

## Xxx vs Yyy on 14 July, 2026

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 29.04.2026

Pronounced on: 14.07.2026

+ MAT.APP.(F.C.) 306/2025  
XXX

.....Appellan

Through: Mr. Vikram Singh and Ms.  
Nidhi Tiwari, Advs.

versus

YYY

.....Respondent

Through: Ms. Purnima Maheshwari, Mr.  
Mukul Aryan and Mr. Kailash  
Golani, Advs.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

1. The present application has been filed by the Appellant/Wife under Section 151 of the Civil Procedure Code, 1908, ("CPC") seeking continuation of interim maintenance, awarded to her during the pendency of the divorce petition, by the learned Principal Judge, Family Court, Patiala House Courts, New Delhi ("Family Court") vide order dated 12.01.2024 ("Maintenance Order"), during the pendency of the captioned appeal filed under Section 19 of the Family Courts Act, 1984. The present application is being considered pursuant to the liberty expressly granted by the Supreme Court of India vide order dated 08.01.2026 in SLP (C) No. 34613/2025.

2. Briefly stated, the marriage between the parties was solemnized on 10.12.2012 according to Hindu rites and ceremonies at Delhi Cantonment, New Delhi. The Respondent is a serving officer in the Indian Army, while the Appellant is an MBA (HR) graduate. Differences arose between the parties and they have been living separately since 22.05.2015. No child was born out of the said wedlock. The Respondent thereafter instituted a petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 ("HMA") seeking dissolution of marriage.

3. During the pendency of the said matrimonial proceedings, the Appellant moved an application under Section 24 of the HMA seeking grant of interim maintenance. By order dated 12.01.2024, the learned Family Court directed the Respondent's employer to deduct 30% of his gross salary, after statutory deductions, and remit the same to the Appellant towards monthly maintenance with effect from 18.05.2022, being the date of filing of the application. While determining the quantum, the learned Family Court followed the principle laid down by this Court in Babita Bisht v. Dharmender Singh Bisht, 2019 SCC OnLine Del 8775. The said order was assailed in appeal by the Respondent; however, the said appeal came to be dismissed by this Court vide judgment dated 21.03.2024 passed in MAT.APP.(F.C.) 91/2024. Consequently, the order granting interim maintenance attained finality.

4. Thereafter, the learned Family Court, by the impugned judgment and decree dated 19.07.2025, allowed the Respondent's petition seeking dissolution of marriage. Aggrieved thereby, the Appellant has preferred the captioned appeal. Along with the appeal, she has also filed the present application seeking continuation of the interim maintenance granted by virtue of the order dated 12.01.2024. Though notice in the appeal was issued on 26.08.2025, no order was passed in respect of the prayer seeking continuation of interim maintenance.

5. Subsequent thereto, the Appellant approached the Supreme Court of India by filing SLP (C) No. 34613/2025. By order dated 08.01.2026, the Supreme Court observed that, in matrimonial matters, issuance of notice would sufficiently safeguard the interests of the parties and that non-grant of stay would not, by itself, result in any adverse consequence. Insofar as the prayer for grant of interim maintenance was concerned, liberty was granted to the Appellant to urge the same before this Court, with a direction that the application be considered after hearing the Respondent. Accordingly, the present application is being considered.

6. Learned Counsel for the Appellant submitted that the Appellant has no independent source of income and is entirely dependent upon her parents for her day-to-day needs. It was submitted that the Respondent is a well salaried Army officer and is under a legal and moral obligation to maintain his wife during the pendency of the proceedings. It was urged that an appeal under Section 19 of the Family Courts Act is not a fresh proceeding but a continuation of the original matrimonial proceedings, and therefore maintenance granted under Section 24 HMA, which operates "during the proceeding", must necessarily continue during the pendency of the preferred appeal.

7. It was further submitted that the application under Section 24 of the HMA filed by the Appellant had been duly examined by the learned Family Court and a considered order was passed on 12.01.2024 granting maintenance amounting to 30% of the gross salary of the Respondent, which was affirmed by this Court in appeal. The said entitlement subsists during the pendency of the present appeal and must be given effect to. It was also submitted that the present application is being pressed pursuant to the specific liberty granted by the Supreme Court and this Court is therefore bound to consider and pass appropriate orders on the prayer for maintenance.

8. Learned Counsel for the Respondent opposed the application and submits that Section 24 of the HMA expressly limits the grant of maintenance to the period "during the proceeding" and that the word "proceeding" contemplated therein refers only to the proceedings before the Trial/Family Court, which stood concluded upon passing of the decree. Reliance was placed on the judgment of the Supreme Court in Sukhdev Singh v. Sukhbir Kaur, 2025 SCC OnLine SC 299 wherein it was held that Section 24 of the HMA operates only during the pendency of matrimonial proceedings before the Court of first instance and that the appropriate post decree remedy lies under Section 25 of the HMA.

9. It was further contended that the Appellant is a qualified MBA (HR) professional with prior employment experience and is fully capable of maintaining herself. It was also submitted that the amounts received by the Appellant under the maintenance order were transferred to accounts of her father and her sister, thereby indicating absence of genuine financial hardship. Furthermore, an

application filed by the Appellant under Section 25 of the HMA is still pending before the learned Family Court, which constitutes the appropriate remedy for post decree maintenance.

10. We have heard the learned counsel for the parties and examined the material placed on record.
11. The sole question that arises for determination in the present application is whether the interim maintenance granted to the Appellant under Section 24 of the HMA vide order dated 12.01.2024 can be directed to continue during the pendency of the present appeal before this Court.
12. Before advertng to the merits of the present case, it is appropriate to take note of Section 24 of the HMA, which reads as under:

"Sec. 24 - Maintenance pendente lite and expenses of proceedings. - Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioners own income and the income of the respondent, it may seem to the court to be reasonable."

13. Section 24 provides that in any proceeding under the HMA, the Court may order the respondent to pay maintenance to the petitioner "monthly during the proceeding" where the petitioner has no independent income sufficient for their support. The operative phrase is "during the proceeding". The question is whether an appeal filed under Section 19 of the Family Courts Act constitutes a "proceeding" within the meaning of Section 24 of the HMA, or whether the "proceeding" referred to in Section 24 is confined to the proceeding before the Trial/Family Court.

14. It is a settled principle of procedural law that an appeal is not an independent or fresh proceeding, but a continuation of the original proceeding. This principle has been consistently affirmed by the Supreme Court and various High Courts. In Jagdish Singh v. Madhuri Devi, (2008) 10 SCC 497, Supreme Court reiterated that an appeal is a continuation of the suit.

15. This view has been consistently followed by various High Courts. In Hansaben v. Ashwinkumar Kacharabhai Patel, 2014 SCC OnLine Guj 15560, a Division Bench of Gujarat High Court held that an appeal under the HMA is a continuation of the original matrimonial proceedings. Consequently, proceedings in appeal also fall within the expression "any proceedings under this Act" under Section 24 of the HMA. The Court clarified that although the appeal is filed under the procedural framework of the CPC, the substantive right of appeal arises from the HMA itself. Therefore, the Appellate Court has jurisdiction to grant interim maintenance and litigation expenses under Section 24 during the pendency of the appeal. The relevant para is extracted below:

"9. We would firstly deal with the question of maintainability of this application, which has two parameters. First is, would this application be maintainable at an

appellate stage when no such application was filed before the Family Court? Second aspect would be when order under section 25 of the Act has been passed, can any higher amount be awarded as interim maintenance under section 24 of the Act? ...

15. In the case of Jalsutram Annapurnamma v. Jalsutram Ramakrishna Sastry, [AIR 1959 AP 49.] Division Bench of Andhra Pradesh High Court while interpreting the term "any proceedings under this Act"

held that the same would also give power to the Appellate Court to grant interim relief under section 24. Referring to section 24 of the Act, it was observed as under:

"The object of the section is to enable the husband or the wife, as the case may be, who has no independent income, to provide the other, so that the proceedings may be conducted and she or he may be maintained during the pendency of the proceedings. But the learned Counsel contends that the word „proceeding“ in section 24 must be confined to the original proceeding on the ground that the original proceeding is the one under the Act, whereas an appeal against the order in that proceeding is one under the Civil Procedure Code. In support of this contention, reliance is placed upon the provisions of section

28. The said section reads:

"All decrees and orders made by the Court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of the original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force:

xxx xxx xxx It is true that section 28 confers a right of appeal by reference to any law: But nonetheless, but for section 28, the aggrieved party cannot have a right of appeal against an order of dissolution of marriage or other orders under the Act. The right of appeal is one conferred under the Act and, therefore, it is a proceeding under the Act. That apart, any proceeding under the Act is a proceeding in respect of a right conferred under the Act.

That proceeding starts in the original Court and continues till it is disposed of by the Appellate Court. It is a commonplace that an appeal is a continuation of the original proceeding. The fact that an appeal lies under the Civil Procedure Code against an order in a proceeding under the Act, will not make the appeal anyhow a proceeding under the Act, for, the appeal also relates to the adjudication in respect of the rights conferred under the Act. In whatever way the problem is approached, it is manifest that the appeal against an order in a proceeding under the Act is a proceeding under the Act. In this view, we hold that the Appellate Court has jurisdiction to make an interim order in terms of section 24 of the Act."

16. The ground of maintainability raised by the respondent thus fails."

#### Emphasis Supplied

16. We are in full agreement with the aforesaid view. The Appellate Court has jurisdiction under Section 24 of the HMA to grant interim maintenance and litigation expenses during the pendency of the preferred appeal. When the Appellant challenges the divorce decree before this Court under Section 19 of the Family Courts Act, she does so as a party to the same proceeding that commenced with the filing of HMA No. 15/2022. The subject matter, the parties, and the cause of action remain unchanged. The proceeding does not attain finality merely because the Trial Court has delivered its judgment; it remains alive and pending until all appellate remedies are exhausted. The word "proceeding" in Section 24 of the HMA must therefore be read to include the appellate stage.

17. The Respondent places reliance on the case of Sukhdev Singh for the proposition that Section 24 of the HMA ceases to operate upon the passing of the decree and that Section 25 of the HMA is the appropriate remedy thereafter. This Court has carefully considered the said judgment. The said decision draws a clear distinction between Section 24 and Section 25 of the HMA, holding that Section 25 is available at the time of and subsequent to the passing of a decree i.e. at the stage of final adjudication. However, the specific question that arises in the present proceedings is, whether the maintenance awarded under Section 24 continues during the pendency of an appeal against the decree, i.e., at the stage of interim adjudication, the appeal being a continuation of the original proceeding which was not the subject matter of the said decision. The said judgment cannot, therefore, be read as a categorical bar to continuation of maintenance granted under Section 24 by the Trial/Family Court, at the appellate stage. This Court is of the view that so long as the appeal is pending and the original proceeding has not attained finality, Section 24 of the HMA remains applicable.

18. On the contention raised by the Respondent that the Appellant is qualified and capable of employment, this Court is guided by the well settled position laid down by the Supreme Court in *Shallja v. Khobanna*, (2018) 12 SCC 199 that a mere capability to earn cannot be a reason to deny maintenance to a spouse who is not actually earning. The distinction between capability and actual earning is fundamental. This very argument was raised and rejected by the learned Family Court in the order dated 12.01.2024, which examined the income affidavit, ITRs, and bank statements of the Appellant. The order dated 12.01.2024 was thereafter affirmed by this Court vide order dated 21.03.2024 passed in MAT.APP.(FC) 91/2024. It has attained finality between the parties on the question of employability of the Appellant and financial need. The Respondent, therefore, cannot be permitted to re-agitate a question that has already been conclusively decided inter se the parties.

19. As regards the contention that amounts received by the Appellant were transferred to accounts of her father and her sister, the order dated 12.01.2024 has already addressed this argument. The learned Family Court found that these transfers represented an internal family arrangement, as the father and siblings were bearing her day- to-day expenses. This cannot lead to the inference that the Appellant does not require maintenance. The Respondent had the opportunity to challenge this finding in appeal against order passed under Section 24 of the HMA before this Court; the order

having been upheld, the same contention cannot be reheard in the present application.

20. The argument that the Appellant has a pending application under Section 25 of the HMA before the learned Family Court and should pursue that remedy is not persuasive. Section 25 is an independent provision that operates at the stage of and after the decree. Section 24 is the provision specifically designed for maintenance during the pendency of proceedings, which includes the present appeal. The existence of a Section 25 remedy, which is yet to be adjudicated and may take considerable time, does not extinguish the entitlement of the Appellant under Section 24 of the HMA during the appellate proceedings. To hold otherwise would leave the Appellant without any financial support during the appeal, which is precisely the mischief that Section 24 seeks to prevent.

21. In view of the above discussion, the present application is allowed. The Respondent shall continue to pay maintenance to the Appellant at the rate of 30% of his current gross salary after deducting minimum statutory deductions. Directions be issued to employer of the Respondent to deduct the said amount and remit the said amount directly to the Appellant towards interim maintenance with effect from the date of filing of application under Section 151 of the CPC along with the present appeal i.e. 25.08.2025 in the same manner as directed vide the order dated 12.01.2024, until the final disposal of MAT. APP. (F.C.) No. 306/2025 or until further orders of this Court, whichever is earlier.

22. It is clarified that the pending application filed by the Appellant under Section 25 of the HMA before the learned Family Court is left unaffected and may be pursued independently.

23. Needless to state, all observations made herein are for the limited purpose of deciding the present application and shall not be construed as an expression of opinion on the merits of the appeal.

VIVEK CHAUDHARY, J.

RENU BHATNAGAR, J.

JULY 14, 2026/neha/mm