

In the High Court of Punjab and Haryana at Chandigarh

104

CRR(F)-778 of 2022(O&M)

Date of Decision: 16.02.2023

Dharambir

---Petitioner

versus

Nisha and another

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Kamlesh Rani, Advocate for
Mr. Parminder Singh, Advocate
for the petitioner

JAGMOHAN BANSAL, J. (ORAL)

CRM-32388 of 2022

The applicant is seeking condonation of delay of 91 days in filing the present petition.

In view of averments made in the application and arguments advanced by counsel for the applicant, the application is allowed and delay of 91 days in filing the present petition is condoned.

CRR(F)-778 of 2022

The petitioner, through the instant petition is seeking setting aside of order dated 21.09.2021 whereby Additional Principal Judge, Family Court, Panipat has allowed interim maintenance of Rs. 10,000/- per month to respondents i.e. Rs. 6000/- to respondent No. 1- wife and Rs. 4000/- to respondent No. 2-minor son of the petitioner.

The marriage of the petitioner was solemnized with respondent on 15.05.2011 according to Hindu rites and ceremonies. A child was born out of this wedlock. Due to reasons known to the parties, the respondent-wife alongwith her son started staying separate from the petitioner and thereafter filed an application under Section 125 Cr.P.C. seeking maintenance. The Family Court vide impugned order dated 21.09.2021 has awarded maintenance of Rs. 6000/- per month to respondent No. 1 and Rs. 4000/- per month to respondent No. 2-minor son of the petitioner.

Learned counsel for the petitioner inter alia contends that respondent is working in a factory and she is getting salary from the factory. She is staying in the house of the petitioner and getting rent from the house, thus, she has sufficient source of income and amount of maintenance awarded is on the higher side.

I have heard counsel for the petitioner and perused the records.

The relevant extracts of order dated read as:-

“3. At this stage without sufficient material on the record the contention of the petitioner that she was neglected and deserted the respondent refused to keep and maintain the petitioners without sufficient cause can not be dwelled upon. However, the said question needs to be redressed once the evidence is recorded, at present the Court has to prima facie see whether the petitioner is living separately. The petitioner and the respondent both have stated that petitioner is residing separately.

4. The petitioner has submitted her detailed affidavit reflecting her economic status similarly

the respondent has also submitted as many as two affidavits reflecting his income statement. The second affidavit was submitted as the first affidavit was vague and was not clear. On perusal of the affidavit of the petitioner it transpires that the petitioner is a home maker and her educational qualification is also till Matric therefore she is not capable of maintaining herself. On perusal of the second affidavit of the respondent Dharambir it reflects that his occupation is of a driver. Furthermore he has stated his monthly income to the tune of Rs. 21,000/-. Apart from this in the column of movable assets it is reflected that the respondent Dharambir owns a car and also owns as many as 3 trucks.

The learned counsel for the respondent during the course of arguments categorically submitted that all the trucks have already been sold off and at this stage there is no truck standing in the name of the respondent. Along with the affidavits from the submitted documents it can be seen that the respondent also has LIC Policies in his name and is also Proprietor of M/s Sharma Enterprises. The learned counsel for the petitioner has submitted that the respondent being the Proprietor of the aforesaid firm is running the business of wood supply. The petitioner has also placed photocopies of the account statement of the said "Sharma Enterprises." On perusal of all the account statements and other documents placed on the file it would not be wrong to access the monthly income of the respondent being not less than Rs. 40,000/- per month.

5. In these circumstances, the petitioner cannot be made to starve when the respondent has the capacity to maintain her as he is an able bodied working person. Although, there is no set formula for fixing the amount of maintenance it depends upon the facts and circumstances of each

case considering the price index status of the parties their respective needs. Determination of at interim maintenance cannot be governed by any rigid or inflexible rules. This flexibility gives wide power and discretion to the Court to do justice.

6. Consequently, taking into consideration the present price index reasonable wants of petitioner besides food and other daily expenses, the petition filed by the petitioner seeking maintenance allowance from respondent is partly allowed with costs in the following terms:

- i) Respondent is directed to pay **Rs.6,000/-** per month to petitioner no. 1.*
- ii) Respondent is directed to pay **Rs. 4,000/-** per month to the petitioner No. 2 per month as maintenance allowance to the petitioners from the filing of the present application.*
- iii) The amount awarded in the present petition shall be adjustable against the amount awarded in related proceedings between the parties.”*

The respondent is legally wedded wife of the petitioner.

The object of maintenance is to prevent the wife and children from being driven to destitution and vagrancy. The respondent being husband has social, ethical and statutory responsibility to maintain his wife. He cannot deflect from his responsibilities.

It is apt to mention here that the maintenance awarded by Family Court is interim, thus, petitioner would get opportunity to put forth his stand at the time of determination of final maintenance.

Keeping in view the present cost of living; social and legal responsibility of the petitioner to maintain his family; this court

does not find that amount of interim maintenance fixed by court below is on higher side, thus, the present petition deserves to be dismissed on merits. Accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

16.02.2023

paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No