IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.12156 of 2017 (O&M)
Date of decision: 19th December, 2018

Naresh Gulati

… Petitioner

Versus

Shalini Gulati & others

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. M.L. Sarin, Senior Advocate with Mr. Sartej S. Narula and Mr. Anuj Rana, Advocates\ for the petitioner.

Mr. Hemant Bassi and Mr. Kanwar Pal Singh Cheema, Advocates for the respondents.

FATEH DEEP SINGH, J.

This is a petition by petitioner husband Naresh Gulati through which he has challenged impugned orders dated 15.11.2016 of the Court of learned Judicial Magistrate 1st Class, Chandigarh passed in application for grant of interim maintenance under Section 125 Cr.P.C. The present respondents namely Shalini Gulati (wife), Simran Gulati (minor daughter) and Bikram Gulati (minor son) filed an application under Section 125 Cr.P.C. seeking maintenance against the petitioner husband Naresh Gulati. It was during the pendency of the maintenance application, a prayer by way of application for grant of interim maintenance was made by the dependents.

The main stake in their claim is that Shalini Gulati happens to be legally wedded wife of then respondent Naresh Gulati who has now since been divorced and out of which wedlock the minor claimants were born. It is alleged that the husband is financially well-off having business in Australia, though claims it is running into crores of rupees and therefore, sought maintenance for their upkeep and maintenance commensurate with the financial and economic status of the husband.

The husband in his stand, besides usual defences of maintainability, lack of jurisdiction and that he was not bestowed with the business and earnings as claimed by the applicants, sought that by the own voluntary act of the estranged wife, they were not entitled to any maintenance. It was through the impugned findings, the Court of learned Judicial Magistrate 1st Class, Chandigarh had passed the following orders:

> *"36. … … … respondent is directed to pay as following to petitioners for their maintenance:*

Petitioner No.1 (wife)	*Rs.5 lacs per month*
Petitioner No.2 (daughter 16 years)	*Rs.2 lacs per month*
Petitioner No.3 (son 14 years)	*Rs.2 lacs per month*
Litigation expenses	*Rs.50,000/- lumpsum"*

The husband assailed these findings in revision before the superior Court and the Court of learned Additional Sessions Judge, Chandigarh through impugned orders dated 30.03.2017 upheld the findings of the learned Magistrate and dismissed the revision petition and that is how the present invocation has come about.

Heard Mr. M.L. Sarin, Senior Advocate assisted by Mr.Sartej Singh Narula, Advocate and Mr. Anuj Rana, Advocate for the petitioner whereas Mr. Hemant Bassi and Mr.Kanwar Pal Singh Cheema, Advocates representing the respondents and perused the records of the case.

As is reflective from the records and the manner in which the present matter has been hotly debated, abundantly makes it clear that there has been a series of multiple litigation between the parties in India as well as in the Courts at Australia. The voluminous records placed on the file are reflective of the same. The material and the primary claim and counter-claim is over the jurisdiction of the Courts in India to try and decide the present matter on the principle of *comity of jurisdiction* and terming the present litigation to be by way of forum shopping by the wife to attain a sinister design. Being a question which can only be adjudicated on merits after the parties lead their respective evidence, besides that it would not be appropriate to comment upon such a plea at this juncture being purely a prayer for interim maintenance. This Court is also not supposed to look into the other round of litigation between the couple and therefore, the immense arguments that have been sought to be made are rendered otiose at this stage. To support their claims, the petitioner side has placed reliance on **'Shilpa Aggarwal (Ms) vs. Aviral Mittal and**

another' (2010)1 SCC 591; 'Videocon Industries Limited vs. Union of India and another' (2011) 6 SCC 161; 'Anathi Bandi v. Bandi Jagadrakshaka Rao and others' AIR 2014 SC 918; 'Bhanwar Lal vs. Satyanarain & another' JT 1994 (6) SC 626; 'Mehtab Singh vs. Tilak Raj Arora and another' AIR 1989 P&H 12; 'Associated Hotels of India Ltd. vs. R.N. Kapoor' AIR 1959 SC 1262; 'Dhariwal Tobacco Products Limited and others vs. State of Maharashtra and another' (2009) 2 SCC 370; 'Punjab State Warehousing Corporation Faridkot vs. M/s Sh. Durga Ji Trades & others' AIR 2012 SC 700; 'M/s Alcon Electronics Pvt. Ltd. vs. Celem S.A. of FOS 34320 Roujan, France & another' 2016 (8) SC 465; 'Lal Chand (dead) by his LRs vs. Radha Kishan' 1977(2) RCR (Rent) 4; 'Saroj Bala @ Geeta vs. Ashok Kumar Kalyan' 2013(2) RCR (Civil) 158; 'Shashi @ Mala vs. State & another' 2007(2) RCR(Criminal) 144; and 'Bhagwan Dutt vs. Smt. Kamla Devi & another' 1975 (2) SCC 386.

On the other hand, on behalf of the respondents Mr. Hemant Bassi assisted by Mr. Kanwar Pal Singh Cheema have placed reliance on **'Ram Chand Saudagar Ram vs. Jiwan Bai w/o Ram Chand' 1957 LawSuit(P&H) 144; 'Kamlesh Kumar Patel vs. Madhulata' 2013 LawSuit(MP) 3424; 'Kulvinder Kumar vs. Ramnik Goel' 1991 LawSuit(P&H) 44; 'Sunanda vs. Chandrakant' 1988 LawSuit(Bom) 3; 'Janabai vs. Krishna Ravba Rithe' 1992 LawSuit(Bom) 185; 'Gyanwati and another vs. Judge Family Court and another' 2012**

LawSuit(Utt) 287; 'Raman Bawa vs. Amit Jain' 2015 LawSuit(P&H) 6126.

None of the ratios cited before this Court could be of any assistance and help at this juncture of the lis on account of stage of main proceedings and factual disparity. The sole point that needs to be adjudicated is as to the economic status of the husband, entitlement of the applicants and if so, the amount of maintenance to which they are entitled.

Appreciating the submissions of the two sides and perusing the records of the case. The inter-se relationship of husband and wife, as also the birth of minor children out of this wedlock are not put to any challenge. It is well settled preposition of law that even a divorced wife is entitled to maintenance unless or until the husband proves to the satisfaction of the Court as to her being barred to such a right as laid down under the provisions of Section 125 Cr.P.C.

As per the provisions of Section 125 Cr.P.C., since the right to claim maintenance by the wife and children, who are not capable to maintain themselves, is a statutory right which has been conferred by way of public policy and thus, the husband is certainly under bounden duty to pay maintenance allowance as per his economic status. Reliance placed on **'Sushil Kumar vs. Neelam' 2004(2) RCR(Criminal) 760**. As has been laid down in **'Sunita Kachwaha and others vs. Anil Kachwaha' 2014(4) RCR(Criminal) 831** by Hon'ble the Supreme

Court, proceedings under Section 125 Cr.P.C. are summary in nature and therefore, at this stage of the proceedings, especially when the parties are litigating over grant of interim maintenance, it is not necessary for the Court to ascertain the technicalities and as to who was on the wrong side of the law and the very legalities and details of the matrimonial disaccord. What the Court has to see at this stage is that the wife and the children must aver positively that they were unable to maintain themselves and that the husband has sufficient means to maintain them and has rather neglected to do so.

The claim of the wife and children is that the husband is Director and Shareholder of M/s Oceanic Consultants Pvt. Ltd.; M/s Object Next Software Pvt. Ltd.; M/s BPO Intelligence India Pvt. Ltd.; M/s BPO Intelligence (Export) Pvt. Ltd. and M/s Oceanic Consultants Pvt. Ltd. Australia, besides having immovable properties in India. But at the same during the course of submissions, learned counsel representing the respondent wife accepts the fact that she had claimed ownership rights of 50% shares of a house in Chandigarh which she claims to have been purchased out of the joint funds and income from these companies, and therefore cannot take a stand that she is not bestowed with any immovable property or earnings. The arguments of the learned counsel for the respondent wife that the husband even in earlier divorce petitions, where divorce has been granted in favour of the husband, has denied that he was Director of any of the companies so claimed by the applicants, cannot be commented upon at this juncture. To the specific query of the Court as to any documentary proof to prima facie show that the husband owns these companies and his total earnings from the same, learned counsel for the respondents could not satisfactorily rebut the arguments put forth by the petitioner side. What has come across on scanning the impugned orders, the courts below have been moved by the claim of the wife that the value of two companies of the husband is approximately Rs.240.00 crores in Indian currency. Though learned Magistrate in his impugned findings has, on his own without there being any sufficient legal proof, reached the conclusion on the basis of respondents' claim that earlier letter by Director, M/s Oceanic Consultants Pvt. Ltd. Australia, is misleading. Assuming as has been argued and hotly debated by the applicant wife side that the husband is owner of 100% shares of M/s Oceanic Consultants Pvt. Ltd. Australia, but without there being any proof of his earnings out of this shareholding, it would be too preposterous to assume what the wife states that the earnings of the husband runs into crores of rupees and the Court below on one hand accepts the stand of the husband that he is owner of 100% shares of M/s Nine Investments Pvt. Ltd. but did not consider his stand that he was earning merely Rs.50,000/- per month for working with the companies. The learned Magistrate ought to have considered all these things on prima facie proof in totality and not by pick and choose, when the learned counsel for the respondents could not highlight what was the actual economic status of the husband at the time of pendency of the application under Section 125 Cr.P.C. wherein they claimed that they do not have any document to reflect the income of the husband. Further in paragraph No.12 of the impugned findings, the learned Magistrate has taken into consideration the fact that the financial performance of M/s Nine Investments Pvt. Ltd. and OCA Group Pvt. Ltd. over the last three years have been shown to be a combine loss of $ 2.1 million in the year 2016, $ 1.6 million in 2015 and $ 8.1 million in 2014, and has observed that at the end of June 2016, M/s Nine Investments Pvt. Ltd. had total assets of $ 18.1 million and total liabilities of $ 19.5 million, and arrived at a conclusion that there was a negative equity of $1.4 million. What is sought to be relied upon by the Court is regarding evidence in other cases pending between the parties, civil as well as criminal, when it is settled proposition of law, reliance of which can be placed on **AIR 1975 SC 149 'Mitthulal & others vs. The State of Madhya Pradesh'** that evidence led in one case cannot be construed to be legal evidence in another case unless the same is established by legal means. The vehement arguments of the two sides are more focused on the photostat copies of print-outs taken from the internet, which are reflective in the findings of the courts below and are the main grounds on which the impugned findings have come about. The courts have lost the principle as to how admissibility of electronic record is to be undertaken by virtue of provisions of Sections 65B, 65A, 63 and 65 of the Indian Evidence Act, 1872 for which this

Court seeks support from **'Anvar P.V. vs. P.K. Basheer and others' 2014(4) RCR(Civil) 504**, where Their Lordships of Hon'ble the Apex Court have held that any documentary evidence by way of electronic record under the provisions of Sections 59 and 65A of the Indian Evidence Act can be proved only in accordance with the procedure prescribed under Section 65B of the Act, which deals with the admissibility of electronic record and which is with a view to sanctify secondary evidence in electronic form generated by a computer. None of these necessary adherences under the law have been resorted to while placing reliance on these documents on the record, whose origin is still lurking in doubt as per the claim of the petitioner side.

Reverting back to the instant findings, the learned trial Court on the premise that the husband has not disclosed his actual income etc. and failed to disprove the material brought on the records, has drawn the conclusion that the wife is entitled to interim maintenance at the rate of Rs.5.00 lacs per month and the children to Rs.2.00 lacs per month each besides Rs.50,000/- as litigation expenses in lumpsum, which are totally unsubstantiated prima-facie. What has been sought to bring on the records is the earnings of the companies/firms and not that of the present petitioner, as the very element of assets and liabilities through balance sheets of such companies and what the husband is getting/earning out of it, have to be established. Rather another document that has been pointed out is notes of accounts and accounting policies for the year ending

30.03.2015 which does not appear to be reflecting any income of the husband. Even assuming that the husband is CEO of a company does not necessarily mean or can be construed that he is bestowed with a particular amount of earnings. On the other hand, the Court has to strike a balance as to the very financial status of the husband and the fact that the dependents are entitled to economic dignity and status commensurate with that of the husband. Going through the findings of the two courts below, it is quite evident that they are impressed and guided more by the fact that the husband is a Non-Resident Indian and is into running of business, without there being any cogent and substantial document carrying legal worth brought on the record and thus, certainly have run into an error qua the quantum of maintenance allowance.

Since the present proceedings are mere pertaining to interim maintenance allowance and thus are more based on guess-work and hypothetical calculations rather than actual evidence, and assuming that the husband is bestowed with sufficient means and income being associated in running of business and without being swayed by the print-outs placed on the record and ensuring that the children are on the verge of adulthood and thus, their day-to-day requirements, educational and academic needs for their secure future/career, the rising trend of prices of essential items together with the fact that the unfortunate wife too is left in a lurch after so many years of the matrimony and at the same time ensuring due justice to the parties, this Court by some amount of guess-work and hypothetical calculations holds that in such a stage, it would suffice the ends of justice if each of the two children is awarded Rs.1.00 lakh each per month and the wife is awarded Rs.1.50 lakh per month as maintenance allowance from the date of filing of the interim maintenance application till the disposal of the main application under Section 125 Cr.P.C. However, the quantum of litigation expenses need not be disturbed.

In the light of these findings, the present petition stands disposed off.

(FATEH DEEP SINGH)
JUDGE

December 19, 2018
rps

Whether speaking/reasoned Yes/No
Whether reportable Yes/No