

Order below Exh.46 in HMP No.33/2021

By this application respondent-husband has requested to dismiss the petition on the ground of non maintainability, on the grounds mentioned in the application. The contents of application in short are:- That the petitioner has filed present petition under Section 9, Hindu Marriage Act, 1955. The petitioner is claiming the relief of restitution of conjugal rights and she is also claiming permanent alimony of Rs.20,000/- per month from the date of decision. The petitioner cannot claim permanent alimony and the petitioner by carrying out amendment in the petition has claimed the relief of permanent alimony. This itself shows that the petitioner is not interested in cohabiting with the respondent. The petition is not maintainable and hence it be dismissed.

2) Petitioner has filed her say and raised objections. As per petitioner the contents of application are not correct and the petitioner has claimed permanent alimony from the date of decision. The respondent is not ready to cohabit the petitioner and the application is not maintainable. Petitioner requested to reject the application.

3) Perused application and say. Heard Ld. Adv.Shri. Chudiwal for respondent and Ld. Adv.Shri. D.S. Wankhede for petitioner. Ld. Adv.Shri. Chudiwal submitted that on one hand petitioner is seeking relief of restitution of conjugal rights and on the other hand she is claiming permanent alimony of Rs.20,000/- p.m. from the date of decision of the petition. He submitted that the petition in the present form is not maintainable and the claim of permanent alimony made by the petitioner itself shows that she is not interested in cohabiting with the respondent. He requested to allow the application and dismiss the petition.

4) Ld. Adv.Shri. D.S. Wankhede submitted that the contents of his say may be treated as his argument. I have considered rival submissions of both the Ld. Advocates. Also gone through documents available on record and relevant provisions of H.M. Act, 1955. Record shows that petitioner has filed present petition under Section 9 of H.M. Act, 1955. Respondent has filed his say at Exh.12 on 07/07/2021. Issues are framed at **Exh.14** on 12/08/2021. The application filed by petitioner at Exh.16 under Section 24 of H.M. Act, 1955 for grant of interim maintenance came to be partly allowed by order dated 25/04/2022 and the respondent is directed to pay interim monthly maintenance of Rs.5000/- and Rs.2,000/- towards expenses of the petition.

5) From the contents of application it appears that the respondent is raising question regarding maintainability of this petition on the ground that petitioner is claiming permanent alimony in the petition filed under Section 9, H.M. Act, 1955. At this juncture, it is necessary to have a glance of Section 25, H.M. Act, 1955. As per Sub-section 1 of Section 25, H.M. Act, 1955 “Any Court exercising jurisdiction under this Act, may, at the time of passing **any** decree or at any time subsequent thereto, on application made to it for the purpose either by the wife or the husband, as the case may be, order that the respondent shall pay..... ”. The plain reading of this provision clearly shows that any Court exercising jurisdiction under this Act, may, at the time of passing any decree, the words ‘any decree’ has been used by legislature and therefore that decree which the Court may pass may be under Section 9, 11, 12 and 13 of H.M. Act, 1955. Therefore, I am of the view that there is no hurdle for petitioner to claim permanent alimony even in the petition filed under Section 9, H.M. Act, 1955.

6) Notwithstanding, if the Court comes to the conclusion at the time of passing decree or thereafter that the petitioner is not entitled for permanent alimony then the Court will not grant her said relief of permanent alimony. For these reasons, I find no substance in the application and pass following order :-

Order

1. Application is rejected.
2. No order as to costs.

Date : 14/11/2025

(Ashish B. Marlecha)
Civil Judge Senior Division,
Shrirampur, Dist. A.Nagar.