

Neutral Citation No. - 2025:AHC:93938-DB

AFR

Court No. - 39

Case :- FIRST APPEAL DEFECTIVE No. - 530 of 2025

Appellant :- Savita Devi @ Pinki Gautam @ Shivangi Shishodiya

Respondent :- Jitendra Gautam

Counsel for Appellant :- Arun Kumar Tripathi

Counsel for Respondent :- Akash Chandra Maurya

Hon'ble Arindam Sinha,J.

Hon'ble Avnish Saxena,J.

(Per Hon'ble Arindam Sinha,J.)

1. The appeal has been preferred by the wife against judgment dated 3rd May, 2025 of the Family Court dismissing her application under section 24 of Hindu Marriage Act, 1955, for maintenance pendente lite and expenses of proceedings. Respondent-husband had filed petition in the Family Court to declare the marriage void on ground that it contravened clause (i) in section 5. It is during pendency of the husband's petition that appellant had filed for maintenance.
2. The Family Court upon hearing the parties and going through the documents on record found appellant to have been guilty of concealment regarding previous marriage, to cause doubt, due to which it was not appropriate to give maintenance amount under section 24. The learned Judge said that appellant's previous marriage ended only on 15th April, 2024.
3. Mr. Arun Kumar Tripathi, learned advocate appears on behalf of appellant and submits, there was long association between appellant and husband. The husband cannot feign ignorance regarding knowing everything about his client. After long relationship, the marriage was solemnized on 10th February, 2021 at Jhansi, according to Hindu customs

and rituals. After the marriage, his client came to live with respondent in Kanpur Nagar, where respondent works in the Police, earning, according to his client, Rs.65,000/- per month. He also has his own building material supply shop. As such, Rs.20,000/- per month maintenance his client needs and is entitled to get.

4. Mr. Akash Chandra Maurya, learned advocate appears on behalf of respondent and opposes the appeal. He relies **judgment dated 12th February, 2025** of the Supreme Court in **Sukhdev Singh Vs. Sukhbir Kaur** reported in **AIR 2025 SC 951**. He submits, declaration of law by the judgment was that direction for maintenance is in the discretion of the Court and conduct of the party is a relevant factor.

5. Section 11 provides for void marriages. Ground taken by respondent to urge void marriage is contravention of clause (i) under section 5. Said clause is reproduced below.

"5. Conditions for a Hindu marriage,--- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:--

(i) neither party has a spouse living at the time of the marriage;"

There is thus no dispute that the marriage was solemnized between the parties on 10th February, 2021.

6. For purpose of adjudicating the appeal, it is not necessary for us to find on other facts regarding allegation of appellant that there was separation from her first husband and compromise confirming the separation prior to her association and marriage with respondent. This is because section 24 provides for a spouse to have maintenance pendente lite and expenses of proceedings. The section is reproduced below.

"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."

(emphasis supplied)

What is important is for the Court to ascertain whether the party seeking maintenance pendente lite and expenses, requires it, as to be paid by the other party in a matrimonial dispute pending adjudication.

7. The Family Court appears to have been convinced about concealment caused by appellant, of her then, said to be, existing marital status as well as that she had represented to be working in the Income Tax department. There does not appear to be a finding against appellant's contention that parties were together and did get married. In fact, the learned Judge has recorded in impugned judgment that the marriage took place in Jhansi and after the marriage, appellant moved to Kanpur Nagar to stay with respondent. On query Mr. Tripathi submits, his client is presently residing at Jhansi at the address given in the cause title.

8. It may well be that appellant had concealed and misled respondent about herself. It may also well be that respondent may find success in the matrimonial proceeding, to get a decree declaring the marriage void. However, there was no material on record before the Family Court to show that appellant had any means to support herself. Respondent did not produce any evidence to show appellant is working, let alone in the Income Tax department. As aforesaid, the learned Judge recorded in impugned judgment that appellant, after the marriage, came to Kanpur Nagar to reside with respondent.

9. We are satisfied that there ought to have been direction for maintenance pendente lite and expenses of proceedings. Impugned judgment is reversed. In view of aforesaid, we think fit to direct respondent to pay consolidated sum of Rs.15,000/- per month to appellant as maintenance pendente lite and her expenses to defend the matrimonial proceeding. Respondent will pay from date of the application i.e., 15th April, 2025. The arrears including current are to be paid by 14th June, 2025 and subsequent monthly maintenance within 7th of the succeeding month. Mr. Maurya submits, there be direction to expedite the matrimonial proceeding. We request the Family Court to so expedite. Appellant must not be seen to seek adjournment.

10. We record our appreciation on the Registry/Department having had made English translation of impugned judgment, overnight.

11. The appeal is allowed to above extent and **disposed of**.

Hearing and Judgment Date :- 30.5.2025

Shivangi

(Arindam Sinha, J.)

(Avnish Saxena, J.)