

A.F.R.

Neutral Citation No. - 2025:AHC:133601

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 8704 of 2025

Petitioner :- Ankit Suman

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Javed Habib, Mohammad Abdullah Rawaha

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar Nigam, J.

1. This petition has been filed to set aside the order dated 06.05.2025 passed by Additional Principal Judge Family Court, Pilibhit in Execution Case No. 9 of 2022 (Smt. Neeraj Saini Vs. Ankit Suman).

2. Brief facts of the case are that the husband-petitioner filed a petition on 20.07.2018 seeking divorce from his wife-respondent No. 2 before the Judge, Family Court under Section 13 of the Hindu Marriage Act, 1955. The aforesaid case was numbered as Case No. 286 of 2018. The respondent-wife appeared and filed written statement denying the allegations made by the petitioner. During pendency of this petition, an application under Section 24 of the Hindu Marriage Act, 1955 was filed by respondent No. 2 on 26.03.2019 to which the petitioner filed objections on 01.10.2019. The said application under Section 24 of the Hindu Marriage Act was decided by the order dated 30.10.2020 dismissing the application filed by the wife-respondent No.2. The order dated 30.10.2020 was challenged by the wife-respondent No. 2 by filing First Appeal No. 722 of 2021 before this Court. The judgment and order dated 30.10.2020 passed by Additional Principal Judge, Family Court, Pilibhit was set aside and the application filed by respondent No. 2 under Section 24 of the Hindu Marriage Act was allowed on 18.11.2021 by this Court and awarded a sum of Rs. 10,000/- per month to the wife and Rs. 10,000/- to the minor daughter payable with effect from date of

application. It was further directed that the arrears of maintenance shall be paid to the wife within a period of two months. The wife was held to be entitled for the cost of litigation incurred by her both before this Court and the Family Court and a lump sum Rs. 30,000/- was directed towards cost of litigation which was to be paid within one month from the date of judgment. Order passed by this Court dated 18.11.2021 was challenged by the petitioner before Supreme Court and the Supreme Court by its order dated 29.11.2022 directed for payment of maintenance of Rs. 10,000/- to wife and Rs. 5,000/- per month to the minor daughter. Respondent No. 2 filed execution case No. 9 of 2022 for executing the order passed under Section 24 of the Hindu Marriage Act before the Additional Principal Judge, Family Court Pilibhit. An application Paper No. 45 Ga was filed by the wife-respondent No. 2 with the averment that till 26.08.2024, the petitioner was liable to pay Rs. 2,50,000/- to respondent No. 2 which was not paid by the petitioner and respondent No. 2 prayed that the said amount be recovered from the petitioner. By order dated 11.09.2024, recovery warrant was issued against the petitioner and therefore, the impugned order dated 06.05.2025 was passed by the Additional Family Court, Pilibhit issuing recovery against the petitioner.

3. Contention of learned counsel for the petitioner is that in view of the provisions of Section 24 of the Hindu Marriage Act, 1955, maintenance can only be granted pendente lite the proceedings. It has been further submitted by counsel for the petitioner that the respondent-wife has filed a petition before this Court for transferring the divorce petition from Pilibhit to Bareilly and this Court has stayed the further proceedings of divorce petition until further orders of the Court on 18.09.2023. He further submitted that the moment proceedings of divorce were stayed by this Court, the respondent was not entitled for maintenance for the period for which the proceedings remained stayed.

4. It has been further contended by counsel for the petitioner that since the proceedings of the matrimonial case filed by the petitioner under

Section 13 of the Hindu Marriage Act, 1955 has been stayed by this Court in a transfer petition filed by respondent-wife, the proceedings for divorce can not be considered as pending and therefore, the respondent No. 2 is not entitled for maintenance amount during the period the proceedings of the matrimonial case are stayed. It has been further submitted by counsel for the petitioner that on the one hand, respondent has got the proceedings of the matrimonial case stayed by filing a transfer petition before this Court, on the other hand, the respondent is claiming maintenance for the period for which the proceedings are stayed and pressing for recovery of the same. It has also been contended by counsel for the petitioner that the court below without looking into these facts has erroneously directed for issuance of recovery warrant against the petitioner .

5. Before considering the submissions of the petitioner, it would be relevant to look into the provisions of Section 24 of the Hindu Marriage Act, 1955. Section 24 of the Hindu Marriage Act, 1955 is quoted as under:

"24. Maintenance pendente lite and expenses of proceedings.-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."

6. From the bare reading of Section 24 of the Hindu Marriage Act, 1955, it is apparent that if the party to the matrimonial proceedings does not possess independent income sufficient for his or her support

(maintenance) during litigation and the expenses of the proceedings, then the Court can on his or her application, order the respondent to pay the applicant for the expenses of the proceedings and for per month allowance 'during the proceedings'. The object of this provision is that a financially weak party to a matrimonial proceedings may not become unprovided for and may not be handicapped in presenting his or her case in defending his or her legal rights. The rich party cannot be allowed by law to have an upper hand simply by the strength of his purse. Money cannot be determinant of the merit of a case. Not only the party against whom a petition is instituted in a court may claim maintenance pendente lite and the expense of litigation but also a party who has instituted the litigation can also claim the cost of litigation and maintenance pendente lite in case, he or she does not possess independent income sufficient for his or her support (maintenance) during litigation and the expenses of the proceedings.

7. At the very outset, it may be pointed out that the doctrine of alimony and the maintenance allowance due to the wife from her husband finds its root in the economic and social conditions under which normally most of the married woman have to live and depend upon the income of their husband, who holds the position like that of a guardian of his wife. The provision for allowance is intended to secure justice to the wife who has no independent income sufficient for her support and necessary expenses of the proceeding while prosecuting or defending any proceedings under the matrimonial law. It is on this principle that the law relating to the matrimonial causes provides for rules for payment of maintenance pendente lite and expenses of the proceedings by the husband to the wife. These are the principles which have been incorporated in Section 24 of the Act which further lays down that any order for pendente lite maintenance and expenses for the proceedings can be made not only in favour of the wife but also in favour of the husband who has no independent income sufficient for his/her support and necessary expenses of the proceedings. Thus, the very object and purpose

of the provisions contained in Section 24 is to provide immediate relief to the wife or the husband, as the case may be, in any proceedings initiated under the Hindu Marriage Act.

8. In Hindu Marriage Act, 1955 this salutary provision of Section 24 of Hindu Marriage Act, 1955 was provided to provide financial assistance to the wife whom the husband has driven to litigation or vice versa in order to avoid starvation or destitution, monthly maintenance was provided.

9. This departure from the general law by which wives who, in most of cases, were not in a happy financial position were to be supported during the litigation. In this background the word 'during the proceedings' under Section 24 of the Hindu Marriage Act, 1955 are of great consequence.

10. This term would cover the proceedings from the start till end to at least from the date the application is made till the termination of proceedings in the Court.

11. The Full Bench of Jammu and Kashmir High Court in case of **Amrit Lal Nehru Vs. Usha Nehru** reported in **AIR 1982 J&K 98** considered the date of commencement of proceedings and termination of the proceedings in terms of Section 30 of the Jammu and Kashmir Hindu Marriage Act, 1980. Section 30 of Jammu and Kashmir Hindu Marriage Act, 1980 is the facsimile of Section 24 of the Hindu Marriage Act, 1955 which reads as under:

"30. Maintenance pendente lite and expenses of proceedings.-- 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 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."

12. In paragraph Nos. 11 and 12 of the judgment of the Full Bench in case of Amrit Lal Nehru Vs. Usha Nehru (supra), the High Court of Jammu and Kashmir has held as under:-

"11. There is no warrant for the proposition that proceeding in a suit commences only from the stage contemplated by Order 13. On the other hand, it commences with the filing of the plaint. On the plaint being filed, summons is issued to the defendant, who on its service appears in the Court and files his written statement. After the parties have filed their pleadings, the Court for the first time proceeds to apply its mind to the controversy raised in the suit. This controversy is then reduced to the form of distinct issues, which are framed by the Court, not only from the allegations made by them in their pleadings, but also from the allegations made by the parties on oath, and the contents of the documents produced by them. That is one of the reasons why production of documents in terms of Order 13 is insisted on or before this stage, which is called first hearing; the other reason being preventing production of fabricated documents. Then comes the next stage in the proceeding. The parties are asked to lead evidence in support of their respective cases. After they have led it, the Court proceeds to hear arguments and give its judgment in the case. This is the last stage in the proceeding, and the last hearing in the suit. It is, therefore, obvious that proceeding in a suit does not commence on the first hearing, rather the first hearing is one of the various stages in that proceeding, which starts as soon as the plaint is filed in the Court. This interpretation also accords with the definition of the word proceeding given in Black's Law Dictionary, wherein it has been defined as: "regular and orderly progress in form of law including all possible steps in an action from its commencement to the execution of judgment" (Blacks' Law Dictionary, Revised Fourth Edition 1968).

12. That apart, the word proceeding in Section 30 has to be given the same meaning, even keeping in view its intent and scope. The object behind the enactment is obviously twofold; firstly, to prevent vagrancy resulting from strained relations between the husband and wife; and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. That is why Courts have always insisted that whenever an application is made under Section 30, it must be disposed of before any further steps are taken in the main case. They have been gone to

the extent of holding that the Court in exercise of its inherent powers should stay further proceedings in the main petition till the order passed by it granting maintenance pendente lite or litigation expenses is complied with by the opposite party."

13. In case of **Vinod Kumar Kejriwal Vs. Usha Kumar Kejriwal** reported in **1993 (1) CCC 69**, the Bombay High Court has considered whether during the pendency of an application under Order IX Rule 4 of C.P.C. for restoring the divorce petition, which was dismissed for default, the wife can claim maintenance under Section 24 of the Hindu Marriage Act, 1955. Contention raised before the Bombay High Court was that Section 24 of the Hindu Marriage Act, 1955 contemplates the pending proceedings. Petition for divorce was dismissed on 28.11.1985, the application for restoration was filed on 04.12.1985 and therefore, there was no proceedings before any Court in which the application under Section 24 of the Hindu Marriage Act could be entertained. Rejecting the contention as made before the Bombay High Court, the High Court held in paragraph No. 18 that even during pendency of an application under Order IX Rule 4 of C.P.C. for restoring the divorce petition which was dismissed in default, an application for maintenance under Section 24 of the Hindu Marriage Act, 1955 will be maintainable. Paragraph No. 18 of the judgment in case of Vinod Kumar Kejriwal Vs. Usha Kumar Kejriwal (*supra*) is quoted as under:-

*"18. In the first place, I have no doubt that the proceedings under section 24 of the Hindu Marriage Act can be initiated even during the pendency of the application either under Rule 13 of Order 9 or Rule 9 of Order 9 or Rule 4 of Order 9 of the Code of Civil Procedure, in the case of Ramesh v. Savita (*supra*)¹ this Court was dealing with the question as to whether pending the application under Rule 13 of Order 9 the wife could maintain an application under section 24 of the Hindu Marriage Act. The learned Chief Justice answered the question in the affirmative. Applying the same ratio and bearing in mind the object of the provisions contained in section 24 of the Hindu Marriage Act. I have no hesitation in holding that even pending the*

¹ Sri Ramesh H. Jadhvani Vs. Smt. Savita Ramesh Jadhvani MANU/MH/0322/1985

application made by the husband under Order 9, Rule 4 of the Code of Civil Procedure, the wife can initiate proceedings under section 24 of the Hindu Marriage Act. It should be borne in mind that, in general, the husband is bound to defray the wife's costs of the proceedings under the Act and to provide her with the maintenance and support pending disposal of the proceedings. Having regard to the object that is sought to be achieved by making provision for awarding maintenance pendente lite and for making provision for payment of expenses of proceedings, the expression "proceedings under the Act" appearing in section 24 cannot be given a narrow and restrictive meaning.

Secondly, in the case of Ramesh Dev Anand v. Smt. Devinder Kaur (supra)² it has been clearly held as under:

"In the view that proceedings under Order 9, Rule 9 of the Code for restoration are proceedings under the Act, it can safely be held that proceedings for setting aside the ex-parte decree are also proceedings under the Act."

I am in agreement with the view expressed in the said decision.

Thirdly, a reference may usefully be made in this behalf to the provisions of section 21 of the Hindu Marriage Act which states that subject to other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act, shall be regulated, as far as may be by the Code of Civil Procedure, 1908. The Punjab and Haryana High Court had also on an occasion to consider a somewhat similar question in the case of Madan Lal v. Meena (supra). Though the question which directly arose there was one of granting relief to the wife under section 24 pending an application under Order 9, Rule 13 for setting aside the ex-parte decree, referring to the object and the rationale of the provisions of section 24 of the Hindu Marriage Act, it was held that to obviate against the financial handicap of a party to the litigation, the provisions of section 24 of the Act can be invoked even during the pendency of the application under Order 9, Rule 13 of the Code of Civil Procedure. Thus, having regard to the object of section 24 of the Hindu Marriage Act, and having regard to the ratio of the above mentioned 3 cases, viz. (i) the decision of this Court reported in MANU/MH/0322/1985: 3 M.C. Page 74, (ii) MANU/DE/0395/1984: A.I.R.

2 Rishi Dev Anand Vs. Smt. Devinder Kaur AIR 1985 Delhi 40

1985 Delhi 40, and (iii) MANU/PH/0169/1988: A.I.R. 1988 (P & H) 31, I am of the view that the provisions of section 24 can be invoked by the spouse even during the pendency of an application under Order 9, rule 4 of the Code of Civil Procedure. In the facts of this case, therefore, the wife is entitled to initiate proceedings under section 24 of the Act even during the pendency of the husband's application for restoration of his petition which was dismissed on 28th November, 1985."

14. In case of **Surendra Kumar Asthana Vs. Kamlesh Asthana** reported in **AIR 1974 All 110**, an objection was raised before this Court interpreting the words 'in any proceedings under this Act' that a revision application under Section 115 of C.P.C. will not be a proceedings under the Act. The said contention was not accepted by this Court and this Court held in paragraph No. 9 of the judgment in case of Surendra Kumar Asthana Vs. Kamlesh Asthana (supra) that Court can grant relief on an application under Section 24 even in a revision filed under Section 115 of C.P.C against an order passed in proceedings under the Hindu Marriage Act, 1955. Paragraph No. 9 of the judgment in case of Surendra Kumar Asthana Vs. Kamlesh Asthana is quoted as under:

"9. The second objection is based on the use of the words "in any proceeding under this Act" and it is contended that a revision application under Section 115, Civil Procedure Code, is not a proceeding under the Act. It is to be noticed that the Act does not directly provide for an appeal or a revision from orders passed in proceedings under it. Section 21 of the Act provides that subject to the other provisions contained in the Act and of the rules made by the High Court all proceedings under the Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908. Section 28 provides that all decrees and orders made by the court in any proceeding under this Act shall be enforced in like manner" as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force. Appeals from decrees and orders made under the Act lie under the Code of Civil Procedure. Likewise, revisions also lie against orders made in proceedings under the Act under the Code of Civil Procedure. It is not disputed and there is good authority for the same that relief under Section 24 can be granted in

an appeal from a decree or order passed under the Act. I can see no reason why then relief under Section 24 cannot be granted in a revision against an order passed in a proceeding under the Act. The words "in any proceeding under this Act" have been used in a wider sense to include all proceedings arising out of orders passed in petitions filed under the Act. To hold otherwise would defeat the very purpose of Section 24. In my opinion, it is competent for this Court to grant relief on an application under Section 24 even in a revision filed under Section 115, Civil Procedure Code, against an order passed in proceedings under the Act. The second objection raised by Sri K. C. Saxena is also without force."

15. In case of Surendra Kumar Asthana Vs. Kamlesh Asthana (supra) this court has gone to the extent of holding even in cases where plea as to jurisdiction of the court is raised, the relief under Section 24 of the Hindu Marriage Act can be granted before considering the question of jurisdiction. Paragraph Nos. 6 and 8 of the judgment in case of Surendra Kumar Asthana Vs. Kamlesh Asthana (supra) are quoted as under:

"6. The grant of relief under Section 24 is not dependent either on the merits of the petition or on the decision of any particular issue or issues in the case or upon the ultimate success or failure of the petition. The reason behind the rule in Section 24 for payment of pendente lite maintenance is that, where marriage is admitted, it is the duty of the affluent spouse to maintain the indigent spouse. This duty is unaffected by the pleas raised in the petition even if the plea be to the jurisdiction of the court. If on the face of the petition it is maintainable and the court has jurisdiction to entertain it, then the court has also the power to grant relief under Section 24 even if an objection to the jurisdiction is raised and even before such an objection is decided. Such an objection will be an issue in the case. Likewise, the reason for the provision for payment of expenses is that a wife or a husband, who has no independent income sufficient to meet the necessary expenses of the proceeding, may not be handicapped. Such a spouse should not be left without means of putting her or his case fairly before the Court. It can be no defence to the claim for expenses that a question of jurisdiction has been raised. Expenses can be awarded even before the question of jurisdiction is decided.

8. Therefore, even where a question of jurisdiction has been raised, the court has, before deciding that question, power to grant relief under Section 24 of

the Hindu Marriage Act provided that, on the averments made in the petition, the petition is maintainable and the court, prima facie, has jurisdiction to entertain it. Though the court has this power, it has a discretion under Section 24 till the question of jurisdiction is decided. It would, however, be desirable to allow expenses to the needy spouse to fight out the issue of jurisdiction also, even where the court thinks that the question of pendente lite maintenance should be decided after the issue of jurisdiction has been decided. The first objection raised by Sri K. C. Saxena does not stand in the way of granting relief to the wife in this case under Section 24."

16. In case of **Dharambir Singh Vs. Smt. Manjit Kaur** reported in **1979 HLR 305**, the Punjab and Haryana High Court held that a petition under Section 24 of the Hindu Marriage Act will be maintainable even in case where an ex-parte order under Section 24 of the Hindu Marriage Act is sought to be recalled by the other party, which is pending. Paragraph Nos. 1 and 2 of the judgment in case of **Dharambir Singh Vs. Smt. Manjit Kaur** (supra) is quoted as under:-

"1. The respondent filed a petition under section 10 of the Hindu Marriage Act (hereinafter to be called the Act) for judicial separation against her husband (the petitioner). During the pendency of this petition she filed an application under section 24 of the Act for the grant of expenses of the litigation and also maintenance pendente lite. The trial Court allowed this application and granted expenses and maintenance by ex-parte order dated 29th November, 1974. By this order an amount of Rs 100/- was allowed as litigation expense and Rs. 150/- as maintenance pendente lite. The present petitioner move the trial Court for setting aside this ex-parte order, the proceedings in which are still pending. The respondent filed another application under section 24 of the Act for litigation expenses as well as maintenance in these subsequent proceedings. The petitioner raised the preliminary objection that the second application under section 24 of the Act was not maintainable. This objection did not find favour with the trial Court and it was held that the second application was also maintainable. It is this order which has been challenged in the present revision petition.

2. It has been contended by the learned counsel for the petitioner that section 24 of the Act contemplates only one application during the pendency of the

main petition under the provisions of the Act and the second application under this provision was not maintainable. A close perusal of section 24 of the Act, however, shows that any of the parties who has no independent income to maintain herself or himself and to meet the necessary expenses of the proceedings, has the right to claim litigation expenses and interim maintenance "in any proceedings" under this Act. The provision is clear and includes all proceedings arising out of or in any manner linked with the main petition. Clearly the proceedings arising out of the application by the husband to get the ex-parte order under section 24 set aside are linked with the main petition. The argument that the second application does not come within the ambit of the provision is not at all tenable. "

17. In case of **Yogeshwar Prasad Vs. Jyoti Rani Prasad** reported in **AIR 1981 Delhi 99**, the Delhi High Court held that during pendency of the proceedings under Section 25 of the Hindu Marriage Act, 1955, the application under Section 24 of the Hindu Marriage Act can be filed and entertained. Paragraph Nos. 4 and 5 in case of **Yogendra Prasad Vs. Jyoti Rani Prasad** (supra) is quoted as under:-

*"(4) The next contentions of the learned counsel for the petitioner are that an interim maintenance under Section 24 of the Act can be granted only in a proceeding under the Act. The Act envisages two periods in the proceedings; (1) duration of the main petition and (2) the period after a decision of the main E petition. Section 24 relates to the first period while Section 25 relates to the second period. That is why Section 24 precedes Section 25. The Act itself treats these periods differently. It is further evident by the selective use of the word 'petition' in relation to the main reliefs and use of 'application' in relation to the rest. That is because the application under Section 25 of the Act is merely ancillary and incidental to the main petition as held in **Patel Dharamshi Premji v. Bai Sakar Kanji MANU/GJ/0082/1968: AIR1968Guj150**. There is therefore, no justification for treating it as a proceeding under the Act which is a proceeding initiated on a petition for any of the main reliefs of restitution of conjugal rights, judicial separation, dissolution and annulment. Section 24 applies only when the main petition is pending. The incidental and ancillary provisions in Section 25 had to be made because if this were not done, then no maintenance could be claimed except whatever could be claimed under Section 125 Criminal Procedure*

Code and Section 18 of the Hindu Adoption and Maintenance Act, 1956. It is Therefore urged that there is a compelling reason for interpreting 'husband and wife' in Section 25 so as to include ex-spouses but there is no such compulsion in respect of Section 24. If the legislature wanted to apply these provisions to former spouses, there was nothing to prevent it from making it specifically clear. The precise argument is that Section 24 is not applicable because the application under Section 25 is not a proceeding under the Act between a husband and a wife.

(5) After careful consideration, I feel, I must up bold the view of the learned Additional District Judge that 'any proceedings under this Act' appearing in Section 24 will cover the proceedings under Section 25 thereof. Section 25 contemplates that an order for permanent alimony can be made at the time of the passing of any decree under the Act or any time thereafter. Now, if a spouse has to make an application after any decree under the Act has been passed and has no sufficient means of his own, such spouse has to be provided for prosecuting the application for permanent alimony when the other spouses opposes any grant thereof. Any other construction will be narrow and will lead to frustration of the provisions. This is so obvious that no precedent need be cited. Yet there is an authority for this view: See Mahinder Singh v. Om Piari 1975 Rlr (Note 4(3). If it is conceded that the application under Section 25 even in case of dissolution or annulment of marriage can be deemed to be a proceeding between a wife and a husband, as it should, there is no scope for argument that it is not such a proceeding within the meaning of Section 24. In Patel Dharamshi Premji (supra) it was held (vide para 3, page 153, Col. 2, penultimate sentence of the report) that the application under Section 25 is an application in the main proceeding for claiming an incidental relief consequent upon granting of the substantive relief by the Court. That provides a complete answer to the argument of the petitioner. To my mind Section 25 is a continuation of the main proceedings. Placement or numbering of the sections or the description of one set of documents as petitions and the other set as applications can not alter this position. This has been done to avoid any avoidable confusion. I also do not see any reason why Section 24 be restricted to the period between institution of a petition and its termination when it is widely worded. There is no doubt that proceedings under Section 25 are proceedings under the Act and will be included in 'any proceeding' under the Act. The purpose of using the words

husband' or 'wife' is to identify the position occupied by the parties in the main proceedings, and not to exclude ex-spouses."

18. Thus, from the case laws as referred above, it is evident that the proceedings under Section 24 of the Hindu Marriage Act, 1955 are maintainable during the pendency of the proceedings as contemplated under the Hindu Marriage Act, 1955 and the liability to pay the amount will not come to an end merely because the proceedings are pending at the revisional stage, appellate stage or even in cases where the proceedings have been dismissed for want of prosecution and the restoration of the same is pending.

19. Coming to the facts of the present case, an order under Section 24 of the Hindu Marriage Act, 1955 has been passed finally by the Hon'ble Supreme Court by judgment and order dated 29.11.2022. The said order has neither been recalled nor been set aside and therefore, the liability to make payment in terms of the order continues unless the same is set aside, varied or modified by the Hon'ble Supreme Court .

20. So far as contention of learned counsel for the petitioner that the proceeding of the matrimonial case filed by the petitioner was got stayed by respondent No. 2 by filing a transfer petition before this Court therefore, during the period for which the proceedings are stayed, petitioner will not be liable to make payment of maintenance under Section 24 of the Hindu Marriage Act, 1955, is wholly misconceived for two reasons, firstly, mere stay of proceedings by this Court will not amount to termination of the proceedings. In this regard, Supreme Court in case of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI CINOD Secretariat, Madras**, reported in (1992) **3 SCC 1**, has held that a distinction has to be made between quashing of an order and staying of an operation of an order. Quashing of an order results in restoration of the position as it stood on the date of passing of the order which has been quashed. The staying of operation of an order does not, however, lead to such result. It only means that order which has

been stayed would not operate from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. Therefore, mere staying the proceedings of the matrimonial case by this Court will not amount that the matrimonial proceedings came to an end, absolving the petitioner of his liability to pay the maintenance amount from the date of stay of proceedings.

21. Secondly, even the proceedings for transfer of matrimonial case from Pilibhit to Bareilly would amount to the proceedings contemplated under Hindu Marriage Act, 1955 in view of judgment of this Court in case of Surendra Kumar Asthana Vs. Kamlesh Asthana (supra) and therefore, the wife is entitled for maintenance during the continuance of transfer proceedings.

22. In my view, the contentions raised by counsel for the petitioner are of no avail and the petitioner will not be absolved from his liability to pay the maintenance amount merely, because the proceedings of matrimonial case has been stayed.

23. No illegality has been committed by the court below in directing for recovery of the said amount. The petition lacks merit and is dismissed.

Order Date :- 7.8.2025

Nitika Sri.

(Manish Kumar Nigam,J.)