/- per year. We have held in similar cases that 1/5th of the income of the husband should be considered as reasonable for fixation of interim maintenance. As such, in my view, the wife is entitled to get 1/5th of the sum of Rs. 12,000/- i.e. Rs. 2,400/- per year by way of interim maintenance. Thus, the interim maintenance, which the wife is entitled to get in the present case, is determined as Rupees 200/- per month.

23. With regard to the period for which the interim maintenance amount should be awarded, some courts have taken the view that the respondent spouse is entitled to get interim maintenance from the date on which the service of the main petition is effected upon the respondent. But in my view the interim maintenance should be awarded to the indigent spouse from the date when the application under Section 24 of the Act is actually moved. There may be cases where the respondent may not be in justifiable need of interim maintenance during the earlier stages of the matrimonial litigation or may unduly delay the filing of an application under Section 24 for the interim maintenance for several years after the filing of the main petition and in all such cases it would not be proper to award a lump sum amount to the respondent spouse, who has neglected to file an application under Section 24 of the Act soon after the service is effected upon her of the notice of the main petition. As Section 24 application was filed on April 25, 1980, the wife is entitled to get interim maintenance from the aforesaid date i. e. April 25, 1980 until August 31, 1981, the date on which the notice of the application for withdrawal of the main petition for divorce was served upon her counsel. After August 31, 1981 the husband absented himself and did not appear, having already filed an application for withdrawal of the divorce petition on August 10, 1981. In the present case, the wife is not entitled to get interim maintenance in respect of the period subsequent to August 31, 1981. Thus, the wife is entitled to get interim maintenance in the present case under Section 24 from April 25, 1980 to August 31, 1981 @ Rupees 200/- per month. It may be mentioned here that the husband has already paid a sum of Rs. 1,000/- towards interim maintenance to the wife, as mentioned in the order of this Court dt. July 27, 1981 and the said amount of Rs. 1,000/- shall be

adjusted while calculating the amount of interim maintenance payable to the wife.

24. As regards litigation expenses, the trial court had deferred the consideration of the question to a future date, while passing the order dated May 25, 1981, but since then it never determined the amount of litigation expenses payable by the husband to the wife in respect of the proceedings in the trial court. I am of the view that the wife is entitled to get a sum of Rs. 400/- towards litigation expenses of the trial court. The amount of arrears of interim maintenance as also the litigation expenses may be paid by the husband to the wife, after deducting the sum of Rs. 1,000/- which has already been paid, within a period of 4 months,

25. In the result, both the revision petitions are partly allowed and the order passed by the learned District Judge, Pali dated October 1, 1982 fixing the amount of interim maintenance under Section 24 of the Act is modified and the wife is allowed interim maintenance from April 25, 1980 to August 31, 1981 @ Rs. 200/- per month and a further sum of Rs. 400/- is allowed to her as litigation expenses of the trial court. The husband is directed to make payment of the aforesaid sums of money to the wife within 4 months, subject to adjustment of the amount already paid.