

A CRITICAL APPRAISAL OF THOUGHT PROVOKING

Whether the Courts exercising discretionary power under Section 24 of Hindu Marriage Act, for awarding interim maintenance and for payment of the expenses of the proceedings can insist the petitioner to offer security as provided under Order 39(2), (2) CPC read with Order XXV(1) CPC as a safeguard for the reimbursement of the amount received towards interim maintenance or costs in the event of dismissal of the main petition

By

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In order to consider the scope and the intendment of the Legislature, it is desirable and profitable to extract the section to the following effect, in order to get a hangover the matter.

Section 24 of the Hindu Marriage Act makes a provision for maintenance *pendente lite* and expenses of proceeding. It reads thus:

Section 24 Maintenance *pendente lite* and expenses of proceeding.

Where in any proceeding 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.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband as the case may be".

Even a cursory reading of the section makes it clear that in any proceeding under the Act, the spouse who has no independent

income sufficient for her or his support may apply to the Court to direct the respondent to pay the monthly maintenance as the Court think reasonable, regard being had to the petitioner's own income and the income of the respondent. The very language in which the section is couched indicates that wide discretion has been conferred on the Court in the matter of an order for interim maintenance. Although the discretion conferred on the Court is wide, the section provides guidelines inasmuch as while fixing the interim maintenance the Court has to give due regard to the income of the respondent and the petitioner's own income. In other words, in the matter of making an order for interim maintenance, the discretion of the Court must be guided by the criterion provided in the section, namely the means of the parties and also after taking into account the incidental and other relevant factors like social status the background from which both the parties come from and the economical dependence of the petitioner.

Be this scope of the section as it may.

The section envisages a statutory presumption, there would be a presumption regarding the status of the petitioner as a wife or husband and she or he makes a *prima facie* case of the entitlement of the maintenance.

At the time of considering the interim maintenance, by its very nature which is temporary, a detailed and elaborate exercise by the Court may not be necessary but the

Court in certain eventualities where the *prima facie* entitlement of the claim of maintenance is not established, may be due to the fact if she is unchaste or ceases to be a Hindu by conversion to other religion as envisaged in Section 18 of the Hindu Adoption and Maintenance Act, 1956 which *prima facie*, the likelihood of the petitioner succeeding in the petition appears to be remote. Hence the Court has to get to take all the relevant factors also, depending on the facts of each case, into account and arrive at a proper conclusion even for the grant of interim maintenance.

If for any reason it is *prima facie* established by the husband that the wife is unchaste by filing a counter petition, the Court has to take into consideration those aspects also and for doing real and substantial justice, the Court can exercise power under Section 151 also and prevent abuse of the process of the Court.

When once interim maintenance is awarded, the petitioners are adopting dilatory tactics and lingered over the matter on one pretext or other leading to considerable delay for decision on merits. Justice should be speedy but not.

Respondents are likely to suffer considerably merely owing to the pendency

of the petition for over a considerable time. Courts cannot be silent spectators. Hence in order to avert this contingency and to discourage frivolous speculative and vexatious claims certain safeguards are provided in CPC such as Section 35, 35(A) for levy of compensatory costs, in respect of false and vexatious claims. Further Order XXV Rule 1 CPC gives power to the Court including *suo motu* power to insist the plaintiff to give security for the payment of all costs incurred or likely to be incurred by the defendant. Far from this Order XXIX, Rule 2 CPC authorised the Court to grant injunction on such terms as deems proper including giving security.

There are other similar provisions in CPC such as Section 90 to a similar effect. But in the narrow scope of the article, it is not desirable to deal them at length. Suffice to make a mention of it for the readers to consider.

The import of this article is no doubt very far-reaching, but the views expressed covered by the article do not end in conflict and it is earnestly hoped the Court will take into consideration these suggestions to be applied to different fact situations are concerned to protect the interest of everyone concerned, if it is felt respondent is being harassed by the plaintiff-petitioner.

SPEEDY CRIMINAL TRIALS VIS-A-VIS LAWYER'S ROLE: A STUDY

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India has a democratic system of governance, which is rooted firmly in the doctrine of 'Rule of law'. Rule of law

postulates that the Country is essentially consists of 'the Government of Laws and not of men. It is the laws that rule and not