

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

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RSA No. 37 of 2010 (O&M)

Date of Decision: January 11, 2016

Seeso @ Bakshish Kaur

-Appellant

Versus

Pakhar Singh Jhuti

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Rachel Kuldip Studley, Advocate
for the appellant.

Mr. Maninder Arora, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

{1}. Plaintiff-appellant is in second appeal against

inadequacy of maintenance granted by the Courts below.

{2}. Plaintiff filed a suit for enhancement of compensation from ₹1000/- per month to ₹36000/- per month against her husband Pakhar Singh. Plaintiff has also claimed recovery of ₹12,78,000/- towards past maintenance from 28.04.1989 to 28.04.1992. Plaintiff claimed that the enhanced compensation and original maintenance be created first charge over the property of Pakhar Singh. Plaintiff claimed that she was married to Pakhar Singh in the year 1955. One daughter took birth from this wedlock on 28.10.1962. Pakhar Singh did not maintain the plaintiff-appellant and the minor daughter Kuldip Kaur and ultimately went to Canada in the year 1972 where he was earning about ₹90,000/- per month. Pakhar Singh also contracted second marriage in Canada and children took birth from that wedlock. Plaintiff filed Civil Suit No. 53 of 27.03.1984 which was decided on 13.09.1985 by Sub Judge, Ist Class, Hoshiarpur, granting ₹74,000/- as past maintenance, besides granting ₹1000/- per month as maintenance.

{3}. In that suit, defendant remained unsuccessful in the

appeal before lower Appellate Court whereas maintenance qua Kuldip Kaur was reduced to ₹500/- per month. Plaintiff filed appeal before the High Court in which maintenance qua Kuldip Kaur was enhanced from ₹500/- per month to ₹1000/- per month, however, appeal of the plaintiff was dismissed. Kuldip Kaur filed appeal against the order of the High Court in the Hon'ble Supreme Court which was accepted and original judgment of Sub Judge, 1st Class, Hoshiarpur was restored with a liberty to file fresh suit for enhancement of maintenance on account of escalation in prices.

{4}. Plaintiff alleged that Pakhar Singh was earning more than ₹90,000/- per month in Canada and she remained ill and used to spent huge amount towards her treatment. The daughter of the plaintiff also became mature and needed more amount towards maintenance. Plaintiff claimed ₹36,000/- per month as maintenance which was claimed to be in consonance with the status of Pakhar Singh in Canada. The income of Pakhar Singh in Canada was claimed to be about \$45,000/- in Canadian currency

out of which plaintiff claimed ₹36,000/- per month towards maintenance from 28.04.1989 to 28.04.1992 towards past maintenance and also enhanced maintenance at the same rate from the date of filing of the suit.

{5}. Plaintiff further pleaded that Pakhar Singh had left huge properties in India. Plaintiff claimed that the amount of maintenance and arrears thereof be held to be first charge over the landed property of Pakhar Singh. Sansar Singh son of Buta Singh and Dilbagh Singh son of Mahan Singh had filed objections in the Executing Court under Order 21 Rule 58 CPC in respect of land of Pakhar Singh which were dismissed with costs by holding that Pakhar Singh was the owner of the property.

{6}. The suit was contested by the defendant on all counts including the plea that the suit was barred under Order 2 Rule 2 CPC and was not properly valued for the purpose of Court fee and jurisdiction. The prayer for *forma paupris* claimed by the plaintiff was denied by the defendant. Defendant highlighted that claim of Kuldip Kaur was met by way of entering into compromise

before Addl. District Judge, Hoshiarpur where lumpsum of ₹2 lac was paid as maintenance to Kuldip Kaur. Allegations were made that the plaintiff herself left the company of the defendant and had refused to join the matrimonial house despite convening Panchayat on a number of occasions. Defendant had even filed petition under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights between the parties. Defendant admitted that he had solemnized second marriage in Canada according to law of that country. Factum of filing Civil Suit No. 53 of 27.03.1984 was admitted and claimed that there was no material change in the circumstances from passing of decree till date. Defendant pleaded that his salary was not more than Rs.5000/- per month.

{7}. On filing replication, parties went to trial on following issues:-

{1}. Whether the plaintiff is entitled to enhancement of maintenance from Rs.1000/- PM to Rs.36,000/- PM and also for a money

decree of Rs.12,78,000/- as past enhanced arrears of maintenance from 28.04.1989 to 28.04.1992? OPP.

{2}. If issue No.1 is proved, whether the plaintiff is entitled to have created a charge on the properties mentioned in the head note of the plaint? OPP.

{3}. Whether the suit is within time? OPP.

{4}. Whether the suit is not maintainable? OPD.

{5}. Whether the suit is barred by Order 2, Rule 2 CPC? OPD.

{6}. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD.

{7}. Whether suit does not discloses any cause of action and as such is liable to be dismissed? OPD.

{8}. Relief.

{8}. Both the parties led evidence. Trial Court decreed the suit for enhancement of compensation from ₹1000/- per month to ₹3000/- per month and also for money decree of ₹2,40,000/- as enhanced maintenance from 29.04.1992 till date i.e. 21.12.1998 when suit was decreed.

{9}. Plaintiff-appellant as well as defendant went in appeal before the lower Appellate Court. Lower Appellate Court modified the judgment and decree of the trial Court thereby allowing the appeal of the plaintiff-appellant partly with proportionate cost and she was held entitled to maintenance of ₹4000/- per month plus ₹2000/- per month for her residence from the date of claim made in the suit subject to adjustment of the amount already received by her in execution or otherwise. The appeal filed by the defendant was dismissed with cost. On the suit for recovery filed by the plaintiff in sum of ₹12,78,000/- as past maintenance for the period from 28.04.1989 to 28.04.1992, Court fee of ₹14817.50 paisa was assessed. The amount of Court fee was ordered to be

recovered by the State Government from the plaintiff and was held to be first charge on the subject matter of the suit.

{10}. Present appeal has been filed by appellant-plaintiff against the inadequacy of the maintenance amount awarded by the lower Appellate Court in its judgment and decree dated 10.11.2009.

{11}. I have heard learned counsel for both the parties and have also perused the material on record submitted by the parties.

{12}. Prayer of the plaintiff under Order 44 Rule 1 CPC for permitting her to file the appeal as indigent person was allowed by the Court, keeping in view the fact that she was allowed to file the suit as well as first appeal as indigent person. The appellant has formulated substantial questions of law in the grounds of appeal in the following manner:-

{i}. Whether the maintenance awarded by the Courts below is too meager which deserve to be increased suitably?

{ii}. Whether once it has been proved that the respondent is earning Rs.1,50,000/- per month and he has no liability, the awarding an amount of Rs.4000/- per month as maintenance and Rs.2000/- per month towards residence is unjustified and unsustainable in the eyes of law?

{iii}. Whether the learned Courts below should have decided the controversy while independently assessing the evidence brought on record without influenced by the judgment of Shri Bihari Lal, the then Sub Judge 1st Class, Hoshiarpur so as to assess the maintenance payable to the appellant?

{iv}. Whether there is any applicability of Section 25 of the Hindu Adoption and Maintenance Act when the Hon'ble Apex Court has granted liberty to the appellant to file application for escalation in an appropriate forum?

{v}. Whether the appellant is entitled to enjoy the same status as is being enjoyed by the respondent in view of the provisions of Hindu Adoption and Maintenance Act?

{13}. It is a settled principle of law that maintenance is to be granted to the wife so as to prevent destitution and vagrancy. It is equally a settled principle of law that wife is also entitled to live with the same status in consonance with the earning capacity of the husband. The amount of compensation should be adequate but the same should not be such so as to make a profitable business which may impede restitution of ultimate matrimonial status, if any. In this way, some guess work has to be done while computing amount of compensation payable to the wife. The maintenance is liable to be altered in view of change of circumstances and escalation of prices.

{14}. Learned counsel for the appellant contended that Pakhar Singh was earning huge amount in Canada. In view of certificate Ex.PA dated 23.04.1990 issued by Ministry of External

Affairs, India, it was shown that Pakhar Singh was earning 45,000/- in Canadian dollars per annum. Plaintiff sought to argue that Pakhar Singh was earning ₹1,50,000/- per month in Indian currency. The earnings of Pakhar Singh came out to be 3750/- Canadian dollars per month and if the Canadian currency is converted into Indian currency, the claim set up by the plaintiff is proved to be fully justified. The suit itself is based on claim of enhanced maintenance which is also dependent on change in circumstance prevailing in the society. Adequate provisions have been made in Section 25 of Hindu Marriage Act and Section 127 of Code of Criminal Procedure for alteration of maintenance awarded at one point of time. Admittedly, the escalation of prices has occurred and there is a sea change in the prevailing prices and prices have gone high enormously. The change in circumstances have been duly brought on record by the witnesses PW2 Rawal Singh, Assistant Statistical Office, PW4 Kuldeep Singh, Iron Merchant, PW5 Rakesh, Cement Dealer, PW7 Prem Nath from HRC Office and other witnesses on record.

Reliance has been made by the lower Appellate Court in its judgment.

{15}. So far as maintenance towards daughter is concerned, that was paid in lumpsum on account of consensus arrived at between the parties before the Court. Kuldip Kaur daughter of the plaintiff has grown up and amount was settled with the concurrence of the parties before Court of law.

{16}. Now, this Court is left with the claim of the plaintiff in respect of maintenance only. Plaintiff claimed that claim of ₹36,000/- per month is fully in consonance with $1/3^{\text{rd}}$ amount from the total income of Pakhar Singh as his income is proved to be ₹1,50,000/- in Indian currency. The Courts below have not accepted the claim of the plaintiff in toto, however only an amount of ₹6000/- per month in total has been awarded by the lower Appellate Court on enhancement. Sub Judge, Ist Class, Hoshiarpur passed the order in the year 1985. Present suit was filed in the year 1992. Apparently, from 1982 to 1992, there was enormous increase in prices and now the prices have gone

multifold than the prevailing price in the year 1982 or in the year 1992. Pakhar Singh was earning 45,000/- per annum in Canadian currency which can be treated to be ₹1,50,000/- in Indian currency. No rebuttal has been made by the defendant to the aforesaid evidence, rather defendant himself has not stepped into the witness box nor rebut his income in Canada, therefore, the income of Pakhar Singh is taken to be an amount of ₹1,50,000/- per month in Indian currency. The Courts below have treated the case on differentiation in view of the fact that suit is for enhancement of maintenance in which amount has already been fixed by the Court and the same can be altered subsequently, if, there was material change in the circumstances justifying such alteration.

{17}. At the time of first order passed by Sub Judge, Ist Class, Hoshiarpur, the income of the defendant was taken to be ₹25,000/- per month. The income of the defendant has now escalated to ₹1,50,000/- per month on the principle that prices of essential commodities have gone high and the land prices have

also gone high. Cost of construction has also gone sky high. The Courts have also taken note of the fact that plaintiff has grown older and is also vulnerable to certain diseases in her old age. Maintenance includes provision for food, clothing, residence, medical facilities, education and marriage prospects of children. On that premise, the Court appreciated the escalation and increased the amount of maintenance to the tune of ₹4000/- per month and ₹2000/- per month towards residence.

{18}. In my view, the increase made by the lower Appellate Court needs to be revisited. Since, the issue of granting maintenance is not static, rather it is a continuous phenomenon giving rights to the parties seeking increase or alteration subject to proving material change in the circumstances. During pendency of present appeal, certain things have come to fore. Pakhar Singh is having 80 Kanals of land in village Patti and Chabbewal in District Hoshiarpur where eucalyptus trees were standing. Vide order dated 17.10.2011, this Court restrained the defendant from cutting those trees and also restrained the Court

from deducting the Court fee as ordered by the lower Appellate Court. Pakhar Singh died during pendency of appeal on 22.07.2015. Plaintiff alongwith her daughter Kuldip Kaur on one hand and second wife of Pakhar Singh on the other hand have also been brought on record as legal representatives of deceased-Pakhar Singh. The claim of the plaintiff can be appreciated till the date of death of Pakhar Singh and not beyond that, so far as maintenance from Pakhar Singh is concerned, however, she can stake claim to landed property on the basis of inheritance or otherwise in accordance with law. The potentiality of the properties of Pakhar Singh for the purpose of grant of maintenance to the plaintiff-appellant is the subject matter of evidence on record till the date of passing of impugned judgment and decree by the lower Appellate Court. Factum of salary of Pakhar Singh to the tune of 45000/- per annum in Canadian dollars was an unrebutted issue and on that premise, even the lower Appellate Court endorsed that monthly income of Pakhar Singh is ₹1,50,000/-. Now during pendency of appeal, factum of

landed property in village Patti and Chabbewal of District Hoshiarpur have come to fore. Even this Court on number of occasions granted liberty to the defendant to bring proof of income of Pakhar Singh but the needful was not done by the respondent on the ground that Pakhar Singh was living in Canada and was stated to be unwell.

{19}. On 29.03.2012, following order was passed:-

“Vide order dated 11.11.2011, the counsel for the respondent Mr. M.M. Mohan had been directed to furnish proof of income of the respondent. The matter had been adjourned to 09.12.2011. However, a written request for an adjournment had been circulated for said date i.e. 09.12.2011 and the matter had been adjourned to 09.01.2012. On 09.01.2012, a written request was yet again circulated and the matter was adjourned to 08.02.2012. On 08.02.2012, counsel for the respondent duly appeared and had assured the Court that the needful would be done within four weeks and accordingly, the matter was adjourned to

29.03.2012. Yet again a written request had been circulated today, stating therein that even though certain documents pertaining to the latest income of the respondent have been despatched from Canada but the same have yet not been received.

The appellant in the present second appeal is an old lady. She had instituted the suit as an indigent person. In view of the fact that repeated adjournments had been sought and needless to mention it, thus cause inconvenience both in financial terms as well as mental harassment to an old lady, who has been attending the Court proceedings thereto in person, one last adjournment is granted to the counsel for the respondent to comply with the order dated 11.11.2011, subject to payment of Rs.5000/- to the appellant, as cost.

Adjourned to 19.04.2012.”

{20}. Thereafter, case was adjourned on number of times.

On 05.07.2012, learned counsel for the respondent produced a certificate issued by Canada authority in respect of retiral pension and old age security pension received by Pakhar Singh. It was

shown to be \$1306.76 per month. Defendant was directed to file affidavit in respect of his total earning and was also directed to furnish proof of payment of Rs.15 lac to the plaintiff-appellant. Needful was not done and even cost was imposed on the defendant on two occasions.

{21}. Plaintiff-appellant had filed an application for grant of interim maintenance. Taking into consideration, this Court vide order dated 11.01.2013 granted ₹15000/- per month as interim maintenance to the plaintiff-appellant, besides ₹22,000/- as litigation expenses.

{22}. The conduct of the respondent was noted in the order dated 11.01.2013 and the order reads as under:-

“C.M. No. 12854-C of 2012

Prayer made in the application is for grant of interim maintenance to the applicant-appellant and also for litigation expenses.

On 1.11.2012, notice of the application was issued when counsel for the respondent accepted the same and requested for an adjournment so as to file reply. The application

was ordered to be taken up for hearing on 14.12.2012. On 14.12.2012, the Court was not held and the hearing of application was adjourned to 21.12.2012. On 21.12.2012, neither the counsel representing the respondent was present nor any reply filed to the application. In the interest of justice, the hearing of the application was adjourned for today.

Once again, neither counsel for the respondent has put in appearance nor any reply filed to the application.

Learned counsel for the applicant has fairly submitted that the applicant is presently getting maintenance @ 4000/- per month and another sum of Rs.2000/- as costs of residence. It is, however, not in dispute that the respondent owns considerable landed property, although the same is stated to be presently under attachment.

Taking into consideration the facts stated in the application, this Court is of the considered view that the applicant-appellant can be granted an amount of Rs.15,000/- per

month as maintenance during the pendency of the present second appeal. In addition, the applicant was also be entitled to obtain an amount of Rs.22,000/- as litigation expenses.

Resultantly, the application is allowed by directing the respondent to pay an amount of Rs.15,000/- per month to the applicant-appellant as interim maintenance from the date of filing of the application and Rs.22,000/- as litigation expenses.

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Adjourned to 11.7.2013.”

{23}. Even thereafter, this Court noted in orders dated 16.09.2014 and 23.09.2014 that monthly maintenance has not been paid by the respondent to the plaintiff-appellant and accumulation to the tune of four months had occurred. Thereafter, it was recorded that the amount has been deposited in the bank account of the plaintiff-appellant. The matter was placed before the Mediation and Conciliation Centre of this Court also, where no consensus could be reached for amicable settlement.

{24}. Vide order dated 30.03.2015, this Court in order to

know the financial status of respondent, directed the learned counsel for the defendant to file an affidavit of the respondent disclosing his wealth statement including agricultural land, money in investments, savings in Banks, his income returns, pension, if any, for the services rendered in Canada and property abroad including residential properties in India as well. It was directed that the affidavit must disclose the status of children from second wife whether they are dependent on the defendant or not.

{25}. On 15.05.2015, it was submitted by learned counsel for the respondent that defendant was lodged in civil prison for breach of injunction issued by the Court on account of selling property during operation of stay order. The Court recorded that the defendant was inclined to abandon the liability towards his first wife and daughter and he was obligated to file the affidavit on his release.

{26}. In order dated 30.04.2015, this Court again observed that learned counsel for the respondent should take instructions from respondent as to settle the issues between him and his

abandoned wife and daughter. Whether he is prepared to part with his agricultural land in the joint name of his wife and daughter subject to disclosure of wealth and provide reasonable needs on dwelling unit on the land with expenses to be met by him.

Thereafter, case was adjourned on number of occasions.

{27}. On 04.08.2015, factum of death of Pakhar Singh was brought to the notice of the Court and it was prayed that the present appeal is limited to the enhancement awarded by the Court and right to receive maintenance has come to an end with the death of Pakhar Singh. Whether the claim of maintenance can be appropriated from the estate of Pakhar Singh or enhancement of maintenance can be done. Thereafter, legal representatives of Pakhar Singh from both marriages were brought on record. Though, learned counsel for the appellant has submitted that Pakhar Singh had one house in 74, Dantek, Court Brampton, Ontarion and the Ministry of External Affairs (MEA) has also confirmed that House No.10 Woge Count Stonley Creek Onterio is also owned by Pakhar Singh and Pakhar Singh had also

executed affidavit that he was paying mortgage of \$800 every two weeks for his property at House No.10 Woge Count Stonley Creek Onterio. Learned counsel for the appellant also submitted that second wife of Pakhar Singh is receiving theka amount from 9 acres of land and is also enjoying rent from properties in Canada.

{28}. At this juncture, this Court is not in a position to access the income of Pakhar Singh arising out of landed property situated either in India or in Canada but the increase in the maintenance amount can be appreciated with the admitted position on record to the extent of finding that income of Pakhar Singh was 45,000/- per annum in Canadian currency and on that conversion is found to be ₹1,50,000/- per month in Indian currency.

{29}. It is the obligation of the Court to award just, fair and reasonable compensation to the plaintiff on acceptable legal standards and principles. There is no bar in awarding compensation more than the compensation claimed by the

plaintiff or claimant. There is no restriction on the Court to award compensation only upto the amount claimed by the plaintiff rather it is honourus duty of the Court to award just and proper compensation. The only requirement is that the compensation should be just in the facts and circumstances of the case. Even though the daughter Kuldip Kaur is major as on date but she is living with the plaintiff and compensation qua her was finally settled in total sum of Rs.2 lac on account of compromise. The Court cannot lost sight of the thing that till marriage of the daughter, the plaintiff is bound to take care of the daughter Kuldip Kaur, even though claim of compensation qua her stood settled long back. Facts and circumstances appearing on record are suggestive of the fact that after the death of Pakhar Singh on 22.07.2015, his second wife has taken charge over the property left by Pakhar Singh. Till the death of Pakhar Singh on 22.07.2015, plaintiff is entitled to stake claim of maintenance from the estate left by Pakhar Singh which is admittedly in possession of his second wife. In the facts and circumstances of the case, it

would be just and expedient to evolve such a mechanism so that the plaintiff may lead her remaining life with some dignity and honour.

{30}. I have considered rival arguments of both sides. It is a settled principle of law that wife is entitled to be maintained in the same way as she was at the place of her husband before matrimonial discord. The wife is also entitled to maintain standard of living which is neither luxuries nor penurious, but is consistent with the status of the family. The aforesaid idea is not to allow the wife to make it profitable business so as to create impediment for prospective return to matrimonial house. The law laid down in **Bhagwan Vs. Kamla Devi, (AIR 1975 SC 83)** and the principles highlighted by the Hon'ble Supreme Court in **Chaturbhuji Vs. Sita Bai, 2008 (1) RCR (Criminal) 163** have been consistently followed thereafter.

{31}. Inability of the wife to earn cannot disentitle her for claiming maintenance from her husband. Impression “unable to maintain herself” does not mean that the wife must be absolutely

destitute before seeking maintenance under Section 125 Cr.P.C.

In **AIR 1978 Supreme Court 1807 Captain Ramesh Chander**

Kaushal Vs. Mrs. Veena Kaushal, the object of granting

maintenance was highlighted by the Apex Court which was to

prevent vagrancy under Section 125 Cr.P.C. as a measure of

social justice and is specifically enacted to protect women and

children and to prevent them from the vagrancy and destitution.

The position was further highlighted in **Savitaben Somabhai**

Bhatiya Vs. State of Gujarat, 2005 (2) RCR (Criminal) 190.

{32}. In **Sita Devi @ Sita Verma Vs. Vijay B Verma, 2014**

(1) (Civil) 1018, this Court vide order dated 11.12.2013 enhanced

maintenance to the tune of ₹1.50 lacs per month according to

financial status of the husband from interim maintenance of

₹31,000/- per month. In the said case gross income of the

husband was found to be ₹19,84,559/- and the income tax return

showed it close to over ₹30 lacs per month.

{33}. Apparently, Pakhar Singh has left huge landed

property and retiral dues, therefore, I am of the view that plaintiff

is entitled to maintenance of ₹20,000/- per month from the estate of deceased-Pakhar Singh from the date of filing of the suit till death of Pakhar Singh on 22.07.2015. Any amount received by the plaintiff towards interim maintenance or otherwise would be adjusted while computing total arrears of maintenance from the date of filing of the suit till the date of death of Pakhar Singh. This Court is of the considered opinion that the award of ₹20,000/- would suffice to meet the contingent factor, if any, while assessing the amount on some guess work.

{34}. So far as inheritance qua the properties of Pakhar Singh is concerned, the plaintiff would be at liberty to avail any other remedy in accordance with law. Keeping in view the attending circumstances of the case, this Court is not inclined to award any cost of litigation.

{35}. With aforesaid observation, judgment and decree of the lower Appellate Court is modified in the manner as discussed above.

Civil Misc. No.1457-C of 2013

{36}. Since the main appeal has been decided on merits on the basis of available evidence, therefore, Civil Misc. No.1457-C of 2013 under Order 1 Rule 10 CPC has no material bearing on the case as the evidence sought to be made available through Ministry of External Affairs is inconsequential. Therefore, no order is required to be passed on the application.

January 11, 2016

jyoti Y.

**(RAJ MOHAN SINGH)
JUDGE**