

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11250 OF 2022

Vinay Manoranjan Pai	... Petitioner
V/s.	
Radhika Appuraya Shenoy	... Respondent

Ms. Pooja Jalan for the petitioner.

Mr. Haresh A. Shivdasani for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2023

P.C.:

1. The seminal question raised by the petitioner is whether the criteria for determining the quantum of maintenance as laid down by the Apex Court in the case of **Rajnesh Vs. Neha** reported in 2021 2 SCC 324 mainly “whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed in her matrimonial home” does not apply at the stage of inquiry under section 24 of the Hindu Marriage Act, 1955.
2. For the adjudication of the said issue, the relevant facts are as under:
3. On 3rd August 2012, the petitioner and the respondent got married. After marriage, they resided in the United States of America (USA). Due to their matrimonial differences, the petitioner filed a petition for divorce, custody and access to the

minor child before the Family Court at Bandra, Mumbai bearing M.J. Petition No.A-2860 of 2018. The respondent contested the said petition by filing a written statement. During the pendency of the said petition, the petitioner applied for interim maintenance under section 24 of the Hindu Marriage Act, 1955, which has been allowed by the Family Court, holding the petitioner entitled to maintenance despite earning independent income on the ground that the wife is entitled to the same comfort and status as she would have enjoyed being in the company of spouse. The husband has, therefore, filed a present petition challenging the order of grant of maintenance of Rs.70,000/- to the wife. At the outset, it is submitted that the petitioner is not challenging the amount of Rs.50,000/- granted to the child.

4. The learned advocate for the petitioner submitted that once the Family Court records a finding that wife is earning the amount of Rs.1,15,000/-, she is not entitled to any maintenance. She submitted that the husband's income has no relevance while adjudicating the quantum of maintenance to be granted to the wife when she has sufficient income to maintain herself. According to her, the reason for the grant of the amount of Rs.70,000/- to the wife is based on the principle of equivalence with that of expenses incurred on the parents by the petitioner. Such a parallel cannot be drawn in law. It is submitted that the Court has no power to consider the status of parties before the separation while considering an application for interim maintenance. However, such a factor would be relevant only in an inquiry under section 25 of the Hindu Marriage Act. In support of her submission, she relied

on the following judgments:

The judgment of this Court in the case of **Hetal Jignesh Parekh v/s. Jignesh Vinod Parekh**, delivered in Writ Petition No.2379 of 2013 decided on 14th June 2013; **Gauri Adesh Parab v/s. Adesh Ashok Parab**, reported in 2022 SCC OnLine Bom 6636; **Sushila Viresh Chhadva v/s. Viresh Nagshi Chhadva**, reported in 1996 (1) Mh.L.J. 288; **Ritula Singh Vs. Lt. Col. Rajeshwar Singh**, reported in 2010 (4) Mh.L.J. 797 and the judgments of the Supreme Court in the case of **Amarjit Kaur v/s. Harbhajan Singh & Anr.**, reported in (2003) 10 SCC 228; **Manish Jain v/s. Akanksha Jain**, reported in (2017) 15 SCC 801 and the judgments of the Delhi High Court in the case of **K.N. v/s. R.G.**, reported in 2019 SCC OnLine Del 7704; **Manish Kumar v/s. Mrs. Pratibha**, reported in ILR (2009) II Delhi 246; **Rupali Gupta v/s. Rajat Gupta**, reported in 2016 SCC OnLine Del 5009 and the judgment of the High Court of **Madhya Pradesh in Mamta Jaiswal v/s. Rajesh Jaiswal**, reported in 2000 SCC OnLine MP 580.

5. Per contra, the learned advocate for the respondent/wife relying on the judgment in the case of **Rajnish Vs. Neha** (supra) submitted that the Supreme Court, in paragraph 78, while laying down criteria for determining the quantum of maintenance, has enumerated factors which would be relevant while considering the application for maintenance. According to him, criteria for evaluating an application for interim maintenance would generally be similar to those of criteria while directing permanent

maintenance. According to him, one of the factors which would be relevant for the Court while considering the interim maintenance is that the income must be sufficient to enable the wife to maintain the same standard of living as she was accustomed to in her matrimonial home. According to him, the material on record is sufficient to record a prima facie finding that the wife needs more than she earns to maintain the same standard of living as she was accustomed to. Relying on the same judgment, he submitted that the Apex Court, in paragraph 19, held that after the wife is earning, it could not operate as a bar from being awarded maintenance by her husband.

6. He also invited my attention to paragraph 90.1, which refers to the earlier judgment of the Apex Court in the case of **Shailja vs Khobbanna**, reported in 2018 12 SCC 199, wherein the Apex Court has observed that merely because the wife is capable of earning would not be sufficient ground to deny maintenance to wife. The Court has to determine whether the wife's income is sufficient to enable her to maintain herself in accordance with the husband's lifestyle in the matrimonial home. He, therefore, submitted that the judgment in the case of **Rajnesh Vs. Neha** covers the issue involved.

7. The rival contentions called for consideration. In the context of the issues involved, it is necessary to refer to the findings of the learned Family Court while awarding interim maintenance to the wife. The emerging factual scenario relevant to the adjudication of the issues involved is as under:

- a) The monthly salary of the husband is \$16.629 U.S.
- b) The wife's monthly salary is around Rs.1,15,000/-.
- c) The expenses incurred by the husband on his parents are \$1498 per month.

8. The core question arises for decision is whether the wife is entitled to the same amount of interim maintenance necessary for leading life with the same standard of living as she was accustomed to in her matrimonial home. The criteria for consideration of the interim maintenance application, as laid down in paragraph 77 of **Rajnesh Vs. Neha** (supra), would be similar to the criteria laid down for inquiry under section 25, subject to the exception that if recording a finding about the quantum of interim maintenance requires oral evidence, it may not be possible for the Court to decide the quantum of interim maintenance. It is a well-settled principle of law that an interim relief can be granted in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. Generally relevant factors for grant of interim relief and final relief are similar, subject to exception that while deciding interim relief enquiry based on prima facie view of the material on record. Exceptional factors such as the nullity of marriage may require oral evidence to record a finding of nullity of marriage which may have effect on the entitlement of the party. It is too wide to lay down a general proposition of law that the criteria for adjudication of the application for interim maintenance would operate in an independent sphere in contradistinction to the criteria of

adjudication of permanent maintenance. There are overlapping criteria for deciding the application under sections 24 and 25 of the Hindu Marriage Act. The overlapping criteria depend on the facts and circumstances of each case. Therefore, it is not possible to accept the general proposition of law that the criteria for adjudication of the application for interim maintenance are totally different than the criteria for the grant of permanent maintenance.

9. The material to arrive at the prima facie conclusion that the wife was leading comfortable life before her separation is paragraph 40 of the petition filed by the petitioner, which reads as under:

“40. Respondent went regularly to meet her brother in New Jersey and her family in India. She also went to meet her friends/relatives regularly at various places like San Francisco, Charleston, Lake George, Cleveland, Various places in New York state, New Jersey, attends parties/get together, goes to the gym, went to the beauty parlour, goes for vacations, spends time in various malls regularly, socializes with her friends and their families, went to their houses for parties, did whatever she wants with her day, spent how much ever money she wanted to without being questioned by her husband and yet she accused Petitioner of treating her like a slave, is not only ridiculous but also extremely shocking.”

10. To contradict the said submission the learned advocate for the petitioner invited my attention to paragraph 35 of the written statement which reads as under:

“35. Whenever the Respondent used to use the credit card for household purchases, the Petitioner used to object to the same and argue with the Respondent as to why she was spending so much money. When the Respondent used to

point out that whatever purchases are made are for the house but still the Petitioner used to object and tell the Respondent Not to spend more money. The Respondent used to plead with the Petitioner to sign the necessary documents so that she can work and spend her own money, but the Petitioner did not accede to the said request of the Respondent and used his position to exploit the Respondent. The Respondent could not spend money without his permission and had to justify whatever she had to buy.”

11. Meaningful reading of paragraph 40 of the petition and paragraph 35 of the written statement indicates that the wife was leading a comfortable life, as described in paragraph 40. However, averments in paragraph 35 do not contradict the inference of leading comfortable life by the wife as described in paragraph 40. The respondent in paragraph 35 stated that the husband used to object to the wife's lifestyle as to why she was spending so much money. In my opinion, there is an implicit admission by the husband that the wife was leading a comfortable lifestyle before their separation. In the light of aforesaid facts, the learned Family Court rightly relied on the judgment of **Rajnesh Vs. Neha** (supra) holding that a spouse is entitled to enjoy the same comfort and status as she would have enjoyed being in the company of her spouse.

12. The learned Family Court in paragraph 12 appears to have drawn a parallel from the income spent on parents by the husband to grant maintenance; however, on deeper scrutiny of the material, it appears that the amount of maintenance granted to the wife and daughter comes to around 9% of the net monthly income of the husband. If this is so, the reason for equivalence of the amount

spent on parents will not vitiate the decision-making process by the learned Family Court.

13. The Apex Court, in the case of **Rajnesh Vs. Neha** (supra) in paragraphs 77 and 78 are observed as under:

“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.”

14. While considering a situation where the wife is earning some income, the Apex Court in paragraphs 90, 90.1 and 90.2 observed as under:

“90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In **Shailja v. Khobbanna**, [(2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in **P. Suresh V. S. Deepa**, 2016 SCC

OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)] this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival.

90.2. In ***Sunita Kachwaha v. Anil Kachwaha*** the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

15. In the light of observations made by the Apex Court in paragraph 77, it appears that the Apex Court was considering the case of grant of interim/permanent alimony therefore, in my opinion, the factors enumerated in paragraph 78 would equally apply to the application for interim maintenance. The principles of law laid down in paragraphs 77 and 78 constitute the ratio of the judgment and, therefore, would be binding on this Court under article 141 of the Constitution of India, 1950.

16. At this stage, the judgments relied upon by the learned advocate for the petitioner need to be considered. The judgment in the case of **Manish Jain** (supra) has been referred to in **Rajnesh Vs. Neha** (supra). Reading the said judgment would make it clear that no proposition of law runs counter to the judgment in the case of **Rajnesh Vs. Neha** has been laid down by the Apex Court. It needs to be noted that in the case of **Manish Jain**, the Apex Court

has not decided the issue of comparative criteria of interim and permanent maintenance and whether the wife is entitled to claim maintenance to maintain herself with the same standard of living as she was accustomed to in her matrimonial home.

17. In the case of **Amarjit Kaur** (supra), the Court has laid down relevant considerations for the grant of interim maintenance and no proposition of law inconsistent with paragraph 78 in the case of **Rajnesh** (supra) has been laid down.

18. The rest of the judgments relied upon by the petitioner are the judgments of this Court since I have already held that question of law framed in the first paragraph of the judgment has been squarely covered by the judgment in the case of **Rajnesh Vs Neha** (supra) and in particular paragraph 78 of the judgment, it is not necessary to refer to the judgments of this Court.

19. To conclude, the fact that the quantum of the amount of maintenance granted to the wife and daughter constitutes 9% of the net monthly income of the husband and averments of the husband in paragraph 40 of the petition, at prima facie stage, the wife has proved her standard of living as she was accustomed to in her matrimonial home, the order impugned does not suffer from the error of law. Hence, there is no perversity nor a miscarriage of justice. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)