

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

Date of decision: 08.03.2017

1. CRR(F) No.157 of 2015 (O&M)

Sharanjeet Kaur
.....Petitioner
Versus
Gurpreet Singh Dhillon
.....Respondent

2. CRR(F) No.135 of 2015 (O&M)

Harnoor Kaur and another
.....Petitioners
Versus
Gurpreet Singh Dhillon
.....Respondent

3. CRR(F) No.74 of 2015 (O&M)

Gurpreet Singh Dhillon
.....Petitioner
Versus
Sharanjeet Kaur
.....Respondent

4. CRR(F) No.81 of 2015 (O&M)

Gurpreet Singh Dhillon
.....Petitioner
Versus
Harnoor Kaur and another
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Amit Jaiswal, Advocate
for the petitioner(s) (in CRR(F) Nos.157 and 135 of 2015)
and for the respondent(s) (CRR(F) Nos.74 and 81 of 2015)

Mr. Bhag Singh, Advocate
for the petitioner(s) (in CRR(F) Nos.74 and 81 of 2015)
and for respondent(s) (in CRR(F) Nos.157 & 135 of 2015)

REKHA MITTAL J.

This order will dispose of the aforesaid petitions as these have emerged out of the same order dated 29.01.2015 passed by the District Judge (Family Court), Ambala whereby Gurpreet Singh Dhillon has been directed to pay maintenance @ Rs.5,000/- per month to Smt. Sharanjeet Kaur, his wife and Rs.2,500/- per month each to Harnoor Kaur, daughter and Jaskaran Singh, son born out of the wedlock of Gurpreet Singh Dhillon and Sharanjeet Kaur.

For the sake of convenience, the beneficiaries shall be referred to as '*claimants*' whereas the husband/father as '*respondent*'.

Counsel for the claimants has submitted that maintenance should be paid from the date of application in place of from the date of order. It is argued that the trial Court has not adverted to the question as to why maintenance is not payable from the date of application nor assigned any reason to allow maintenance from the date of order. Another submission made by counsel is that daughter of the parties is now a student of class 7th and requires more money for expenses on her education, therefore, maintenance payable to the children is liable to be enhanced.

Counsel for the respondent, while refuting contention of the claimants and assailing the order would submit that findings of the trial Court assessing income of the respondent to the tune of Rs.30,000/- to Rs. 35,000/-per month are based on surmises and conjectures as there is no material on record to substantiate the findings. Further argued that income from 09 acres of land, admittedly, in the name of father of the respondent, by no means, can be taken as

income of the respondent in order to fasten liability @ Rs.10,000/- per month. It is further argued that as the respondent is hardly able to earn his livelihood by sale of milk of 02 buffaloes kept by him in his ancestral village Barnala, maintenance assessed by the Court below is liable to be reduced substantially.

I have heard counsel for the parties and perused the original records.

Indisputably, Sharanjeet Kaur and Gupreet Singh Dhillon tied nuptial knot on 09.12.2002. Out of the wedlock, 02 children namely Harnoor Kaur and Jaskaran Singh were born. Sharanjeet Kaur along with minor children of the parties is residing in House No.38, Jaggi Garden, Naraingarh Road, Ambala City, admittedly, owned by father of the respondent. Sharanjeet Kaur appeared in the witness-box and tendered into evidence her duly sworn affidavit Ex.PW1/A. In para 6 of the affidavit, she has deposed that father of the respondent has 10 acres of land at village Barnala. Jamabandi is Ex.P1. The respondent has one brother namely Kanwaljeet Singh Dhillon and he is residing in Canada with his parents. The respondent is earning about Rs.5,00,000/- per annum by cultivating agricultural land. The money remains with the respondent for his use. He has dairy farm i.e. 40 buffaloes and earns Rs.5,00,000/-. The witness was cross-examined at length but there is no challenge to her testimony that land owned by father of the respondent is cultivated by the respondent and income from the land remains in his hands for utilization.

The respondent appeared in the witness-box but there is no challenge to testimony of the claimant in regard to his cultivating the

land of his father and utilizing the income raised from land. No doubt, in the eye of law, the respondent is not owner of the land that stands recorded in the name of his father as per Jamabandi Ex.P1. Equally true is that there is no material on record to suggest that the land is Joint Hindu Family co-parcenary property, therefore, respondent being one of the co-parcenars gets interest therein by way of birth. However, the respondent has not adduced any evidence that land owned by his father is in possession of a third party or income from the land is being transferred to his father by any means whatever as father is residing in Canada. The respondent, in his statement, has tried to prove (though beyond pleadings) that land of his father remained with Sharanjeet Kaur and her parents and they have not paid an amount of Rs.3,95,000/- qua theka @ Rs.2,00,000/- per annum. There is nothing on record to suggest that father of the respondent ever initiated any proceedings against Sharanjeet Kaur or her parents for recovery of the said amount, sufficient to prove that father of the respondent never asserted his claim qua income of the land. That being so, it can be safely concluded that agricultural land owned by father of the respondent is being cultivated by him and he utilizes its income. One thing more to be added here is that father of the respondent has passed away about a year back and on the basis of natural succession, the respondent would inherit the land to the extent of 1/3rd share being one of the class one heirs as the respondent has another brother and his mother is alive.

The trial Court assessed interim maintenance @ Rs.6,000/- per month. It is not plea of the claimants that the respondent has not

discharged his liability of interim maintenance. There is no material on record that the respondent had taken any loan to pay interim maintenance to the claimants. That being so, it falsifies and belies plea of the respondent that he is earning Rs.2,500/- or Rs.3,000/- per month, not sufficient to satisfy his own needs.

This brings the Court to another important aspect with regard to liability of the respondent to provide adequate maintenance to his wife and children. The Courts have gone to the extent of saying that even if a person has renounced the world, he is obligated to come back to the social life in order to earn livelihood for his family. The two children born out of the wedlock are studying in school. Taking into consideration prices of daily necessities of life coupled with expenses to be incurred on education of the children, maintenance assessed by the Court below, by no stretch of imagination, can be termed to be excessive, warranting reduction.

The trial Court has awarded maintenance from the date of order and not from the date of application. Under Section 125 Cr.P.C., the Court has discretion to award maintenance either from the date of order or from the date of application. However, discretion vested in the Court has to be exercised on sound judicial principles. Hon'ble the Supreme Court of India in ***“Shail Kumari Devi and another vs Krishan Bhagwan Pathak @ Kishun B. Pathak”***, 2008(3) RCR (Criminal) 842 has held that maintenance can be awarded from the date of order or if so ordered from the date of application as the case may be. For awarding maintenance from the date of application, express

order is necessary. No special reasons, however, are required to be recorded by the Court. In the instant case, the Court has neither adverted to the question if the claimants are entitled to get maintenance from the date of application nor has assigned any reason as to why it is payable from the date of order. In view of the discussion made hereinbefore, it would be in the interest of justice that the claimants get maintenance from the date of application.

For the foregoing reasons, the petitions stand disposed of. The order passed by the trial Court with regard to assessment of maintenance @ Rs.5,000/- per month for the wife and Rs.2,500/- per month each for the children is affirmed subject, however, to the modification that the maintenance shall be payable from the date of application. Interim maintenance paid by the respondent shall be adjusted towards arrears.

(REKHA MITTAL)
JUDGE

08.03.2017
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No