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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25.07.2023

+ **CM(M) 970/2023**

SHRADDHA GUPTA

..... Petitioner

Through: Mr.Prashant Mendiratta, Ms. Aditi Chaudhary, Ms.Somya Shree and Mr.B.Venkatraman, Advocates with petitioner in person.

versus

SUMIT JAIN

..... Respondent

Through: In person

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner challenging the order dated 9th May, 2023 passed by the learned Judge, Family Courts, Patiala House Courts, New Delhi (hereinafter referred to as the learned 'Family Court') in HMA No. 181/2023, rejecting the prayer of the petitioner to call upon the respondent to file his affidavit of income and assets before the cross-examination of the respondent is concluded by the petitioner.

2. The learned counsel for the petitioner submits that the learned Family Court has erred in not appreciating that in terms of the judgment of the Hon'ble Supreme Court in *Rajnish vs. Neha & Anr.* 2021 (2) SCC 324, it is mandatory for the parties to file their affidavits of income and assets even in pending matters. He submits that the petitioner would



affidavit is filed on record, the learned Tribunal, however, has erred in observing that the direction of the Hon'ble Supreme Court would be applicable only in cases where the interim maintenance is to be fixed, and since the same has already been fixed in the present case, the same shall not be applicable.

3. On the other hand, the respondent, who appears in person, submits that interim maintenance was fixed by the learned Family Courts at Bandra, Mumbai, *vide* order dated 13.10.2017 passed in Interim Application No. 187/2016. The said order was challenged by the petitioner by way of a Writ Petition before the Hon'ble High Court of Judicature at Bombay, being Writ Petition No. 1215/2018. The said petition was dismissed by the High Court *vide* its judgment and order dated 13.04.2018. The said order has become final.

4. He submits that the Divorce Petition filed by the respondent and the petition filed by the petitioner under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'DV Act') were transferred to the Patiala House Courts, New Delhi, by the order dated 08.09.2022 passed by the Hon'ble Supreme Court in Transfer Petition (Civil) no. 214/2021, titled ***Shraddha Gupta vs. Sumit Jain***, directing as under:-

"Both parties join in the request that case may be disposed of by the transferee Court at the earliest. We direct that the Transferee Family Court at Patiala House, New Delhi will endeavour to dispose of the matter at the earliest and preferably within a period of six months from the production of the copy before the Court."

5. He submits that in spite of the above direction, the petitioner has delayed the cross-examination of the petitioner, and vide an order dated



20.04.2023, the learned Family Court was pleased to close the right of the petitioner to cross-examine the respondent. Subsequently, by an order dated 26.04.2023, the application seeking recall of the order dated 20.04.2023 was also dismissed by the learned Family Court. The petitioner challenged the said order before this Court by way of petition, being CM(M) 712/2023. This Court by its judgment and order dated 02.05.2023 allowed the said petition directing as under:-

“9. The petition is accordingly allowed by setting aside the impugned order to the aforesaid extent and directing the learned Family Court to grant two dates to the petitioner for further cross examination of PW-1. It is further directed that the petitioner would not be required to tender her evidence before completion of the cross examination of PW-1, in terms of this order. The learned Family Court will also ensure that the cross examination by the petitioner is completed at the earliest without granting any undue adjournments to any of the parties.”

6. In spite of the said direction, the petitioner only wanted to delay the cross-examination of the respondent, and for that purpose, the petitioner made the prayer that the respondent should first be called upon to file the affidavit of his income and assets before the cross-examination is concluded. He submits that the learned Family Court has, therefore, rightly rejected such prayer of the petitioner.

7. He submits that in fact the grievance of the petitioner, based on the judgment of the Hon’ble Supreme Court in **Rajnish v. Neha** (supra) is also *mala fide*, as is evident from the fact that the petitioner has also not filed her affidavit of income and assets in terms of the said judgment.

8. The learned counsel for the petitioner, in rejoinder, refutes the above submissions of the respondent. He submits that the petitioner has



always been ready and willing to file her affidavit of income and assets, and it is only because the learned Family Court had directed that no fresh application shall be considered by the learned Family Court that the said affidavit has not been filed till date.

9. He further submits that it was not the intention of the petitioner to seek an adjournment for the purposes of completing the cross-examination of the respondent, inasmuch as the petitioner had two dates to complete the cross-examination. The request of the petitioner was only that the second date be used only after the filing of the affidavit of income and assets by the respondent. The petitioner, in fact, wanted a direction to both the parties to file their affidavits of income and assets, however, the said prayer has been wrongly rejected by the learned Family Court. He submits that the petitioner had wished to cross-examine the respondent on the question of permanent alimony.

10. I have considered the submissions made by the learned counsel for the petitioner and the respondent, who appears in person.

11. As is evident, the respondent had filed the petition under Section 13 of the Hindu Marriage Act, 1956 before the learned Family Court at Bandra, Mumbai, on 04.06.2016. The petitioner filed the petition under Section 12 of the DV Act before the same Court on 04.02.2017. On petition seeking transfer of the divorce petition filed by respondent, the Hon'ble Supreme Court, *vide* its order dated 08.09.2022 passed in Transfer Petition (Civil) 214/2021, allowed the said prayer and directed the Transferee Court to make an endeavour to dispose of the divorce petition at the earliest and preferably within a period of 6 months from the production of the copy of the petition before the Court. The petition



12. Before such transfer, the learned Family Court at Bandra had determined the claim of interim maintenance, *vide* order dated 13.10.2017 passed in Interim Application No.187/2016. The petitioner being aggrieved of such determination, challenged the same before the High Court of Judicature at Bombay in the form of a Writ Petition, being Writ Petition No.1215/2018, which was dismissed by the High Court *vide* its judgment and order dated 13.04.2018. The issue of interim maintenance, therefore, stood concluded by the above orders.

13. In ***Rajnish*** (supra), the Hon'ble Supreme Court has laid down the guidelines on claim for maintenance filed under various legislations. In laying such guidelines, for determination of interim maintenance and permanent alimony, the Supreme Court has, *inter alia*, directed as under:-

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India :

72.1.(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court/Magistrate's Court, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply alongwith the Affidavit of Disclosure within a maximum period of four weeks. The Courts may not grant more than two opportunities for



submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the Affidavit, and seeks more than two adjournments for this purpose, the Court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings. On the failure to file the Affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the Affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the concerned Court, if the exigencies of a case require the same. It would be left to the judicial discretion of the concerned Court, to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the concerned Court may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the Court to serve interrogatories, and seek production of relevant documents from the opposite party under Order XI of the CPC;

On filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C or Section 165 of the Evidence Act 1872, if it considers it necessary to do so;

The income of one party is often not within the knowledge of the other spouse. The Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended / supplementary affidavit,



which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding u/S.340 Cr.P.C., and for contempt of Court.

72.9. (i) In case the parties belong to the Economically Weaker Sections ("EWS"), or are living Below the Poverty Line ("BPL"), or are casual labourers, the requirement of filing the Affidavit would be dispensed with.

72.10. (j) The concerned Family Court / District Court/Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.

Permanent alimony

73. Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse.

74. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.

75. Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.

76. If there are any trust funds / investments



created by any spouse / grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.”

14. In the present case, the interim maintenance already stands decided and no application has been filed by the petitioner seeking modification thereof. For the purposes of permanent alimony, the parties are to lead their respective evidence. The absence of evidence on the part of the respondent, if any, will have its own consequences. The petitioner, however, could not have insisted that she would cross-examine the respondent only after the updated affidavit of income and assets is filed by the respondent.

15. In my view, therefore, no infirmity is found in the impugned order.

16. The petition is accordingly dismissed. The parties shall bear their own costs.

NAVIN CHAWLA, J

JULY 25, 2023
Neelam/am

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 31.07.2023

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CM(M) 970/2023