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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR(F)-421-2024 (O&M)

Date of decision: 25.09.2024

Sushil Kumar

...Petitioner

V/s

Sushma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Joginder Siwach, Advocate for the petitioner.

Mr. Sanjeev Sharma, Advocate for the respondents.

SUMEET GOEL, J. (Oral)

1. Present revision petition has been preferred against the order dated 16.02.2024 passed by the Principal Judge, Family Court, Bhiwani Camp Court Tosham (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.16,000/- per month (i.e. Rs.7,000/- per month to respondent No.1-wife and Rs.3,000/- per month each to respondent Nos.2 to 4-minor children) 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, who is only a farmer, he is unable to pay the excessive amount of

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maintenance granted by the Family Court. Learned counsel has further argued that the Family Court has overlooked the fact that the respondent-wife, is working in Anganwari Department and earning a salary of Rs.13,500/- per month. It has been further argued, that the respondents are living in the house of the father of the petitioner and hence the maintenance assessed by the Family Court is on the higher side. 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 the learned counsel, the petitioner has been battling with chronic disease which has severely impacted his physical and mental health & rendered him incapable of earning a livelihood or contributing to the financial needs of the family. Learned counsel has further argued that the Family Court ought to have considered this aspect before fastening the petitioner with the liability to pay such a large amount of interim maintenance to the respondents. 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 argued that the learned Family Court has rightly allowed the application seeking interim maintenance as the respondent-wife has limited source of income to maintain herself and her minor children. 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 children i.e. respondent Nos.2 to



4 as also taken due consideration of the relevant facts and circumstances of the case. Furthermore, it has been submitted that the petitioner is doing a private practice of Veterinary Livestock Development Assistance (VLDA) as he is a qualified VLDA 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.

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

(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.

xxx	xxx	xxx	xxx	xxx
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 Nos.2 to 4 are the minor children of the

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petitioner, who are 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 children of the petitioner, have been granted interim maintenance at the rate of Rs. 16,000/- per month (i.e. Rs.7,000/- per month to respondent No.1-wife and Rs.3,000/- per month each to respondent Nos.2 to 4-minor children) 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 limited source of income while working in Anganwadi Department and is unable to bear the maintenance, education and other developmental expenses of her children, who are living with her. The cost of education, particularly, has surged significantly adding substantial financial burden on respondent No.1. In light of these responsibilities, 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 children. The Family Court further observed that in addition to financial challenges, the respondent-wife also bears the emotional and mental burden as also the burden of well being and overall development of the children. On the other hand, the petitioner (herein), who is running a private clinic and is financially stable and capable, continues to live without the daily stresses and obligations that comes with raising children. Therefore, keeping in view the facts and circumstances of the case, the Family Court had taken into account not only the financial capability of the petitioner but also the comprehensive efforts required to raise children, which should be fairly

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shared between both the parents. 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 comment 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 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 02.09.2024, this Court had directed the concerned Family Court to send a report as to whether the impugned order dated 16.02.2024 was passed after taking on record the affidavit (disclosure of assets and liabilities) of 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 06.09.2024 has been received from the concerned Family Court which reflects that the respondents-herein (petitioner in the original petition) had filed the main petition on 14.07.2023 which was accompanied by Affidavit of Assets and Liabilities for Non-Agrarian Deponents. Thereafter, the petitioner-herein (respondent in the original petition) put in appearance on 04.08.2023 and after availing to affective opportunities, petitioner-herein (respondent in the original petition), filed his reply on 17.11.2023. Thereafter, the matter was adjourned to 15.12.2023 & then to 19.01.2024, 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

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 ***Rajnish 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.16,000/- per month, which has been directed to be paid by the petitioner (herein) to the respondents, vide the impugned order cannot be 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

September 25, 2024
Ajay

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