

29.04.2024
Sl. No.34&1489(ML)
srm

C.O. No. 4184 of 2023
Sri Arnab Chakraborty
Versus
Smt. Nabamita Nath Chakraborty

With

C.O. No. 3949 of 2023
Nabamita Nath Chakraborty
Versus
Arnab Chakraborty

Mr. Arijit Bardhan,
Mr. Sayan Sinha,
Mr. Adil Naser

...for the Petitioner in CO 4184/2023 &
Opposite Party in CO 3949/2023.

Mr. Somnath Roy Chowdhury

...for the Petitioner in CO 3949/2023 &
Opposite Party in CO 4184/2023.

1. Both the revisional applications are taken up together in view of similarities between the parties and the issues involved.
2. Both the parties are aggrieved by an order dated October 9, 2023 passed in Miscellaneous Case No.30 of 2020, by the learned Additional District Judge, Fast Track, 1st Court at Howrah.
3. By the order impugned, the learned court directed the husband/petitioner in C.O. No.4184 of 2023 to pay maintenance *pendente lite* to the tune of Rs.30,000/- per

month from the date of the application, within 10th of each succeeding English calendar month, until disposal of the suit. The amount of maintenance *pendente lite* was awarded on and from the date of the application.

4. Mr. Bardhan, learned Advocate appearing on behalf of the petitioner in C.O. No.4184 of 2023 has challenged the said order on the following grounds:-

- (a) The learned court did not take into account the conduct of the wife who kept on filing one application after another under various provisions of law, thereby creating a hindrance in the disposal of the suit.

- (b) The learned court took into account the enhanced income of the husband and directed the amount of Rs. 30,000/- to be paid, without appreciating that direction for payment, from the date of the filing of the misc. case, would cause serious prejudice to the husband. Computation of the arrears should be proportionate to the income of the husband during the relevant periods, i.e., from filing of the application for maintenance, to the date of the order. The husband's income kept varying from time to time.

(c) The enhanced income of the husband should not have been taken into consideration while awarding the maintenance.

5. Mr. Roy Chowdhury, learned Advocate appearing on behalf of the wife and the petitioner in C.O. No.3949 of 2023, submits that the learned court had proceeded on the income disclosed by the husband in his affidavit of assets. Mr. Roy Chowdhury further submits that although a letter issued by the employer of the husband had been filed which disclosed base pay of Rs.23,00,000/- per annum, such amount was not taken into consideration. According to Mr. Roy Chowdhury, going by Mr. Bardhan's contention, the wife was entitled to much more than Rs. 30,000/- per month as the income increased year after year. The next contention is that the learned court did not allow litigation cost, which was contrary to law.
6. Having heard learned Advocates for the respective parties, it appears to this Court that the learned trial judge relied on the affidavit of assets and calculated the maintenance on the basis thereof. Reliance was not placed on the income of Rs.23,00,000/- per annum. The first contention of Mr. Bardhan that maintenance should have been determined on the basis of the income of the

husband at the time of filing of the application for maintenance *pendente lite*, and not on the basis of the income of the husband later, is not available as the court took into account the income disclosed by the husband.

7. In *Rajnish v. Neha and ors. reported in (2021) 2 SCC 324*,

the Hon'ble Apex Court held that in a proceeding for maintenance, both the spouses were required to submit their affidavits of assets. In this case, the husband has disclosed in his affidavit of assets that his income is around Rs.1,36,000/- per month. The law is well settled. It is for the husband to disclose his income as it is within his exclusive knowledge.

8. The contention that the learned trial court was required to compute the arrears by taking into account the proportionate income of the husband during the pendency of the proceedings, is not backed by any law. Such suggestion of Mr. Bardhan is farfetched. The affidavit of assets of the husband has rightly been relied upon by the learned trial judge, based on the decision of *Rajnish (supra)*. The relevant paragraphs of the said decision are quoted below:

“63. At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guesswork or rough estimation takes

place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income. It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

64. In the first instance, the Family Court in compliance with the mandate of Section 9 of the Family Courts Act, 1984 must make an endeavour for settlement of the disputes. For this, Section 6 provides that the State Government shall, in consultation with the High Court, make provision for counsellors to assist a Family Court in the discharge of its functions. Given the large and growing percentage of matrimonial litigation, it has become necessary that the provisions of Sections 5 and 6 of the Family Courts Act are given effect to, by providing for the appointment of marriage counsellors in every Family Court, which would help in the process of settlement. If the proceedings for settlement are unsuccessful, the Family Court would proceed with the matter on merits.

65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by

both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage."

9. Paragraph 113 is also quoted below in order to justify the correctness of the order of the learned trial judge in directing payment of the amount on and from the date of the application.

"113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant."

10. The further contention of Mr. Bardhan that already an amount of Rs.28,000/- per month had been permitted in the proceedings under the Domestic Violence Act has been noted by the court. The wife is entitled to initiate as many proceedings as are available under the various laws. The Hon'ble Apex Court in Rajnesh (supra) has also recognized such proposition. All that was required to be seen was that the maximum of the quantum awarded in the different proceedings should be the quantum of maintenance to be paid by the husband. In this case, the

husband has been directed to pay Rs.30,000/- per month as the total amount of maintenance. The Hon'ble Apex Court in Rajnesh (supra) held as follows:-

“60. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 CrPC, or under HMA. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family Court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

61. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding.”

11. In this case, the amount awarded under the Domestic Violence Act was taken note of by the learned trial court.

12. The learned court has also relied on the affidavit of assets filed by the wife and it has been recorded that the wife did not have any income and had monthly expenses of

Rs.50,000/- per month. Mr. Bardhan's contention that wife was also earning, could not be proved.

13. In the decision of Rajnesh (supra), it has been held that even if the wife was well educated and capable of earning money, that should not be a ground for reducing the quantum of maintenance. The relevant paragraphs are set out below:-

“62. 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.

63. In Shailja & Anr. v Khobbanna, 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.⁴⁰ Sustenance does not mean, and cannot be allowed to mean mere survival.

64. In Sunita Kachwaha & Ors. 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.

65. The Bombay High Court in Sanjay Damodar Kale v Kalyani Sanjay Kale while relying upon the judgment in Sunita Kachwaha (supra), held that neither the mere potential to earn, nor the actual

earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

66. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a Chander Prakash Bodhraj v. Shila Rani Chander Prakash. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court."

14. In this case, the husband failed to prove that the wife was earning.

15. In CO 3949 of 2023, the issue is whether the wife's claim for an amount more than Rs.30,000/- could be justified in terms of the prayers and submissions made in C.O. No.3949 of 2023.

16. In the celebrated judgment of Justice Krishna Iyer in the matter of **Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and ors.** reported in **(1978) 4 SCC 70**, the object behind promulgation of maintenance laws, had been discussed, which is quoted below:-

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that Sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional

empathy for the weaker Sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts.”

17. The parameters for fixing the quantum of maintenance have been discussed elaborately in many decisions by the courts.

18. The Hon'ble Apex Court in *Rajnesh* (supra), discussed the criteria for determining quantum of maintenance. The relevant paragraphs are as follows:-

“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. [Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

79. In *Manish Jain v. Akanksha Jain* [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The

maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort."

19. While discussing a decision of the Delhi High Court, the

Apex Court also approved certain factors to be relevant.

Such finding of the Apex Court is at paragraph 57 of the judgment.

20. The factors to be taken into consideration while awarding

maintenance are as follows:-

“(v) The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde* laid down the following factors to be considered for determining maintenance :

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.

11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act. 17.

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

21. The courts have normally laid down the proposition that

1/5th to 1/3rd should be the amount to be paid to the wife.

Admittedly, the husband is a B.Tech. engineer who is working in a reputed multi-national company and has a substantial income. He is maintaining a good quality of life. His wife is also entitled to live in the same status which he enjoys. There are contentions that he has also afforded foreign holidays etc.

22. Thus, assuming the income is around Rs.1,36,000/- per

month according to this Court, Rs.30,000/- per month is not adequate for the wife. Taking into account the amount disclosed by the husband as his salary in the affidavit of assets, Rs. 40,000/- would be reasonable. Cost of food, clothing, shelter, medical expenses and miscellaneous expenses are considered. The wife is entitled to enjoy the same status as her husband and live a comfortable life. This Court enhances the said amount to Rs.40,000/- per month to be paid from the date of the

application, in total, by taking note of the other proceeding as well.

23. The payment of Rs.40,000/- per month on and from May, 2024 shall commence from 10th of May, 2024 and thereafter month by month within 10th of each month when it falls due.

24. The amount of maintenance of Rs.40,000/- from the date of filing of the application till April, 2024, which are now arrears, shall be paid in ten equal monthly instalments, along with the current maintenance, with adjustment of the amounts paid, as per direction of any of the fora.

25. Another mistake which has been committed by the learned court is in not awarding litigation costs. Onetime litigation cost of Rs.50,000/- to be paid to the wife. within a month from date

26. The pending application under Order XII Rule 6 of the Code of Civil Procedure shall be disposed of within 15 days on its own merits, provided the husband complies with the order of payment of maintenance.

27. Upon disposal of the application and on its outcome, the suit should be disposed of expeditiously and preferably within six months from the date of disposal of the application.

28. The order impugned is modified.

29. In case of default, the wife is at liberty to take steps in accordance with law and the suit shall not proceed.

30. Both the revisional applications are, thus, disposed of.

31. This order is restricted to the disposal of the revisional applications and the learned court will dispose of the suit in accordance with law and on merits.

32. There shall be no order as to costs.

33. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)