CHAPTER: III.


The provisions for maintenance pendente-lite and expenses of proceedings have been enacted in Section 24 of the Hindu Marriage Act, 1955. Section 24 of the Act is based on social as well as moral values which requires that financial provisions should be provided to the indigent spouse to maintain herself or himself during the proceedings and to meet the immediate needs of the applicant. B.M. Lal, J., of the Madhya Pradesh High Court in *Nirmala Tiwari Vs. Shobharam Tiwari* has highlighted the Constitutional mandate as well as the object saying;

"This provisions is a measure of social justice which is specially enacted to protect the interests of either of the spouse and it squarely falls within the Constitutional sweep of Articles 14, 15 particularly Article 15 (3) and 39-A of the Constitution, so that even one of them either wife or husband may not feel monetarily handicapped in the event of matrimonial crises between them and to live and lead their life normally."

It will be beneficial to reproduce the provisions of Section 24 of the Hindu Marriage Act, 1955, which run as follows:

"MAINTENANCE PENDENTE-LITE AND EXPENSES OF THE 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 proceedings, it may on the application of the wife or the husband order the respondent to pay the petitioner the expenses of the proceedings, and monthly during the proceeding such sum as having

1. 1986(1) HLR 324.
regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

The object of this Section 24 of the Act is very simple and clear, and laudable too. It is aimed to provide summary and speedy relief so as 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 or carry on the litigation, so that the spouse does not unduly suffer.

From the language of Section 24 of the Act, it is evident that wide discretionary power is conferred on the Court to pass an order for maintenance pendente-lite and expenses of the proceedings. But this discretion is judicial and not arbitrary or capricious. The initial words of the Section 'in any proceedings under this Act' and the words, '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' are clearly suggestive of the wide amplitude of the discretionary power conferred on the Court'.

Recently, while discussing the provisions of Section 24 of the Act in Smt. Indira Gagele Vs. Shailendra


Gagale, Justice B.M.Lal has very rightly observed:

"A bare look to the provision of Section 24 of the Act demonstrate that it has been enacted exclusively for the benefit of the poor spouse who is enable to maintain and contest the case. Therefore, it is always for such a poor spouse to avail this statutory benefit."

Thus the object of this Section 24 of the Act is two fold. Firstly, it is aimed to provide maintenance to an indigent spouse and secondly, to provide funds to that indigent spouse to enable her or him to defend, carry on or conduct the proceedings. This provision is intended to ensure that nobody should remain disabled from prosecuting or defending the matrimonial proceedings initiated under the Act due to lack of funds or his or her poverty or lack of means. With this objective, the provisions of Section 24 are enacted in the Act. But, unfortunately, due to certain procedural formalities and controversies regarding the construction and interpretation of the provisions of this Section, the very object is frustrated and there is considerable delay before the interim maintenance is actually awarded by the Court. In the following pages, an attempt is made to critically analyze these procedural formalities and controversies so as to point out the true construction of these provisions.

1. 'IN ANY PROCEEDINGS UNDER THIS ACT' SIGNIFIES THE PENDENTE-LITE NATURE OF THE REMEDY: The words 'in a-y proceeding under the Act' signify that maintenance pendente-

1. AIR 1992 M.P. 72, para 7.
2. Ram Chander Agarwalla Vs. Mrudula Agarwalla, 1991(1) HLR 48 (Ori.).
lite can be ordered by the Court, if it is seized of the matrimonial litigation among the spouses under Sections 9 to 13B and 25 of the Act, which make provisions for the decree of restitution of conjugal rights, judicial separation, decree of nullity of void marriage, decree of nullity of voidable marriage, decree of divorce, decree of divorce by mutual consent and, proceedings for permanent alimony and maintenance, respectively.

So, it must be noted that Section 24 of the Act is not an independent legal provision. Maintenance pendente-litie under Section 24 of the Act can be claimed only, where the litigation contemplated above is pending in a matrimonial Court. Therefore, if the proceedings are pending under the provision of Criminal Procedure Code, 1973 or Civil Procedure Code, 1908 or the Hindu Adoption and Maintenance Act, 1956, it will not be the proceedings under the Hindu Marriage Act and the Provisions of Section 24 of the Act cannot be invoked.

(a) DURING THE PROCEEDINGS: A bare persual of the Section 24 of the Act makes it clear that there is an important condition precedent to award maintenance under this Section, the pendency of proceedings in the Court. If there is no legal proceedings left to prosecute or to defend at any

stage in the Court, then certainly no order under Section 24 of the Act can be passed. The jurisdiction of the court to make an order under Section 24 of the Act arises as soon as any proceedings are initiated or instituted under the Act in the Court and lasts so long as the proceedings are pending.

Now, another significant question is that at what time of proceedings, the needy spouse can make an application for maintenance pendente-lite and expenses of proceedings? As noted above the jurisdiction of the court can be invoked 'during the proceeding' only. Application for maintenance pendente-lite can be filed at the earliest alongwith the petition presented under the Act by the petitioner, but if respondent intends to file an application under Section 24 of the Act, she or he can file it even before the filing of written statement. Certainly, the application must be made at any time before the petition as decided.

(b) EFFECT OF WITHDRAWL OF PETITION: Another question is that what would be the effect of withdrawal of petition on an application filed under Section 24 of the Act. Suppose husband files an application for maintenance pendente-lite alongwith her written statement. But, the husband withdraws his petition. Can he thereby defeat the claim of

maintenance pendente-lite of the wife? Dr. Paras Diwan has stated that the husband cannot defeat the application of the wife for interim maintenance and Court can still make an order. It is submitted in such a situation, it will be more appropriate for the Court to ensure that order regarding maintenance pendente-lite must be made at the time of allowing the withdrawal of petition and not later on.

2. THE EXPRESSION 'WIFE OR HUSBAND' IS ONLY DESCRIPTIVE: The word 'wife' and 'husband' have been given wide meaning and are only descriptive of the parties and not indicative of their legal status. In the same sense, the word 'husband' and 'wife' have been used in Section 25 of the Hindu Marriage Act also.

Even where the petition is filed for the decree of nullity under Section 11 or 12 of the Act, the parties to the proceedings are 'Wife or Husband' for the purpose of Section 24 and the indigent spouse is very much entitled to claim maintenance pendente-lite under section 24 of the Act. The provisions of this section are very much applicable to the parties of a void or voidable marriage.

Justice R.K Vijaywargia of the Madhya Pradesh High Court in Raja Ram Vs. Rupa Bai. has very lucidly analysed the provision of Section 11 vis-a-vis section 24 of the Act as follow:

3. 1985 (2) HLR 425.
"The term, in any proceeding under the Act used in Section 24 of the Act includes a proceeding under section 11 of the Act. There is nothing in section 24 of the Act from which it can be concluded that the proceeding under section 11 of the Act is excluded from the purview of that section. The term wife means whose marriage is solemnized though it may be declared null and void in petition filed under section 11 of the Act. It, therefore, cannot be said that trial had no jurisdiction to bars an order granting intereim maintenance to the non-applicant."

But, an interesting question may arise. A person files a petition for substantive relief under Section 10, 11, 12 or 13 of the Act. The other party denies the factum of marriage i.e. the status of being husband and wife. Can Court order maintenance pendente-lite under section 24 of the Act an application made by either of the party of the proceedings.

Ravi Kumar Vs. Nirmal Devi is a direct case on the point, wherein the husband filed petition for Restitution of Conjugal Rights, but the wife contested the petition on the ground that she was not married and denied the factum of marriage, altogether. She, however, made an application under section 24 for maintenance and litigation expenses. In this case, D.S.Tawatia, J., has very rightly opined that since the respondent had denied the factum of marriage and her status as the wife of the petitioner’s husband, she could only claim litigation expenses and not maintenance, for she could not blow hot and cold in the same breath. Explaining the reasons for the said conclusion, the Learned Judge

1. 1978 HLR 796.
observed that 'where the order for the grant of maintenance is dependent upon an application being moved by the spouse, who claims maintenance, then the onus rests on the spouse who claims maintenance, first to prove his or her status and then other ingredients of section 24 of the Act.' In Veena Rani Vs. Jagdish Miter Malhan, Justice M.S. Liberhan of the Punjab and Haryana High Court denied maintenance to a woman who failed to prove herself to be the wife of the other party.

In other cases decided by different High Courts, the factum of marriage was not disputed. Only the validity of marriage was challenged as being void or voidable under the Act. In such cases, the courts decision to grant maintenance pendente-lite were in consonance with the spirit of Section 24 of the Act. But, where the factum of marriage is denied by the person, who himself or herself claims relief under Section 24 of the Act, then he or she should not be allowed maintenance pendente-lite.

3. RESPONDENT-PETITIONER - A SOURCE OF DIVERGENT OPINION AMONG THE HIGH COURTS: In this Section 24 of the Act, the words used are 'order the respondent to pay to the petitioner'. These terms have also caused difficulties before the courts.

1. 1990(1) HLR 113.

Under the Hindu marriage Act, 1955, the spouse who files a petition under Section 9, 10, 11, 12 or 13 of the Act, he or she is termed as 'petitioner' and other spouse against whom the petition is filed is termed as 'Respondent'. Under Section 24 of the Act, it is an application, which is required to be filed for claiming maintenance pendente-lite and expenses of proceedings. The spouse is 'Applicant' and other spouse is 'Non-applicant or Respondent'. Now the question is, whether the petitioner in the main proceeding only i.e. who has filed a petition under Section 9, 10, 11, 12 or 13 of the Act, is entitled to file an application under Section 24 of the Act and the Court can 'Order the respondent to pay to the petitioner the claimed maintenance pendente-lite and litigation expenses. No doubt, from the plain reading of Section 24 of the Act, the answer seems to be in affirmative, but on the perusal of the Sections of the Act, we will find that the expression petitioner, Respondent and Applicant are used by the legislature without much consciousness and without making any discrimination between 'petitioner' and 'applicant'. Because of these reasons, it was rightly observed by the Punjab & Haryana High court that the Act has not been carefully drafted and therefore, the provisions should not receive very strict construction.

Almost all the High Courts in India have taken a very healthy approach on the interpretation and

construction of these expressions 'order the respondent to pay to the petitioner' in Section 24 of the Act. The Courts have rejected the argument that only petitioner in the main proceeding is entitled to claim maintenance pendente-lite and held that the expression 'petitioner' and 'respondent' in Section 24 of the Act refers to the petitioner and respondent in the application for maintenance pendente-lite. Thus, the word 'petitioner' refers to the 'applicant' in that application and not in the original petition by which proceedings are started. The word 'respondent' indicates to the party against whom the application is directed and not the party arrayed as the opponent to the main petition. The application under Section 24 of the Act can be filed by a spouse who may be either the petitioner or the respondent to the main petition for any of the matrimonial reliefs under Sections 9, 10, 11, 12 or 13 of the Act.

It is submitted that the correct drafting in this respect would have been the use of the expression 'order the defendant to pay to the applicant'. The use of the word 'applicant' in place of petitioner and respondent would be more accurate.

4. THE MEANING OF THE PHRASE, 'EXPENSES OF THE PROCEEDINGS':

Section 24 of the Act, besides allowing maintenance pendente-lite also allows the 'expenses of proceedings'. What it included within the expression of 'necessary expenses of proceeding' was a point at issue before certain High Courts. A Division Bench consisting of K.C. Aggarwal and R.K. Gulati, JJ., of Allahabad High Court considered this question in Neera Jain Vs. Diwakar. "Whether under Section 24 of the Hindu Marriage Act, 1955 payment to the petitioner of the expenses of the proceeding, would also include or not, the proceeding, for transfer in the Supreme Court of a proceeding of divorce initiated under this Act, instituted in the Delhi Court?"

Answering this question in the negative, the Division Bench held;

"Under Section 24 of the Act what is allowable is the 'expenses of the proceeding. The proceeding spoken of in Section 24 of the Act does not cover the expenses incurred in prosecution of a transfer application in as much as that is not under the Hindu Marriage Act. A transfer application does not arise out of any proceeding contemplated by the Hindu Marriage Act".

The Division Bench find support to these views from decision of its own High Court Smt. Rachna Sharma Vs. Chandra Mohan Sharma, wherein R.A. Mishra, J., took the view that if a transfer application is filed by the husband, the wife is

1. 1989 (2) HLR 394
2. Ibid, Para 5 of the judgement
3. AIR. 1984 All 302.
not entitled to any amount for defending these proceeding, because a transfer application under Section 24, of the Civil Procedure code, 1908 is not a part of the 1 in matrimonial proceedings. Dr Diwar disagrees with these views Justice Mishra and pleaded that 'whatever proceedings are filed by the parties during the pendency of the main petition for a matrimonial relief are part of the matrimonial proceedings, whether they are filed under the provisions specific provisions of the Hindu Marriage Act, as the Civil procedure code, and whenever some such additional proceedings are initiated, the indigent party is entitled is additional expenses for the proceedings in case he or she has incurred some additional expenditure.' But Dr. Diwan agrees with Justice Mishra, and rightly too, when the judge said that one can claim maintenance pendente-lite and expenses of the entire proceedings and not for each and every application and steps taken in those proceedings.

(a) EXPENSES OF PROCEEDING VIS-A-VIS MAINTENANCE PENDETE-LITE: As already discussed above, under Section 24, two types of reliefs are available:

1. Maintenance Pendente-lite
2. Expenses of the Proceedings.

An Important question for determination regarding these two reliefs is, can the Court disallow the relief of maintenance pendente-lite, but allow the relief of expenses of proceedings?

1. Law of maintenance in India, p.207-208
This question came for consideration before Radha Krishan Menon, J., of Kerala High Court in Nanda Kumar Parrat Vs. Sreekala Rani. The facts of the case were: that the trial judge found that the wife was not entitled to maintenance pendente-lite. On the ground that the wife had an independent income, but allowed the litigation expenses prayed for by the wife to the extent of Rs.4,000/-. The husband came in appeal before the High Court. The learned Justice Menon answered the question on the construction of Section 24 of the Act. After reproducing the provision of Section 24 the Hon'ble Judge observed:

"This Section makes it clear that no amount as maintenance or expenses of proceedings requires to be paid either to the wife or to the husband as the case may be, where he or she has sufficient income for her or his support. The object of enacting the section discernible from the plain words used therein, is to provide the financially weaker party with the requisite funds to meet his or her maintenance and expenses pendente-lite. These two claims for litigation expenses. The condition, which is a condition precedent and which should be established for awarding maintenance and litigation expenses is the insufficiency of income of the claimant to support oneself. It therefore follows, when once the claim for maintenance is disallowed on the ground that the claimant has sufficient income for his or her support, then it automatically follows that the claimant is not entitled to litigation expenses".

But here are the typical and interesting facts of a case,

1. 1989 (2) HLR 218.

which resulted in contrary conclusion to that reached by
the Kerala High Court. In Ravi Kumar Vs. Nirmal Devi the
husband filed a petition under Section 9 of Hindu Marriage
Act, 1955 seeking the remedy of restitution or conjugal
rights. The wife contested the petition denying the factum
of marriage altogether. But on an application under
Section 24 of the Act, the Trial Court granted her Rs.100/-
per month as maintenance pendente-lite and Rs.300/- as
litigation expenses. The husband aggrieved by this order,
challenged it in the High Court. The learned judge of High
Court did not agree with the reasons put forth by the trial
judge that 'husband is liable to pay the maintenance
pendente-lite, since the petitioner husband had himself
alleged in the petition that the respondent was his wife'.
The learned Judge opined, and rightly too, that since the
respondent had denied the factum of marriage and her
status as wife of the petitioner husband, he could only
claim litigation expenses and not maintenance, for she could
not blow hot and cold in the same breath, that is, for the
purpose of petition under Section 9 denying that she is the
wife of the petitioner husband, but claiming maintenance
under Section 24 by asserting the contrary.

These views are in accordance with the
object and true construction of the provisions of Section 24
of the Act. But at the same time, the views taken by Kerala
High Court in Nand Kumar Parat case too are in accordance

1. 1978 HLR 796 (P & H) per Justice D.S. Tewatia.
2. 1989 (2) HLR 218.
with the true construction of provisions.

Consequently, it is submitted that the answer to the question posed in the beginning cannot but depend upon the facts and circumstances in each case. If maintenance pendente-lite is denied on the ground that wife has sufficient income for her support, she should certainly be not entitled to litigation expenses. But denying the litigation expenses to a women, who has been put into trouble by a man claiming her to be his wife, would certainly amount to a negation of natural law. On the other hand, granting maintenance pendente-lite to such a lady would also amount to a wrong proposition of law.

5. DATE FROM WHICH MAINTENANCE PENDENTE-LITE TO BE GRANTED:

It is crystal clear that maintenance pendente-lite and expenses of proceedings can be claimed by the indigent spouse during the proceedings under the Act.

Now, an important question that arises for consideration relates to the date with effect from which the applicant is entitled to maintenance pendente-lite from the opposite party. This issue has become a point of controversy among the High Courts.

1 2

The Punjab & Haryana, Orissa High Court and Delhi


High Court took the view that maintenance pendente-lite should be awarded from the date of filing an application under Section 24 of the Act.

On the other hand, the Madhya Pradesh High Court in Sunita Jain Vs. Suresh Kumar Jain has ruled that maintenance pendente-lite is payable from the date of order of awarding maintenance pendente-lite under Section 24 itself. Whereas the Kerala High Court in Nalini Vs VeluandHema Vs. S. Lakshman Bhat expressed that an altogether different view that maintenance pendente-lite should be awarded from the date on which the summons in the main petition were served. The same view is taken by the Calcutta High Court in Sobhanan Sen Vs. Amar Kanta Sen. The Allahabad High Court in Jawala Prashad Vs. Meena Devi ruled that the maintenance pendente-lite should be awarded with effect from the date when the petition for substantive relief is filed.


3. AIR 1984 Ker. 214.

4. AIR 1986 Ker. 130; see also Radha Kumari Vs. K.M.K. Nair,(1982) KLT 417

5. AIR 1954 Cal. 455; see also Sudarshan Kumar Vs. Chaggar Singh.

From the wording of Section 24 of the Act, it is clear that the situation visualized by Allahabad High Court and Kerala High Court are not in accordance with the true construction of the provision of Section 24 and are mis-conceived. The expression 'on the application of the wife or the Husband' makes it absolute clear that maintenance under Section 24 of the Act should be granted 'on the application of the wife or the husband'. Thus, it is submitted, under Section 24 of the Act maintenance can be ordered either from the date of filing an application under said Section itself or from the date of order on such application. In both these situations the date from which maintenance should be ordered, the Court has to decide on consideration of facts and circumstances and the conduct of parties in each case. No hard and fast rule can be laid down in these cases (in the matter).

Justice S. Awasthy of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".

Interestingly, Justice B.L. Lal, of the Madhya Pradesh High Court in Sunila Jain Vs. Sunita Jain while rightly ordering the payment of maintenance from the date of order on the application under Section 24 and not from the date of filing an application under the said Section, gave the reasons for doing so;

"The provision is made to enable an unearning spouse to contest litigation and not to penalise the plaintiff so as to debar him from asking the relief".
Court in Smt. Indira Ganele Vs. Shailendra Ganele has observed:

"Therefore, normally the point of time for granting maintenance pendente-lite would be from the date of application. But, if specific prayer is made in the application, then the order may be made operative in consonance with the prayer made in the application i.e. either from the institution of suit in favour of the plaintiff or first appearance by the respondent".

The learned judge, while expecting from the Court to decide such applications or priority basis at its earliest opportunity on the basis of the affidavits and counter affidavits as far as possible to cut short the time, observed further:

"However, exception of above rule cannot be ignored where parties found guilty of protracting the proceedings by any manner and delay caused in deciding application on account of such a party, in such a case court can certainly order for payment of maintenance amount from the date of order."

In its judgement Court ordered the payment from the date of application.

Actually, it is the duty of the Court to order maintenance pendente-lite on application as expeditiously as possible and without any delay. If delay occurs for unforseen reasons and certainly not due to the conduct of

2. Emphasis Supplied.
the non-applicant, in such cases the non-applicant could not be penalised and maintenance should be ordered from the date of order itself.

6. CAN COURT ORDER MAINTENANCE PENDENTE-LITE AFTER THE DECISION OF MAIN PETITION: Sometimes, the following situation may arise, husband seeks dissolution of marriage, wife resists it. She files application for maintenance pendente-lite and the expenses of the proceedings. Before this application is disposed of by the Court, the petition of the husband stands decided. Is applicant entitled for maintenance pendente-lite even after the decision of the main petition or has the court jurisdiction to decide the application even after its decision in the main petition?

This question has been discussed by many High Courts. Justice B.C. Misra of Delhi High Court in Smt. Chitra Lekha Vs. Ranjit Rai answering the question in negative observed;

"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."

Again the Delhi High Court took the same view in Rita Mago Vs. V.P. Magó.

Contrary views were taken by the Division Bench

1. AIR 1977 Delhi 176.
2. Para 5 of the Judgement.
3. 1982 HLR 201 (Delhi).
of Mysore High Court in N.Subramnyam Vs. Mrs. M.G. Saraswatha. The Punjab & Haryana High Court has expressed divorce opinion at different occasion. In its earlier decision, the Punjab & Haryana High Court in Nirmala Devi Vs. Ram Dasstook the same view as taken by the Delhi High Court. In this case the wife made an application under Section 24 of the Act on 14th January, 1970 and the main petition was decided by the Court on 19th February, 1970 without deciding the application under Section 24 of the Act. The Single Judge was of the view that the application under Section 24 of the Act on account of the decision of the main petition could not be granted. Same view was taken in Smt. Savitri Piplani Vs. Subhash Chander.

But later on D.S.Tawatia, J., of Punjab & Haryana High Court in Amrik Singh Vs. Smt. Narinder Kaur took the contrary view and held that the applicant would not be denied the relief under Section 24 of the Act even after the conclusion of the main petition. This decision was relied upon by the Division Bench of Punjab & Haryana High Court,

1. AIR 1964 Mys.38.
5. AIR 1983 Raj. 229, but D.P. Gupta of the Rajasthan High Court has taken contrary view earlier in Rajendra Singh Vs. Patwant Kaur, 1982 HLR 693.
comprising R.N. Mittal and M.M. Pun^chi, JJ., in Sohan Lal Vs. Kamlash, wherein the Bench emphatically ruled that;

"Therefore, we are of the opinion that if the application under Section 24 continues after dismissed of the main petition, the applicant is entitled to the maintenance till the date of the decision in the main petition".

The Division Bench in this case overruled the decision in Smt. Mirmala Devi and Smt. Savitri plani case, and dissented from Delhi High Court decision in Smt. Chirtralekha and Rita Mago case. The views of Amrik Singh Vs. Smt. Narinder Kaur was followed by the Rajasthan High Court in Bhanwar Lal Vs. Smt. Kamla Devi. Same question has been discussed in detail by Varghese Kalliath, J., of the Kerala High Court in E.K. Ragavan Vs. K.K. Saroja and their lordship dissented from the view taken by the Delhi High Court in Chirtralekha case. Justice Kalliath preferred to follow the ratio of Punjab & Haryana High Court decision in Sohan Lal case. Noting that the Division Bench of Punjab & Haryana High Court has 'considered the question very

1. AIR 1984 P & H 332.
3. 1977 Del. 176, 1982 HLR 201, respectively
4. AIR 1987 Ker. 151.
5. AIR 1977 Del. 176.
carefully and held that if the application under S.24 of the Act has not been disposed of during the pendency of the main proceedings on accounts of the dilatory tactics of the other spouse or for some unforeseen circumstances, the whole purpose of the section would be frustrated in case it is dismissed on the score that after the disposal of the main petition it does not survive Justice Kallith has observed;

"If I hold construing Section 24 of the Act that there is an inbuilt interdiction in the promise prohibiting matrimonial Courts from ordering interim alimony when the main petition stands dismissed, it will only promote and encourage the dilatory tactics now very commonly used for unduly delaying the disposal of interlocutory applications particularly applications under Section 24 of the Act".

The same will be the position where the petition is withdrawn by the petitioner. The relief to the applicant under Section 24 cannot be defeated by the petitioner by just withdrawing the main petition. Therefore even after the withdrawal of such petition, the court can still decide the application filed under Section 24 of the Act and order the payment of maintenance pendente-lite till the date of withdrawal of such petition.

Undoubtedly, if we go after the wording of Section 24 of the Act, it is obvious that court's jurisdiction ceases with the decision in the main petition. But in the background of the object and purpose to be achieved by Section 24 of the Act, which is certainly aimed to secure the indigent spouse some financial assistance to prosecute so

that indigent spouse should not suffer during the pendency of the proceedings because of his or her indigence, a liberal interpretation has to be given enabling the Court to pass an order for maintenance pendente-lite under Section 24 of the Act, even if the main petition had already been decided. Once an application for maintenance pendente-lite is entertained validly, it has to be disposed of not with standing the decision in the main petition. Otherwise if we prohibit the Court from ordering the interim maintenance when the main petition stands decided, it will only promote and encourage the dilatory tactics, now very commonly used for unduly delaying the disposal of application under Section 24 of the Act.

7. UPTO WHAT DATE MAINTENANCE PENDENTE-LITE CAN BE GRANTED:
Maintenance pendente-lite under Section 24 of the Act can be awarded by the Court to the applicant during the proceedings. In preceding pages, it been the date from which the maintenance pendente-lite can be awarded by the Court was discussed. Another important issue is that up to what date the said maintenance can be awarded? In other words, if no order is made on the application filed under Section 24 of the Act, before or at the time of the decision in the main petition under the Act, later on can the Court order the payment of maintenance pendente-lite only up to the date of decision in the main petition or can Court award maintenance pendente-lite up to the date on which application for maintenance is disposed of?
In the preceding pages, after discussing the case law, it we concluded that on an application filed validly under Section 24 of the Act, maintenance pendente-lite can be ordered even after the conclusion of the main petition.

Now, the question for consideration is that upto what date the Court can order the payment of maintenance pendente-lite under Section 24 of the Act. This question was discussed by D.S. Tawatia, J., of the Punjab & Haryana High Court in Sudarshan Kumar Khurana Vs. Smt. Deepak. In this case, the trial Court ordered the payment of maintenance pendente-lite to the applicant wife till the date of decision in the main petition. The wife staked her claim of maintenance pendente-lite upto the date of conclusion of proceeding under Section 24, which continued even after the conclusion of main petition under Section 9 of the Act. The learned judge observed that there is no 'justification for not awarding maintenance pendente-lite to the wife even beyond the conclusion of the main petition till the proceedings under Section 24 and 26 of the Act are finalised'. So, in the views of the learned judge, the maintenance pendente-lite can be ordered upto the date of decision on the application filed under Section 24 i.e. even subsequent to the conclusion of the main petition. A Division Bench of Punjab & Haryana High Court consisting of R.N. Mittal and M.M. Punchhi, JJ. in Sohan Lal Vs.  

1. AIR 1981 P & H 305.
Kamlesh again examined this question that if an application under Section 24 continues after dismissal of the main petition, whether the applicant is entitled to the maintenance till the date of decision of the main petition or the disposal of the application under Section 24? The learned Bench after pointing out the importance of the words 'proceedings' and 'monthly during the proceedings such sum' used in Section 24 overruled the Single Bench decision in the Sudarshan Kumar case relating to its ruling regarding maintenance pendente lite and opined that if the application under Section 24 continues after dismissal of the main petition, the applicant is entitled to the maintenance till the date of the decision in the main petition.

The view taken by the Division Bench in Sohan Lal Case is sound and in consonance with the object of Section 24 of the Act. The object of Section 24 is not to penalise the non-applicant but to provide relief to the indigent spouse during the pendency of the proceedings. If no decision is given by the court on the application filed under Section 24 till the decision in the main petition and it continues even afterwards, the non-applicant should not be blamed for that. It is the duty of the Court to decide such

1. AIR 1984 P & H 332.
2. AIR 1981 P & H 305.
3. p 335 para 11.
application as expeditiously as possible and without any delay. As a matter of fact the application should be decided before the conclusion of the main petition.

(a) UPTO THE DATE OF STAY ORDER OR DECISION IN MAIN PETITION.: Another interesting and important question came before the Delhi High Court for consideration in Jai Ram 1 vs. Om Prakash of maintenance pendente-lite. In this case, the question for consideration was 'whether the wife can claim maintenance allowance as long as the husband's petition is not dismissed or decreed'? Here the husband filed a petition for restitution of conjugal right under Section 9 of the Act. On the application under Section 24 of the Act by the wife, the trial Court made order to pay Rs. 100/- per month as maintenance pendente-lite and Rs. 400/- as expenses of the proceedings. The husband did not pay, so the trial judge on 26.5.1980, ordered, 'the file be consigned to record room for the present. The petitioner can revive the petition after complying with order dated 12.5.1980'. On an application by the wife for the execution of order of maintenance pendente-lite and litigation expenses under Section 28-A of the Act, the trial court issued warrant of attachment for the recovery of litigation expenses and maintenance allowance for the period from 18.2.1980 i.e. date of application under Section 24 of the Act to 26.5.1980 i.e. stay of proceedings. The wife filed the revision petition in High Court Against the said order.

1. AIR 1984 Delhi 301.
Justice A.B. Rohtagi examined this aspect in detail and answered the question saying;

"In my opinion the lis between the parties is at an end, when the court stays the proceedings. It follows that maintenance allowance, being interim pendente-lite must cease when the proceedings are stayed. Upto that date he has to pay. But beyond that date there is no liability to pay which may be enforced by attachment in execution".

The learned judge has rightly observed that:

"It will be incongruous to hold that the husband will be liable to pay maintenance allowance for the period subsequent to the stay even though he is not allowed to go on with the proceedings".

From the above decisions it is clear that where the stay is ordered in the proceedings under the Act, the maintenance pendente-lite can be ordered only upto the date of stay orders and not subsequent there to. This is certainly the true construction of the provisions of Section 24 of the Act. The words 'During the proceedings' or 'Wherein any proceeding under this Act' and marginal note of the Section too' maintenance pendente-lite and expenses of the 'PROCEEDINGS' clearly shows that the order of maintenance which the court awards under Section 24 of the Act is to last only for the period of proceedings. If there is no proceedings before the judge, no order for maintenance can be issued because nature of order under Section 24 is temporary order, the life of which is co-terminous with the proceedings, where

1. Latham Vs. Latham,(1861) 164 ER 1011.
the proceedings are ordered to be stayed, one cannot argue plausibly that the proceedings are still pending or continuing. The petition does not continue after stay. Therefore, maintenance pendente-lite can be ordered to be paid up to the date of stay order and not beyond that date.

8. MAINTENANCE TO CHILDREN UNDER SECTION 24 VIS-A-VIS SECTION 26 OF THE HINDU MARRIAGE ACT, 1955: From the reading of the provision of Section 24 of the Act, it is clear that this provision primarily deals with the maintenance of husband or wife, as the case may be during the proceedings. But nobody can deny the fact that most unfortunate aspect of matrimonial disputes is always the offspring of such marriages. The controversial question raised before the High Court was whether the children of such marriage can claim maintenance under Section 24 of the Act?

In 1966, the Orissa High Court decided this question in Akasom Chinna Babu Vs. Akasamparbatı. The Division Bench of the High Court speaking through Das, J., held that Section 24 does not authorise grant of any pendente-lites maintenance to the daughter and in terms applies either to the wife or the husband as the case may be. Same view was taken in Purshottam Dass Aggarwal Vs. Pushpa Devi.

Later on in Mahendra Kumar Misra Vs. Smt.

1. AIR 1967 Ori. 163.
2. AIR 1982 Ori.270.
Snehlata Kar the decision of the Division Bench in Akasom case and Purshotam Dass Aggarwal was distinguished on the ground that Section 26 of the Act was not considered in the said decision.

Again S.C. Mahapatra, of the Orissa High Court, has rightly observed in Sudhir Lata Dei Vs. Krushma Chandra Mohanty:

"It is true that application for pendente-lite maintenance of wife and child and litigation expenses has been nomenclature to be one under Section 24 of the Act.... Section 26 of the Act provides that in a proceedings under the Act, Court can pass interim orders with respect to the maintenance and education of minor child. Therefore, nomenclature of an application cannot decide the maintainability of such application wherein interim relief is prayed for maintenance and education of child. Where an application contains prayer for maintenance of a spouse and the minor child and litigation expenses the same can be treated to be one under Section 24 and 26 of the Act".

The single Judge of the Patna High Court took the view similar to that of Akasom case, in Bankim Chand Vs. Anjali Roy stating that no monthly allowance can be granted

1. AIR 1983 Ori.74
2. AIR 1967 Ori.163
3. AIR 1982 Ori. 270
4. 1990 (2) HLR 423.
5. AIR 1967 Ori. 163.
6. AIR 1972 Pat. 80, See Baboolal Vs. Prem Lata, 1973 W.L.R 809, wherein the learned judge did agree with the view taken in Bankim Case, ibid, that section 24 of the Act did not authorise grant of any pendente-lite maintenance to children but noted the power to grant such relief is under section 26 of the Act.
under Section 24 for the support of the children.

The Punjab & Haryana High Court had to consider the question at different times under circumstances. In Mohan Singh Vs. Smt. Pushpa Devi the subordinate judge awarded Rs.80/- per month for the maintenance of the wife, Rs.40/- and Rs.30/- respectively for the maintenance of a son and a daughter. The single judge of the High Court set aside the order of the subordinate judge in so far it related to the award of maintenance to the son and daughter admitting that it is true that section 24 does not provide for the award of maintenance to children separately. But the learned judge Chinnappa Reddy, further expressed the view that perhaps if the children are under the protection of the wife, the court will be justified in taking that circumstances into account in awarding maintenance to the wife.

In Sharda Vs. Krishan Kumar the said question was not raised directly. Here both the husband and wife were earning hands as the husband was an Advocate and the wife was a Government Teacher. G.C. Mittal, J., denied maintenance pendente-lite and litigation expenses to the wife but thought that Rs. 250/- per month will be required for the maintenance of the child. Since both the parents of

1. 1978 HLR 586.
2. Same views were expressed in Balbir Kaur Vs. Raghbir Singh AIR 1974 P & H 225.
the child were earning, the learned judge placed the burden on them equally. The husband was asked to pay Rs. 125/- towards maintenance of child to the wife as she was maintaining the child.

The Decision of the High Court consisting of learned C.J. Harbans Singh and R.S. Narula, J, in Smt. Usha Vs. Sudhir Kumar ruled that there is no doubt that under Section 24 of the Act the child cannot claim maintenance and it is only either of the two spouses who can make a claim. But, the learned Judges devised a new technique to help the helpless children getting assistance from Section 26 of the Act there lordships observed;

"At the same time, it is clear that a claim can be made for maintenance of a child during a proceeding under the Act and the Court can in exercise of powers vested in it by Section 26 of the Act, pass such interim orders in any proceedings under the Act, from time to time, as it may deem just and proper with respect to the maintenance and education of minor children, consistently with their wishes wherever possible".

Same views has been expressed by Justice J.V. Gupta in Kamlesh Arora Vs. Jugal Kishore Arora, wherein it was held that minor daughter was entitled to maintenance in an application under Section 24 of the Act. The Andhra Pradesh High Court took same approach in Katamonchi Appo Rao Vs.

1. 1975 HLR 1
2. See also Chand Gupta Vs. Adarsh Pal Gupta 1(1986) HLR 460., wherein nobody disputed the child's right to maintenance u/s 24 of the Act.
3. 1989 HLR 208 (P & H)
atamanchi Paradishma.

Just after six weeks after the decision in Arora case Justice J.V. Gupta, vividly laid down the correct position of law in Neelam(Smt.) Vs. Ramesh Kumar observing that the respondent being the father of the said minor child was liable to pay maintenance for the minor child in an application under Section 24 of the Act read with Section 26 thereof.

Recently, learned judge A.L. Bahri in Mrs. Gurveen Kaur Vs. Ranjit Singh Sandhu, after examining the decision of Orissa High Court in Akasom Chinna Babu and Punjab & Haryana High Court decisions in Mohan singh, Shards case, Arora case, and Neelam case, upheld the court's jurisdiction to grant maintenance pendente-lite to the child under Section 24 of the Act.

Surprisingly, the learned judge has not mentioned the decision of Division Bench in Usha Vs. Sudhir Kumar. It is clear that the best interpretation of the provisions relating to maintenance pendente-lite to the child is to be

2. ibid decided on 1.6.89
3. 1989 (2) HLR 210 decided on 12.7.89
4. 1990 (1) HLR 672
5. Supras.
found in Usha case. and later on in Neelam (Smt.) case, wherein it is rightly held that maintenance pendente-lite to the child can be granted in an application under Section 24 read with Section 26 of the Act, thereof.

From the reading of Section 26 of the Act, it is very clear that no normal application is required to be filed by or on behalf of the minor child for maintenance pendente-lite even under Section 26 of the Act.

S.K. Mal Lodha, J., of the Rajasthan High Court, Jodhpur Bench, discussed the said question in detail in Pushpa Devi Vs. Om Parkash. His lordship examined the divergence of judicial opinion on the point and, having considered the language used in Section 24 and Section 26 of the Act, the learned judge subscribed to the view taken by Punjab & Haryana High Court in Usha case and dissented from the view taken in Akasom Chinna case and Bankim Chand.

1. 1975 HLR 1.
2. Ibid,
4. A detailed discussion to this effect has been undertaken lateron.
5. 1985(2) HLR 327.
7. AIR 1967 Ori. 163 and AIR 1972 Pat. 80, respectively.
Venkataswami J., of the Karnataka High Court in Thimmappa Vs. Nagaveni agrees with the decision of the Andhra Pradesh High Court in Katamanchi Appa Rao case.

A Division Bench of Calcutta High Court has also examined the said question in Dr. U.K. Banerjee Vs. Manjula Devi Banerjee. Referring to its earlier Division Bench decision in Manoj Jaiswal Vs. Lila Jaiswal, the learned judges concluded that maintenance pendente-lite under Section 24 can be awarded to the children even without any formal application in writing. The learned Bench observed that even though Section 24 of the Act does not in terms provide for maintenance to children, the court has perfect jurisdiction to grant pendente-lite maintenance to minor children as enshrined under Section 26 of the Act. Even when moved by an application labelled as one under Section 24 only, such an application cannot be termed as without jurisdiction.

The Himachal Pradesh High Court in Mrs. Rajni Abro, Vs. Adarsh Abrol has also ruled that pendente-lite

1. 1976 HLR 693.
3. 1(1989) DMC 276 per A.M. Bhatta Charjee and Ajit Kumar Nayak, JJ.
5. 1989 (2) HLR 114
maintenance to children could be awarded even when no formal application is filed and the application filed under Section 24 could be considered to have been filed under Section 26 also.

In the conclusion it may be averred that from the reading of Section 24, it seems that maintenance pendente-lite can be ordered only to a wife or husband, as the case may be, but as rightly held by the High Courts of Punjab & Haryana, Karnataka, Andhra Pradesh, Himachal Pradesh and Orissa in the above Examined decisions, the provisions of Section 26 can be involved in aid of the unfortunate children to provide them maintenance even though the application for maintenance pendente-lite is filed under Section 24 of the Act.

9. EFFECT OF NON-COMPLIANCE OF MAINTENANCE PENDENTE-LITE ORDERS:

Sometimes, difficult situation arises, when the nonapplicant refuses to pay the pendente-lite maintenance or litigation expenses amount awarded by the Court under Section 24 of the Act. Therefore, important an question which arises for our consideration is that what would be the remedy in case the non-applicant refuses to comply with the Court's orders? How such order can be enforced?

One may contend that the simple answer to that question is that such order should be enforced like any other
order of the Civil Court under the provisions of Code of Civil Procedure, 1908. But the very purpose of maintenance pendente-lite will be frustrated, if the applicant is asked to resort to execution proceedings under the provision of Civil Procedure Code, which is a risky and difficult pathway. The execution provisions contained in Order XXI of Civil Procedure Code are cumbersome and time consuming. In this background, the matrimonial courts have rightly invoked their inherent powers to get the order of maintenance complied with. The Court, with a view to enforce the maintenance pendente-lite orders, have resorted to the exercise of the inherent power by ordering the stay of proceedings, or striking out the defence of dismissing the petition or dismissing the appeal. Thus, the Court comes to the rescue of the indigent spouse by exercising the inherent power in several ways, as follows:

(a) STAY OF PROCEEDINGS: herein the main proceedings have been started by the non-applicant or defaulting spouse, the matrimonial Courts, stay the proceedings at the initial stage, if the petitioner refuses to pay the pendente-lite maintenance ordered by the Court. Therefore, when a matrimonial Court passes an order of maintenance pendente-

lite under Section 24 of the Act and such order is not complied with by the petitioner in the main proceedings, the Court has the inherent power to stay the proceedings.

(b) DISMISSAL OF PETITION: In an earlier decision by the Bombay High Court in W. Codd vs. B.E. Codd, it was opined that the husband's petition should be stayed and not dismissed in case of husband's failure to give security for the wife's costs as ordered by the Court inspite of his being able to pay but deliberately refused to do so.

But now the trend has emerged that when the petitioner has not complied with the order of maintenance pendente-lite even after availing an opportunity to pay the maintenance amount, the Court may dismiss the petition instituted by him or her, where it comes to the conclusion that the non-payment was deliberate and contumacious. But it must be noted that dismissing the petition is the most drastic step. It must be exercised with restraint S.C. Mahapatra, J., of the Orissa High Court has rightly cautioned in B.C. Padhy Vs. Kamla Padhy that 'the power


2. AIR 1924 Bom. 132.


4. AIR 1987 Ori. 167.
should not be allowed to be utilized by a party to harass the other party to whom direction is given merely on account of non-payment. In such cases the party entitled to receive pendente-lite maintenance and expenses of proceeding can be allowed to execute the order and till then the proceedings can be stayed?

(c) DISMISSAL OF APPEAL: Where an appeal is filed by the husband, the pendente-lite maintenance is awarded to the wife under Section 24 of the Act and husband has not cared to comply with the specific orders for the payment of maintenance pendente-lite, the Court may exercise its inherent power and dismiss the appeal in such a situation.

Hon'ble Justice A.S. Bains of the Punjab & Haryana High Court has observed in Surinder Kumar Vs. Smt. Sarda Rani.

"This seems to be the persistent view of this court that where the orders of this court are not complied with by the husband in the appeal under the Hindu Marriage Act, then, if he is the appellant, his appeal is dismissed and if he is the respondent, the appeal is allowed against him".

The learned judge reaffirmed the said opinion later on in Smt. Banso Vs. Shri Sarwan.


(d) STRIKING OFF THE DEFENCE IN TRIAL CASE AS WELL AS IN APPEAL: Sometimes, the staying of proceedings may result in hardship to the spouse in whose favour, the court has passed the order for maintenance pendente-lite under Section 24 of the Act. In such cases, the Court can exercise its inherent power and to ensure the implementation of its orders, it can strike of the defence. But, before, the court take this strong action for ensuring compliance of its orders, it must warn the defaulting spouse. The Courts action should not be harsh and the Court should not strike of the defence outrightly merely on the bases of technicalities.

(e) NON-COMPLIANCE OF ORDER WOULD IT AMOUNT TO CONTEMPT OF COURTS; The Courts have divised another manner to ensure the compliance of pendente-lite maintenance order passed under Section 24 of the Act. Where the non-applicant deliberatly and contumaciously disobeyed the Court's order to pay maintenance pendente-lite, the applicant is entitled to start the contempt proceedings against the defaulter. Justice G.C. Mittal of the Punjab & Haryana High Court has given such right ot the applicant in Smt. Naresh Kumari


But a contrary stand has been taken by the Delhi High Court in Varinder Anand Vs. Dr. Majoi Anand, which is also supported by Sh. S.N. Aggar.al.

It would be reasonable to assert that the line adopted by Punjab & Haryana High Court is consonance with the spirit of law. It would not amount to stretching the things too far, if the applicant is allowed to start contempt proceedings. Wherever, the non-applicant willful deliberately and contumaciously intends to harass the applicant who could certainly be in dire need of maintenance, the Court must allow the contempt of Court proceedings to be initiated.

10. EXECUTION OF ORDER OF MAINTENANCE PENDENTE-LITE: It is open to the applicant to get the maintenance pendente-lite order passed under Section 24 executed like any other money decree.

11. QUANTUM OF INTERIM MAINTENANCE AND CONSIDERATION FOR ITS FIXATION THE MOST DEBATEABLE POINT AMONG THE HIGH COURTS: This aspect of the provision has become most controversial. Divergent views are expressed by different High Court on the question of quantum of maintenance.

1. 1985(I) HLR 144.
2. 1990(2) HLR 35, see also Balwinder Kaur Vs. Jaswant Singh, 1979 MLR 76.
3. AIR 1987 Delhi 120.
According to Section 24 of the Hindu marriage Act, 1955 the Court may:

"Order the respondent to pay the petitioner the expenses of the proceedings, and monthly, during the proceeding, such sum, having regard to the petitioner’s own income and the income of the respondent as it may seem to the court to be reasonable".

From the above wording it is evident that the Court may order the payment of

- expenses of proceeding.
- monthly i.e. fixed amount to be paid to the applicant every month during the proceeding.

And for awarding such monthly payment the Court will have regards to the

- income of the 'applicant' and,
- income of the respondent.

Thus, the condition precedent for awarding such maintenance is that the claimant has no ‘independent income’ sufficient for his or her support and necessary expenses of the proceeding. Therefore, the Court is not required to give any regard to the conduct of the parties for fixing and awarding the maintenance pendente lite as has been observed by S.S. Sodhi, J., in Rajinder Kaur Vs. Atinderjit Singh that;

"Proceedings under Section 24 of the Act provides neither the occasion nor the stage for the Court to enquire into the veracity or the weight to be attached to the allegations in the pleadings of the parties. Indeed to go into

3. 1990 (1) HLR 255 (P & H).
such allegations would clearly introduce extraneous consideration or amount to prejudging the main issue".

It must be noted that the amount of maintenance pendente-lite is to be ordered on monthly basis whereas the expenses of the proceedings may be paid in lumpsum.

Undoubtedly, maintenance pendente-lite will be awarded as it 'seems to the Court to be reasonable'. Thus, the court has full discretion to fix the amount of maintenance as it may deem reasonable. But what is reasonable amount? It differs from case to case and depends upon the facts and circumstances of each case. Though, the Court has discretion to fix a reasonable amount as maintenance pendente-lite this discretion has to be exercised judiciously in order to serve the interest of justice and on the basis of certain well established principles.

It is pertinent to point out here that under the Indian Divorce Act, 1869, the rule of 1/5 is adopted. Provisio in Section 36 of the Divorce Act enacts that alimony pending the suit shall in no case exceed one fifth of the husband's average net income for the three years next preceding the date of the order.


1955, no such specific proposition has been incorporated. Thus it leaves everything to the discretion of the Court. No mathematical formula of 1/5 or 1/3 or any other proportion can be formulated under the Act. The Legislature in its wisdom did not impose any restriction on the Court's discretion and no percentage of the income is fixed. Therefore, no arithmetical rule should be adopted to fix the quantum of maintenance. A Division Bench of the Bombay High Court in Dinesh Vs. Ushahas very rightly not only rejected the applicability of the 1/5 rule under Section 24 of the Hindu Marriage Act but has also renounced the 1/5 rule under Section 36 Divorce Act itself Justice Deshpande speaking for himself and Justice Mrs. Manohar, has observed that;

"We are unable to trace any rational basis for the rule which prevents the wife from claiming more than 1/5th, even when her needs, and capacity of the husband, warrant awarding large amount. This amounts almost to be a rule of the thumb. Such a provision in the Act of 1869, may have been based on the then notions and concepts, as to a woman's status and position in the society and her claim against the husband".

Pointing out that the maintenance provisions under the Hindu Marriage Act, 1955 are enacted to keep pace with the guarantee of equality to every citizen afforded by the constitution, his Lordship observed;

2. AIR 1979 Bom. 173.
"Such a rule, apart from being unreasonable and irrational also cuts the root of such equality. Such a rule militates against the reasonableness of approach conceived under this Section".

But, unfortunately, some of the High Courts still insist on the 1/5 or 1/3 rule. Justice D.V. Sehgal of the Punjab and Haryana High Court opined in Sham Lal vs. Dhanwat that:

"According to the settled law, the petitioner is liable to pay to the respondent \(\frac{1}{3}\) of his income as maintenance pendente-lite".

A Division Bench of the Madhya Pradesh High Court has invented a new arithmetical rule in Ravendera Singh Choudhary vs. Smt. Seema Bai. The learned Division Bench held:

"Usually pendente-lite maintenance is granted at \(\frac{1}{5}\) of the husband's average net income after deducting the wife's income, if any".

 Husband's income being Rs.750 p.m., the Division Bench ordered maintenance pendente-lite under Section 24 of the Act at the rate of Rs.150 p.m. in favour of the wife.

Justice B.M. Lal of the Madhya Pradesh High Court has given a new doctrine to fix the amount of maintenance pendente-lite under Section 24 of the Hindu Marriage Act, 1955 in P. Padmavati vs. K.G. Gopinath Nayar. His Lordship ruled:

1. 1990 (I) HLR 369.
2. Emphasis supplied.
3. 1990 (1) HLR 251 per C.P. Sen and P.C. Pathak, JJ.
4. Emphasis supplied.
"No doubt, if there are no dependents of the husband, the wife being Ardhangani is certainly entitled to receive half of the salary of the husband."

But, A.G. Qureshi, J., of the same High Court in Prahald Pal Vs. Uttam rejected the argument of the Division Bench in the Raghevendera Singh Choudhary case that maintenance amount of more than 1/5 of the income cannot be allowed as maintenance pendente-lite. The learned judge opined that even though the Division Bench has observed that, usually, maintenance amount is granted at one fifth of the husband’s average net income, yet the Court has not laid down any hard and fast rule that it should invariably be so.

A.L. Bahri, J., of the Punjab and Haryana High Court in Mrs. Gurveen Kaur Vs. Ranjit Singh Sandhu, though noted that there is no fixed formula for allowing maintenance out of the income of the husband to the wife, yet without referring to any decision observed that in some cases 1/3 of the income of the husband has been allowed as maintenance to the wife and in some cases one half of the income.

Taking the income of the husband at Rs.1000/- p.m., the learned judge ordered the maintenance pendente-lite at the rate of Rs. 1500/- p.m. i.e. one half of the income of the husband to be paid by him to the wife.

Justice B.N. Kirpal, of the Delhi High Court has

2. Supra.
3. 1990 (I) HLR 672.
very rightly construed the provision of Section 24 of the Act in Promila Nangia Vs. Baldev Raj Nangia. His Lordship referred to the decision, Devi Dutt Singh Vs. Rajni Gandhi, wherein Avadh Behari, J., of the Delhi High Court concluded that 'one third is a good and rational starting point remembering that it is not an inflexible rule, but only a starting point' and disagreed with the decision of P.K. Bahri, J., wherein his Lordship held that, 'the maintenance allowance should be usually granted to the extent of one fifth of the salary of the husband'. Justice Irpal, then observed:

"There can be no mathematical basis in calculating the amount of maintenance which should be allowed. What has to be awarded must necessarily depend upon facts of each case. The Court has to take the totality of the circumstances into consideration and then find an equitable solution to a very vexed problem".

The learned judge awarded Rs. 1000/- p.m. as maintenance pendente-lite to the wife, out of the disposable salary of Rs. 3600 p.m. of the husband.

Dr. Paras Diwan has rightly submitted that 'the discretion of the Court shall not be hampered by any rigid formula, and the Court after considering all the circumstances, should fix an amount of maintenance which it

1. 1989 (2) HLR 37.
2. AIR 1984 Del. 320.
considers to be reasonable’. Mulla has also submitted that it is essential to note that there can be no rigid rule in maintenance as to the proportion to be given and it would be an error to decide first what the proposition should be and then to examine to other relevant factors. The Court will take all the circumstances of the case into account and arrive at a proper solution having particular regard to the factors which are mentioned in the Section. Justice Avadh Behari in Devi Dutt Singh Vs. Ranji Gandhi has lucidly held that,

"Section 24 is not a code of rigid and inflexible rules, arbitrarily ordained, and to be blindly obeyed. It leaves everything to judge's discretion: It does not enact any mathematical formula of one third or any other proportion. It gives wide power, flexible and elastic, to do justice in a given case."

From the above discussion, it may be concluded that the 1/5 or 1/3 or 1/2 rule should not be incorporated into the ambit of Sec. 24 of the Act. The court is vested with wide discretion to fix the quantum of maintenance pendente-lite. The Legislature in its no percentage of the income is fixed. Therefore, the Courts should not adopt any arithmetical rule to fix the quantum of maintenance pendente-lite for the spouse and it has to be fixed keeping in view all the facts


2. Supra.

and circumstances of each case in their totality to do justice in a given case.

On the perusal of the provision of Section 24 of the Act, in awarding maintenance pendente-lite, the Court is to satisfy itself that the claimant applicant must not have independent income sufficient for her or his support and the necessary expenses of the proceeding. The court while fixing quantum of maintenance pendente-lite must have regard to the applicant's own income and the income of the non-applicant.

But, it was not the intention of the Legislature that the applicant must be a penniless person to ask for maintenance. Where the applicant has income but not sufficient for his or her support, the court may order maintenance pendente-lite having regard to the non-applicant's income. A Division Bench of the Madhya Pradesh High Court in Radhikabai Vs. Sadhuram has very correctly envisaged the situation by observing:

"It does happen that in the absence of independent income, the party manages to keep alive and even to contest in law courts on the help provided by relations or friends. But, while considering whether any grant should be ordered, the goodwill or charity of relations and friends cannot be taken into account. What is to be examined is whether there is sufficient independent, income by which is meant actual income and not merely possible or potential income."

1. Mrs. Gurveen Kaur Vs. Ranj... Singh, 1990(1) HLR 672.
3. Emphasis supplied.
The learned Bench rejected the plea of the husband that because the wife possessed ornaments she was not entitled to maintenance pendente-lite. The Division bench ruled:

"Section 24 does not envisage the substitution of customary ornaments for the income nor can the Court, in our opinion, refuse to make a grant for support simply because the wife can pull on for sometime by selling the ornaments". 1

Similarly in Mrs. Gurveen Kaur Vs. Ranjit Singh Sandhu, Justice A.L. Bahri was of the view that 'were existence of fixed Deposits Receipt or immovable property will not be sufficient to deny the claim of the spouse for maintenance pendente-lite.' The learned judge further observed that 'the wife is required to be maintained in the same standard of living which her husband or both the parties have been living.'

Thus, capacity to earn itself is not sufficient to deny the claim of maintenance pendente-lite. Where the wife is a law graduate, but is not a practising advocate, she cannot be denied maintenance pendente-lite. A husband cannot escape from the liability of maintenance pendente-lite merely because of the potential earning capacity of the wife. Independent sufficient income should not be treated

1. ibid p. 15.
2. 1990(1) HLR 672.
5. Radhika Bai, Supra.
as equivalent to potential earning capacity.

Justice G.C. Suri of the Punjab and Haryana High Court has observed in *Bibi Balbir Kaur Vs. Raghubir Singh* that an able-bodied, foreign qualified Engineer husband, though unemployed cannot disown his liability to maintain his wife and children and leave them to starve until he comes by a job to his liking.

But, Justice Charanjit Talwar of the Delhi High Court in *Rishi Dev Anand Vs. Devinder Kaur* exempted the husband from the payment of maintenance pendente-lite during the medical leave without pay which he took bonafidely and not with a view to defeat the claim of maintenance of the wife.

Where both wife and husband are the students of MBBS and M.Sc. courses, respectively, the Madras High Court in *Rajambal Vs. Muragappan* that obreaved trial court has rightly held the wife not to be entitled to maintenance pendente-lite under Section 24 of the Act.

From the above discussion, it may be concluded that no fixed rule can be enunciated on the question of quantum of maintenance pendente-lite. It must necessarily depend on the facts and circumstance of each case. Undoubtedly, the court is conferred with wide discretionary power to fix the amount of maintenance. Under Section 24 of

1. AIR 1974 P & H 225.
2. AIR 1985 Del. 40.
3. AIR 1985 Mad. 284.
the Act, Court’s jurisdiction is judicial and not arbitrary and capricious. Therefore, while determining the quantum of maintenance under Section 24, the Court, besides taking into consideration the income of the applicant and the non-applicant or respondent, must consider the relevant facts and circumstances of the case.

12. ORDER OF MAINTENANCE PENDENTE-LITE CAN IT BE VARIED

LATERON : Section 24 of the Act does not contain any specific provision regarding alteration or to about varying the quantum of maintenance pendente-lite. But Justice M.S. Liberhan of the Punjab & Haryana High Court has opined in Mohinder Kaur Vs. Gobind Singh that since the order of maintenance pendente-lite does not attain finality, it can be varied during the pendency of the litigation.

In Sudha Mehta Vs. Ravinder Mehta, Justice N.C. Jain has allowed an increase of Rs.100 p.m. and fixed the maintenance pendente-lite under Section 24 of the Act at the rate of Rs.500 p.m.

The Punjab & Haryana High Court in Shiv Chander Lal Vs. Raj Kumari, Asha Vs. Surinder Kumar, Manjit Kaur Vs. Gurdial Singh Sandeep Kaur Vs. Charanjit Singh also

1. 1990 (1) HLR 273.
2. 1990 (2) HLR 221 (P & H).
4. 1976 HLR 690.
5. AIR 1978 P & H 150.
allowed the enhancement in maintenance allowance and litigation expenses.

Sometimes, it is argued that under Section 2 of the Act, once an order of maintenance pendente-lite is passed by the court, it ceases to have any jurisdiction to vary such order later on. This argument is advanced on the plea that under Section 25 of the Act, power to vary the order of maintenance is specifically conferred on the court and no corresponding provision has been enacted under Section 24 of the Act. Thus, the intention of the Legislature was manifest that under Section 24 of the Act the Court should not have the power to vary the order of maintenance. rejecting such an argument, Justice Kaur Singh of the Rajasthan High Court has observed in Devki Vs. Purshotam that:

"Section 24 of the Act vests a wide discretion a Court in the matter of fixation of pendente-lite maintenance and costs of the proceedings. The discretion, however, has to be exercised judicially. If there is no enabling provision in the Act for changing such an order by the court, there is at the same time no disabling provision either and therefore, the court can in an appropriate case exercise its inherent powers to vary an order of maintenance provided there is a change in circumstances justifying variation of the order. If that were not so, it may lead to manifest injustice in some cases, for example at the time of granting of maintenance the order spouse may be having a substantial income and after sometime if that income were to be lost by change of fortune or on account of some accidental causes then the continuance of the same maintenance may result in hardship to the other spouse who is to pay the maintenance. Therefore, I should think that

1. AIR 1973 Raj. 2 at p.3
in an appropriate case the court should be able to exercise its inherent powers under Section 151 Civil Procedure Code.

True, there is no specific enabling provision in Section 24 of the Act to vary the order of maintenance. Actually there is no need to have such provision. Under Section 24, the orders are interim orders. The court is still seized of the matrimonial dispute. It is yet to be decided by the court. Therefore, the court has jurisdiction to vary the order of interim-maintenance at any time during the pendency of proceedings, if there is change in the circumstances which is sufficient to justify such a change. Whereas under Section 25 of the Act order for permanent alimony and maintenance are made at the time of 'passing any decree or subsequent thereto'. That means, when an order for permanent alimony and maintenance are made under Section 25, the main petition is disposed of or has already been decided. The court becomes functus officio after such an order and decision. Because of this reason, the Legislature has to enact specific provision in Section 25 of the Act to enable the court to vary the order of permanent maintenance.

In Anuradha Vs. Santosh Nath, Justice B.C. Misra of the Delhi High Court has also observed that:

"The object behind the passing of the order under Sec.24 is to provide financial assistance to the indigent spouse to maintain herself(or himself, as the case may be) during the pendency of the proceeding and also to have sufficient funds to defend or carry on the litigation, so that the spouse does not unduly suffer in the conduct of

1. 1977 HLR 35.
the case for want of funds. Such an order is essentially in the nature of an interim order. Interim orders, in my opinion are by their nature such, that in, their respect the court must always retain inherent jurisdiction and power to vary, modify or rescind, as the circumstances may justify. Section 151 of the Code of Civil Procedure, in terms prescribes, that nothing in the code shall be deemed to limit or otherwise, affect the inherent power of the court to make such an order, as may be necessary for the ends of justice or to prevent abuse of the process of the court. The inherent jurisdiction includes a power to review an inter-locutory order to recall and cancel previous order or orders which cause injustice.1

Recently, in Laxami Priya Rout Vs. Kama Prasad Rout, the trial court rejected the second application of the wife filed under Section 24 of the Act for the enhancement of maintenance amount already granted in her favour. The subordinate judge was of the opinion that Sec. 24 of the Act does not contemplate filing of successive applications for interim maintenance and cost of proceedings and therefore, court has no jurisdiction to entertain application for enhancement of the amount already granted by it. Aggrieved by this decision, the wife filed Civil Revision in the High Court, Justice D.P.Mahapatra thoroughly examined the intent and purpose behind the provisions of Section 24 of the Act and thus allowed the revision petition. The learned judge set aside the order of the trial court and directed it to consider the application filed by the wife for modification of interim maintenance and expenses of the proceeding

1. ibid p.39.
2. AIR 1992 Ori. 88.
granted earlier. Justice Mahapatra has very rightly observed:

"In its very nature the quantum of interim maintenance cannot be taken to be fixed amount which if determined once, can in no circumstances be altered. The change in the circumstances relevant to the matter may call for a revision of the order. No doubt, Sec. 24 unlike Sec. 26 does not expressly provide that the court may pass orders for interim maintenance\expenses of the proceedings from time to time. But there is no express or implied bar in the provision for exercise of such jurisdiction in a deserving case. Therefore in my view it will neither be legal nor just and proper to limit the wide discretionery power conferred on the court by holding that the court has no power to modify or vary its order awarding interim maintenance even on proof of changed circumstances".

It is submitted that the court has inherent jurisdiction under Section 24 of the Act itself to vary, modify, or rescind its previous orders. But this jurisdiction has to be exercised judiciously in the interest of justice. If the court finds the change in the circumstances, which provide justification for varying its order of maintenance pendente-lite, it should exercise its inherent power to do so judicially.

13. NO APPEAL LIES AGAINST ORDER OF MAINTENANCE PENDENTE LITE PASSED UNDER SECTION 24 OF THE ACT: After the 1 amendment of the Act of 1976, Section 28 of the Hindu Marriage Act, enacts the provision regarding appeals against decree and orders passed under the different provisions of the Act. Appeal can be filed against all the decrees passed

1. Act No. 68 of 1976, which can into force on 27th May, 1976.
under the Act i.e. decree of restitution of conjugal rights, judicial separation, nullity of void marriage, nullity of voidable marriage, divorce and divorce by mutual consent. Appeal is also allowed against orders made in any proceeding under the Act viz: Under Sect. 25 or 26 of the Act. But no appeal shall lie on the subject of cost only. Sub-Section (2) of Sec. 28 of the Act specifically says that orders are applicable, if they are not interim orders. Every appeal is to be filed within a period of thirty days from the date of the decree or order. All appeal shall lie to the Court to which appeals ordinarily lie from the decision of the court given in the exercise of its original civil jurisdiction. As all the petitions under the Act are to be filed in the District Court, appeal shall lie to the High Court.

Unamended Section 28 of the Hindu Marriage Act, 1955 was as under:

Section-28: All decrees and orders made by the Court in any proceedings under this Act shall be enforced in like manner as the decree and orders of the Court made in exercise of the original civil jurisdiction are enforced and may be appealed from under any law for the time being in force;

1. Section 28 (1).
2. Section 9 to 13-B of the Act, respectively.
3. Section 28 (2).
4. Section 28 (3).
5. See Section 19 of the Act.
Provided there shall be not appeal on the subject of costs only"

Thus, under old Sec. 28, all decrees as well as orders were appealable except the order of costs. The result of this provision was that there used to be appeals against every order passed under the provision of Hindu Marriage Act, except orders of cost. This resulted in a flood of appeals in the Appellate Courts. Moreover, the proceedings under the Act could not see the end within a reasonable time. The Parliament, therefore, by Act No. 68 of 1976, which came into force on 27 May, 1976, amended Section 28 with substantial changes.

As indicated earlier, under the new amended Section 28 of the Act, order made by the Court under Section 25 or Section 26 shall be appealable if they are not interim orders there shall not be any appeal against order of costs only. It must be noted that exclusion of Sec. 24 of the Act is very significant. Now, Section 28(2) totally bars an appeals against an order passed under Sections 25 and 26 of the Act.

In a landmark judgement, a Division Bench of the Bombay High Court consisting of S.P. Kurdukar and S.S. Dani, JJ., has thoroughly examined the provisions of Sec. 24 vis-a-vis Section 28 of the Act as well as cl.15th of the Letters Patent Section 19 of the Family Courts Act, 1984 in


2. AIR 1991 Bom. 423.
of different High Courts in

1. Dinesh C. Mehta Vs. Usha D. Mehta,
2. Rajpal Vs. Dharmavati, Narendra Kumar Mehta Vs. Suraj Mehta,
3. Dilipbhai Patel Vs. State of Maharashtra,
4. the learned Division Bench ruled:

"Thus the legal position that emerges is that under Sub-Section (2) of Section 28 no appeal shall lie to the High Court against interim orders passed under Sections 24, 25, or 26 of the Act. Under this sub-Section reference to Section 24 is purposely omitted and this is a pointer to hold that the legislature wanted to expressly bar an appeal against any order passed under Section 24 of the Hindu Marriage Act."

It was argued before the High Court that Section 24 of the Act is an independent provision and every order under Sec. 24 of the Act is an order, to be more precise, final order and not an interlocutory order and resolutely, appeal can be filed against such order. The Division Bench discussed the law laid down on this point of interlocutory order in

5. Shahbabu Lal Khimji Vs. Jayaban, Mohanlal M. Thakkar Vs. State of Gujrat,
6. Madhu Limaya Vs. State of Maharashtra,

1. AIR 1979 Bom 173.
2. AIR 1980 All. 350.
3. AIR 1983 A.P. 100.
4. AIR 1983 Bom. 128.
7. AIR 1978 S.C. 47.
The Division Bench finally concluded:

"Upon review of various decisions of the Supreme Court, We may sum up that the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issue sought, but not a final decision or judgement in the matter in issue".

Then the Division Bench noted the definition of the Word 'interlocutory order' from Wharton's Law Lexicon (14th ed., p. 529) which reads as under:

"An interlocutory order or judgement is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties".

And held:

"an order under Section 24 of the Hindu Marriage Act does not decide in any manner the rights and liabilities of the parties raised in the Hindu Marriage petition. Lis in M.J.Petition continues ... The phraseology used in Section 28 of the H.M.Act unmistakably emphasises that no appeal for an order under Section 24 of the Act is competent".

But, a Division Bench of the Madhya Pradesh High Court consisting of C.P. Sen and P.C. Pathak, JJ., took a contrary view in Ragvendra Singh Chaudhary Vs. Smt. Seema Baias

"Therefore, an appeal will lie against an interlocutory order if it is a judgement. Clearly the order passed u/s 24 of the Hindu Marriage Act is a judgement as it decides the question of maintenance during the pendency of the suit and therefore, there is final adjudication".

Thus, the Division Bench opined that appeal is allowed against the order of maintenance pendente lite passed under Section 24 of the Act, because the question of maintenance is finally adjudicated. To arrive at such a conclusion,

1. 1990 (1) HLR 251.
the Division Bench took strength from the Bombay High Court decision in Dinesh Vs. Usha where the Bombay High Court has taken the question as to the view that pendente-lite maintenance does raise controversy independently of the suit and decision therein concludes controversy finally between parties and as such Letter Patent Appeal is maintainable'

Interestingly, the Bombay High Court decision in Dinesh case was also referred lateron before the Division Bench of same High Court in Sunil Hansraj Gupta case. But, the Division Bench in Sunil Hansraj case did not agree with the argument that in Dinesh case, the Division Bench has ruled that 'order under Section 24 of the Hindu Marriage Act was a judgement' and therefore order u/s 24 are appealable. Rather, the Division Bench in Sunil Hansraj case opined that 'ratio of this Dinesh judgement is found in para 9' and the Division Bench thus quoted:

"The impugned order is neither a decree nor an order under Section 25 or 26 of the Act. This order, therefore, does not appear to be appealable".

It is pertinent to note that the above quoted wording is not the observation of the Division Bench in Dinesh case. It

1. AIR 1979 Bom. 173.
2. AIR 1979 Bom. 173.
4. ibid
5. AIR 1979 Bom. 173.
7. AIR 1979 Bom. 173.
was the argument put forth by the advocate on behalf of appellant. I would like to produce the facts of Dinesh case, in brief, to make the picture of the case clear. In Dinesh case of trial court granted Rs.145 p.m as maintenance pendente-lite and Rs. 125 towards cost in favour of the wife. The wife aggrieved by that order went in appeal to the High Court, Bombay. A single Bench, Hajarnavas.J., raised the quantum of maintenance from Rs. 145/- to Rs. 350/- p.m. and the cost from Rs. 125/- to Rs. 500/-. Then the husband filed this Letters Patent Appeal, which was heard by Deshpande and Mrs. Manohar, JJ. Mr. Kapasi, learned advocate appearing on behalf of husband 'contends that the interlocutory order passed, on notice of motion is not appealable'. But the Division Bench, after discussion, 'observed 'that,

"The contention of Mr. Kapasi, therefore, shall have to be rejected", 3

which means that the orders are appealable. It becomes further clear from the following discussion. The learned advocate appearing on behalf of wife to raised preliminary objection to the maintainability of the Letters Patent, Appeal filed by the husband on the ground 'that the order fixing the maintenance under Section 24 of the Act does not amount to "Judgement" within the meaning of Cl.15 of the Letters

1. ibid.
2. ibid.
3. ibid p. 176.
Patent. On this point the learned judges ruled;

"We may, however, indicate that the question as to pendente-lite maintenance does raise a controversy independently of the suit and the decision on this question concludes the controversy finally, as far as the parties are concerned. Looked at from this point of view, it should be difficult to hold that the Letters Patent Appeal is not maintainable".

From the above discussion, it is crystal clear that the Division Bench in Dinesh case not only ruled the maintainability of appeal but Letters Patent Appeal also against the order of maintenance pendente-lite u/s 24 of the Act.

It is submitted that the views taken by the Division Bench in Sunil Hansraj case are in conformity with the spirit and purpose of Section 24 of the Act. The true construction of Section 24 of the Act is, undoubtedly, that no appeal can be maintained against order of maintenance pendente-lite. But the Division Bench should not have misinterpreted the decision of Dinesh Case. An 'argument' by an advocate should not have been termed as 'observation' by the Division Bench particularly when the Bench had clearly allowed the Letters Patent Appeal and had observed as quoted above. Practically, now there are two decisions by the same High Court i.e. Bombay rendered by

2. Emphasis supplied.
3. AIR 1979 Bom. 173.
5. AIR 1979 Bom. 173.
the Division Benches having different views on the question of the maintainability of appeal against order of maintenance pendente-lite u/s 24 of the Act.

The Orissa High Court speaking through Justice S.C. Mahapatra in Sudhir Lata Dei vs. Kusum Chandra Mohanty has ruled in unequivocal terms that no appeal under Section 28 lies against an order under Section 24 of the Act, but the learned judge thought it proper to record that;

"However, there is no bar under Section 115 C.P.C., for the Court to exercise the power of revision suo moto in deserving cases even though an application has not been filed by the party".

Thus, the learned judge recognised the right of the party to file a revision under Section 115 of Civil Procedure Code, 1908 against the order of interim maintenance under Section 24 or 26 of the Act. The learned judge further empowered the court to suo-moto exercise the power of Division, in case appeal is filed where no appeal lies. Justice Mahapatra emphasised that;

"In such circumstances, unless court rises to the occasion, beneficial provision under Section 24 and 26 shall be frustrated to the detriment of the wife and the child who are recognised to belong to deprived class".

14. JURISDICTION OF APPEALATE COURT TO MAKE ORDER OF MAINTENANCE PENDENTE-LITE: It must be submitted that the appellate Court has the jurisdiction to pass order of maintenance pendente-

1. 1990 (2) HLR 423.
2. See also Surendra Kumar vs. Kamleshasthana, AIR 1979 All. 110.
The application for maintenance pendente-lite has to be presented a fresh before the appellate court, as the interim order of maintenance passed by the trial court comes to an end with the decision in main petition. But B.P. Beri, Chief Justice (Retd.) of Rajasthan High Court disagree with this approach and pleaded that the terms 'during the proceeding' means the proceeding in a trial court and includes an appeal. Time and again, it has been held that appeal is a continuation of the original proceeding.

It is submitted that best course would be that the claimant should file an application for maintenance pendente-lite before the appellate court, but the appellate court must make order for maintenance pendente-lite under section 24 of the Act at the earliest opportunity and it should fix at least that amount of maintenance pendente-lite which had been ordered by the trial court. It must be made clear the appellate court has full discretion to increase or decrease the amount so ordered by the trial court.

From above discussion, it may be summed up that

under Section 28(2):

- No appeal can be filed against the order of maintenance pendente-lite under Section 24 of the Act.

The revision can be filed against the order of maintenance pendente-lite. This is so because Section 21 of the Act allows the application of Civil Procedure Code, 1908 under certain circumstances. Section 115 of CPC allows the revision where appeal against order does not lie. Therefore, undoubtedly, revision can be filed against order of maintenance pendente-lite made under Section 24 of the Act.