

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.131 of 2020

Vandana Mishra @ Vandana, Female, aged about 34 years, daughter of Paras Nath Tiwary, resident of Mahadewa Colony, behind Chirai Ghar, Swami Vivekanand Path, P.S.- New Basti, District Siwan.

... .. Appellant/s

Versus

Anil Mishra son of Ram Dular Mishra, resident of Village- Surwal, P.O.- Rahimpur, P.S. Khampar, District Deoriya (U.P).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Harsh Anuj, Advocate

For the Respondent/s : Mr. Irshad Ahmad Khan, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 15-02-2024

Learned counsel for the parties have been heard.

2. The instant miscellaneous appeal is being filed by the appellant for setting aside the judgment and order dated 24.10.2019 passed in M.M. Case No. 61 of 2019 for enhancement of permanent alimony amount in the light of order dated 04.01.2019 and direction passed in Misc. Appeal No. 323 of 2015 of the Hon'ble Court by which the learned court of by Principal Judge, Family Court, Gopalganj has allowed the appeal and enhance the permanent alimony amount Rs 5,00,000/- in place of Rs 2,00,000/-.

3. Brief fact of the case is that earlier appellant had filed M.A. No. 323 of 2015 u/s 25(2) of the Hindu Marriage



Act, 1955 for enhancement of the permanent alimony in which vide order dated 04.01.2019, liberty was given that any such application filed by the appellant would be considered by the Family Court below. Though the appellant had filed M.M Case No. 61 of 2019 and was allowed same.

4. In the nature of dispute inter-party put up for consideration before this Court as well as the stage at which it rests, we do not deem it proper to go into the merits of the case because the appellant-herein has very clearly expressed before this Court, as recorded in the order dated 26.09.2018 that in the changed circumstances there was no question of living together and that she was pressing the appeal only for enhancement of the alimony amount by way of one time settlement keeping in view of the fact that she is living with a minor girl child born out of their wedlock.

5. We do note that the learned Family Court below while determining the quantum of permanent alimony has restricted it on the life support of the opposite party completely failing to notice that there was a daughter born from the wedlock and who had also to be maintained in the said amount.

6. Having heard learned counsel appearing on behalf of the appellant, we are persuaded by the submissions, so made,



which prima-facie do indicate that the quantum of permanent alimony requires a variation in the circumstance that it has not only to provide a support for the appellant but for the minor daughter as well. A period of almost four years is going to lapse since the passing of the decree by itself is a sufficient change in circumstance coupled with the fact that the Family Court below has failed to take notice of the fact that there is a minor daughter living with appellant born from the wedlock who needed support and thus, there was equal responsibility on the respondent-husband to ensure for her well-being as well.

7. Sections 24 and 25 of the Hindu Marriage Act, 1955 make provision for maintenance to a party who has no independent income sufficient for his or her support, and necessary expenses. The Counsel for the Applicant contended that the applicant does not have any source of income for her survival and the expenses of the girl child is borne by the Grand-Father.

8. We, therefore uphold the decision in the light of Hon'ble Apex court held in **Rajnesh v. Neha, (2021) 2 SCC 324**, the court said that the terms of maintenance are decided based on pleadings of parties and based on some amount of guess work. It is often seen that both parties submit scanty



material and do not disclose correct details. The court noted the guidelines laid down in **Rajnesh v. Neha case (*supra*)** regarding maintenance to minor children. The Hon'ble Apex Court acknowledged that there is no straitjacket formula to calculate the quantum of maintenance. It should weigh the interests of the applicant spouse against the financial capability of the respondent spouse. The Hon'ble Apex Court, however, laid down factors that needed to be considered while assessing the quantum of maintenance. The list included: status of the parties, needs of the applicant, income and property of the respondent, liabilities and financial responsibilities of the claimant, age and employment status of the parties, residential arrangements, maintenance of minor children, illness or disability.

9. Further after referring to **Neha Tyagi v. Deepak Tyagi, (2022) 3 SCC 86**, wherein the Hon'ble court upheld the decree of divorce, and opined that even after the divorce, the husband is not absolved of his liability and responsibility to maintain child till he/she attains the age of majority, the court said that where the earning of the wife is also good, that factor can always be considered, as joint parenting is always best for upbringing of the child. The basic object is the welfare of the child. Considering the matter presented here the



Respondent/Husband is hereby directed that he will bear the entire expenses of the child including educational and marriage.

10. We come to the conclusion that Impugned Judgment/order of learned Family Court, Gopalganj is not sustainable @ Rs. 5,00,000/- is not a sufficient amount for whole life and hence the judgment/order dated 24.10.2019 passed in M.M. case no. 61 of 2019 stand set aside. We proposed to enhance for the reason that standard of living at this hour is to be taken note of, thus permanent alimony is enhanced to a sum of Rs. 10,00,000/- (Ten Lakhs only) in place of Rs. 5,00,000/-, which is to be paid to the Appellant within a period of two months and the Appellant/Wife is hereby directed to open a bank account in the name of the daughter and provide it to the Respondent/Husband so that a considerable sum of money is deposited for the well-being of the child.

11. Let decree be drawn accordingly.

(Ramesh Chand Malviya, J)

(P. B. Bajanthri, J)

Brajesh Kumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

