



CRR(F)-26-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CRR(F)-26-2024

Date of decision: 22.10.2024

Chander Kant

...Petitioner

V/s

Neetu Kumari and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Chanderhas Yadav, Advocate for the petitioner.

Ms. Anu Bala Garg, Advocate for the respondents.

SUMEET GOEL, J. (Oral)

1. Present revision petition has been preferred against the order dated 06.12.2023 passed by the Principal Judge, Family Court, Bhiwani Camp Court at Loharu (hereinafter to be referred as the 'concerned Family Court') praying for setting-aside of the said order. Vide the impugned order; the respondents (herein) have been awarded interim maintenance at the rate of Rs.10,000/- per month (i.e. Rs.5,000/- per month to respondent No.1-wife and Rs.5,000/- per month to respondent No.2-minor son) to be paid by the petitioner (herein) from the date of application till final disposal.

2. Learned counsel for the petitioner has argued that the learned Family Court, while determining the quantum of interim maintenance, has acted on presumption while assessing the income of the petitioner. Learned counsel has further argued that considering the modest income of the petitioner, he is unable to pay the excessive amount of maintenance granted by the Family Court. Learned counsel has further argued that the Family Court has overlooked the fact that the respondent-wife, is doing the work of

**CRR(F)-26-2024**

2

embroidery, sewing and stitching and earning handsomely. Learned counsel has further submitted that the respondent-wife has refused to live with the petitioner without any justifiable cause which further demonstrates that the respondent-wife has no justifiable grounds for seeking maintenance. According to learned counsel, the Family Court ought to have dismissed the petition at the very first instance, as the respondent-wife (herein) intentionally misrepresented the material facts before the Family Court. Learned counsel has further submitted that the respondent, in her petition before the Family Court, has wrongly claimed herself to be a housewife with no source of income. Learned counsel has further argued that the Family Court ought to have considered that the petitioner is the sole bread winner of his family, having responsibility to look after his old parents before fastening with the liability to pay the interim maintenance. Thus, it has been prayed that the impugned order is patently illegal, perverse and suffers from material illegalities and infirmities and the same is liable to be set-aside.

3 *Per contra*, learned counsel for the respondents has iterated that the learned Family Court has rightly allowed the application seeking interim maintenance as the respondent-wife has no source of income to maintain herself and her minor son. Furthermore, the Family Court has determined the quantum of maintenance based on the calculation of the income of the petitioner; consideration of the expenditure incurred for the maintenance and education of the minor son as also taken due consideration of the relevant facts and circumstances of the case. Furthermore, it has been submitted that the petitioner is working in a private company and as such earning



handsomely. Thus, it has been prayed that the present petition be dismissed.

4. I have heard learned counsel for the parties and have perused the available record.

5. It would be apposite to refer herein to a judgment passed by the Hon’ble Supreme Court titled as **Rajnish vs. Neha & Anr.: 2021(2) SCC 324**; relevant whereof reads as under:-

“II Payment of interim Maintenance

1. *The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C., 1973 (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days’ from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that application remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.*
2. *At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work 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.*
74.It has therefore, become necessary to lay down a procedure to streamline, the proceedings, since a dependant 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.



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(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.

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xxx xxx xxx xxx xxx

132. 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;

xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx”

6. Vide the impugned order passed by the Family Court, the aspect of interim maintenance has been decided. It goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly as the entitlement of the applicant (making a plea for grant of interim maintenance) cannot be based upon exact arithmetical calculations at such stage. The order granting interim maintenance is, indubitably, subject to final adjudication and it is a provisional step subject to final determination to be made on the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

7. It is undisputed that respondent No.1 is the legally wedded wife of the petitioner and respondent No.2 is the minor son of the petitioner, who is living in the care and custody of respondent No.1. The facts of the instant case reflect that vide the impugned order; the respondents, who are the wife and minor son of the petitioner, have been granted interim maintenance at

**CRR(F)-26-2024**

5

No.1-wife and Rs.5,000/- per month to respondent No.2 -minor son) to be paid by the petitioner from the date of application. While going through the impugned order, it transpired that the respondent No.1 has consistently maintained throughout the proceedings that she has neither any source of income nor possesses any moveable or immoveable property and hence unable to bear the maintenance, education and other developmental expenses of her son, who is living with her. Furthermore, no credible evidence has been brought on record to establish that the respondent No.1-wife has an independent source of income or is engaged in any form of profitable employment. In light of these circumstances, the financial disparity between the petitioner and respondent-wife making it imperative that adequate financial support should be provided to ensure a decent standard of living for the respondent-wife and her son. On the other hand, no documentary proof has been produced on record to prove the earnings of petitioner (herein). Therefore, keeping in view the facts and circumstances of the case, the Family Court had taken into account the income of the petitioner as Rs.20,000/- per month and granted interim maintenance at the rate of Rs.10,000/- per month to the respondents (herein). At this juncture, the contentions raised by learned counsel for the petitioner in the present petition with regard to factual aspect, are matter of trial and no ratiocination on the same can be made at this stage. The same can be ascertained only after adducing evidence by the parties. It is also apparent from the record, that the order under challenge is only interim in nature and not a final decision of the maintenance petition. The amount of maintenance awarded is

**CRR(F)-26-2024**

6

always subject to the adjustment which will depend on the final outcome of the maintenance petition filed by the respondent/wife.

7.1 Furthermore, vide order dated 17.09.2024, this Court had directed the concerned Family Court to send a report as to whether the impugned order dated 06.12.2023 was passed after taking on record the affidavits (disclosure of assets and liabilities) by rival parties in terms of judgment passed by Hon'ble Supreme Court in the case of **Rajnesh** case (supra). In pursuance thereto, a report dated 21.10.2024 has been received from the concerned Family Court which reflects that the respondents-herein (petitioners in the original petition) had filed the main petition on 01.02.2023 which was accompanied by her Affidavit of Assets and Liabilities. Thereafter, the petitioner-herein (respondent in the original petition) put in appearance on 15.03.2023 and after availing effective opportunities, petitioner-herein (respondent in the original petition), filed his reply on 16.08.2023 but he did not file the requisite affidavit. Thereafter, the matter was adjourned to 13.09.2023 and then to 18.10.2023, 08.11.2023, 22.11.2023 respectively for arguments on the application seeking interim maintenance, but despite that, the petitioner-herein (respondent in the original petition) did not file his requisite Affidavit of Assets and Liabilities. At last, the concerned Family Court decided the application for interim maintenance on 06.12.2023 wherein the impugned order was passed. Hence, it is forthcoming from above-mentioned factual conspectus, that till the time of deciding the application seeking interim maintenance, the Affidavit of Disclosure of Assets and Liabilities was not filed by the petitioner-herein

7.2 It is a settled legal position, that for assessing the quantum of interim maintenance, it is imperative for the parties to submit Affidavit of Assets and Liabilities, which would enable the Court to evaluate the financial capabilities of each party. The Court's reliance on Affidavits of Disclosure of Assets and Liabilities ensures a fair and informed assessment of interim maintenance, preventing potential concealment of income or financial mis-representation. In cases where a party fails to file the Affidavit of Disclosure of Assets and Liabilities, despite being given sufficient opportunities in that regard, the Court is constrained to draw adverse inferences against such party, as per Order XIX Rule 3, the Code of Civil Procedure, 1908 and Section 106 of the Indian Evidence Act, 1872/Section 109 of the Bharatiya Sakshya Adhiniyam, 2023. Reference in this regard may be made to the following observations by Hon'ble Supreme Court in the case of ***Rajnesh vs. Neha & Anr.: 2021(2) SCC 324***;

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The onus is on the husband to establish with necessary material that there are sufficient grounds to show 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.

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8. Considering the facts and circumstances of the case, the amount of Rs.10,000/- per month, which has been directed to be paid by the petitioner (herein) to the respondents, vide the impugned order cannot be



CRR(F)-26-2024

said to be on the higher side and is rather just and appropriate in the facts/circumstances of the case. Needless to say that in case any maintenance order is passed against the petitioner (herein) and in favour of the respondents (herein) in any other proceedings, adjustment or set-off of the said amount awarded, shall be taken into account.

9. In view of above, the interim maintenance granted by the Family Court does not call for any interference. Accordingly, the instant petition is hereby dismissed.

10. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced with them.

11. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

October 22, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No