



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-643-2024

Date of decision:13.08.2024

Rahul Dewan

...Petitioner

V/s

Micky Dewan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Parmod Kumar Chauhan, Advocate for the petitioner.
Mr. Akash Khurcha, Advocate for
Mr. Murari Tiwari, Advocate for the respondents.

SUMEET GOEL, J.

1. Present revision petition has been preferred against the order dated 23.01.2024 as well as order dated 01.04.2024 passed by the Additional Principal Judge, Family Court, Gurugram (hereinafter to be referred as the 'concerned Family Court'). At the outset; it is noticeable herein that, though in the prayer clause in the instant revision petition, challenge has been laid to the order dated 23.01.2024 as also order dated 01.04.2024 passed by the concerned Family Court but a copy of the order dated 23.01.2024 has not even been annexed in the instant revision petition. The opening sheet in the instant revision also shows that challenge has only been laid to order dated 01.04.2024 passed by the concerned Family Court. Also, no arguments have been raised by learned counsel for the rival parties *qua* veracity of order dated 23.01.2024. Therefore; it is indubitable that, in essence, challenge has been only laid to order dated 01.04.2024 passed by the concerned Family Court. The said order dated 01.04.2024 passed by the concerned Family

Court reads as under:-



*“Present: Petitioner in person with Sh. Kuldeep Singh Raghav, Advocate
Respondent in person with Ms. Neha Bhardwaj, Advocate
(Defence of respondent struck off vide order dated 23.01.2014)*

*Mediation report has not been received. Counsel for the petitioner
has submitted that mediation between the parties has not been effected.*

*One witness namely Smt. Micky Dewan is appeared as PW-1 and
examined. No other witness is present. Petitioner has closed her evidence
by her statement recorded separately.*

*At this stage Counsel for the petitioner has requested for passing
some provisional order regarding maintenance*

*Heard. Till disposal of the interim application for maintenance,
respondent is directed to pay a sum of Rs. 15,000/- per month to the
petitioner from the date of this order as provisional maintenance*

*To come up on 09.05.2024 for payment of provisional maintenance
and evidence of respondent.*

01.04.2024

*Sd/-Narender Kaur
Additional Principle Judge Family Court,
Gurugram (UID No. HR-0139)”*

2. Learned counsel for the petitioner has argued that the impugned order dated 01.04.2024 is against the statute as there is no legislative mandate for grant of any ad-interim maintenance/provisional maintenance under Section 125 of Cr.P.C pending final disposal of an application for interim maintenance. Learned counsel for the petitioner has further argued that the petitioner is doing a private job at Gurugram and he is also having old aged parents to look after. Therefore, even the quantum of ad-interim (provisional maintenance) awarded, vide the impugned order dated 01.04.2024, is on the higher side. Thus, it has been prayed that the instant petition be accepted and the impugned order dated 01.04.2024 be set-aside.

3. Learned counsel appearing for the respondents has argued that the petitioner (herein) has been directed to pay Rs.15,000/- per month to the respondents (herein) from the date of the order i.e. 01.04.2024 as ad-interim



maintenance (provisional maintenance) to tide over the difficulties being faced by the respondents (herein) during the pendency of application for interim maintenance. Learned counsel has further submitted that even; if there is no statutory mandate in Cr.P.C., 1973 to grant provisional maintenance/ad-interim maintenance; yet, the factual matrix of the *lis* indicates that the ad-interim maintenance (provisional maintenance) was required to be paid to the respondents (herein) in view of financial difficulties being faced by them. Thus, dismissal of the instant petition is prayed for.

4. This Court has heard learned counsel for the rival parties and have perused the record.

Prime Issue

5. The prime issue that arises for consideration in the instant revision is as to whether the impugned order dated 01.04.2024 passed by the concerned Family Court deserves to be set-aside. The pivotal legal issue that arises for consideration is as to whether the Court has the power to grant ad-interim/provisional maintenance under Section 125 of Cr.P.C., 1973/Section 144 of BNSS, 2023.

6. **Relevant Statutory provisions**

The Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC., 1973')

Section 125 of Cr.P.C. (as it stood before 24.09.2001) reads as under:-

“125. Order for maintenance of wives, children and parents.- (1) If any person having sufficient means neglects or refuses to maintain-
(a) his wife, unable to maintain herself, or



(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.”

Section 125 of Cr.P.C. (as it stood after 24.09.2021)

125. Order for maintenance of wives, children and parents- (1) *If any person having sufficient means neglects or refuses to maintain*

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable



and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.”

The Bharatiya Nagarik Suraksha Sanhita, 2023

“144. Order for maintenance of wives, children and parents: — (1) If
any person having sufficient means neglects or refuses to maintain—

- (a) his wife, unable to maintain herself; or*
- (b) his legitimate or illegitimate child, whether married or not, unable to maintain itself; or*
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself; or*
- (d) his father or mother, unable to maintain himself or herself,*

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Relevant Case Law

II. *Doctrine of implied powers (QUANDO LEX ALIQUID ALICUI CONCEDIT, CONCEDERE VIDETUR ET ID SINE QUO RES IPSA ESSE NON POTEST & UBI ALIQUID CONCEDITUR, CONCEDITUR ET ID SINE QUO RES IPSA ESSE NON POTEST)*

"20. One of the first principles of law with regard to the effect of an enabling act", observes Craies, "is that if Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view". The principle on which the doctrine is based is contained in the legal maxim '**Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest**'. This maxim has been thus translated by Broom thus: "whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect". Dealing with this doctrine Pollock, C.B., observed in **Fenton v. Hempton, (1858) 117 RR 32 at p.41 : II MOO PC 347**" it becomes therefore all important to consider the true import of this maxim, and the extent to which it has been applied. After the fullest research which I have been able to bestow, I take the matter to stand thus : Whenever anything is authorised, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorised in express terms be else done, then that something will be supplied by necessary intendment." This doctrine can be invoked in cases "Where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means as are essentially necessary to its execution." In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature so that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead letter and cannot be enforced unless a subsidiary power is implied. xxx"

"59. xx. At this juncture, it is seemly to state that the principle of implication is fundamentally founded on rational inference of an idea from the words used in the text. The concept of legitimate deduction is always recognised. In **Melbourne Corporation v Commonwealth**, (1974) 74 CLR 31, Dixon, J opined that constitutional implication should be based on considerations which are compelling. Mason, CJ, in **Political Advertising Case** (1992) 177 CLR 106, has ruled that there can be structural implications which are 'logically or practically necessary for the preservation of the integrity of that structure'. Any proposition that is arrived at taking this route of interpretation must find some resting pillar or strength on the basis of certain words in the text or the scheme of the text. In the absence of that, it may not be permissible for a Court to deduce any proposition as that would defeat the legitimacy of reasoning. A proposition can be established by reading number of articles cohesively, for that will be in the domain of substantive legitimacy.

60. Dixon, J, in *Australian National Airways Pty Ltd. v Commonwealth*, (1945) 71 CLR 29, 85, said: ‘I do not see why we should be fearful about making implications’. The said principle has been approved in *Lamshed v Lake*, (1958) 99 CLR 132, 144-5, and thereafter, in *Payroll Tax Case* (1971) 122 CLR 353, 401. #### Thus, the said principle can be taken aid of for the purpose of interpreting constitutional provision in an expansive manner. But, it has its own limitations. The interpretation has to have a base in the Constitution.”

(i) A Seven Judges Bench of Hon'ble Supreme Court in a judgment titled as ***Bengal Immunity Co. Ltd. Vs. State of Bihar and others, AIR 1995 SC 661***, has held as under:-

“(22) *It is a sound rule of construction of a statute firmly established in England as far back as 1584 when – ‘Heydon’s case, (1584) 3 Co Rep 7a (V) was decided that –*



“.....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st What was the common law before the making of the Act

2nd What was the mischief and defect for which the common law did not provide,

3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and ‘pro private commodo’, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, ‘pro bono publico’ ”.

In – In re, Mayfair Property Co.’ (1898) 2 Ch 28 at p. 35 (W) Lindley M.R. in 1898 found the rule “as necessary now as it was when Lord Coke reported ‘Heydon’s case (V)’, In – Eastman photographic Material Co. v. comptroller General of Patents, Designs and Trade marks’, 1898 AC 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows :

“My Lord, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion.”

It appears to us that this rule is equally applicable to the construction of Art, 286 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief.”

(ii) The Hon’ble Supreme Court in judgment titled as **R.M.D.**

Chamarbaugwalla and another vs. Union of India and another, 1957 AIR

(Supreme Court) 628, held as under:

“6..... Now, when a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain “the intent of them that make it”, and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literally interpretation of the words used in disregard of all other materials. “The literally constructions then”, says Maxwell on Interpretation of Statutes, 10th Edn., p.19, “has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason



*of the remedy”. The reference here is to Heydon’s case. These are principles well settled, and were applied by this Court in **Bengal Immunity Co. Ltd. v. State of Bihar, 1955-2 SCR 603 at p.633.** To decide the true scope of the present Act, therefore we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute.....”*

IV. ***Re: Methodology of determining maintenance including interim-maintenance***

(i) The Hon’ble Supreme Court in judgment titled as ***Rajnesh vs. Neha & Anr.: 2021(2) SCC 324***, held as under:

“II Payment of interim Maintenance

- (i) *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.*
- (ii) *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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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”

(ii) In a judgment tiled as **Aditi @ Mithi vs. Jitesh Sharma, 2023**

INSC 981; the Hon’ble Supreme Court has held as under:-

“14. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in **Rajnesh’s case (supra)**, which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case is hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr.P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu



Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate”

Analysis (re law)

8. The marriage is a solemn covenant between two people on equal footing; it is an admittance into family life which becomes a basic unit of community and nation. When children are born to this sacred covenant, the marriage does not remain an entity ensconced between the couple, but it pivots into a family wherein children's presence kindles a collective obligation for the parents, kinsfolk and even the society at large. It is not just legally binding, but a foremost moral and divine duty to provide for and support one's family. A father/husband cannot forsake his duty towards his family. A mother/wife is not a vulnerable helpless person, to be treated with commiseration, but is entitle to equal stature in a marriage, family and society. A husband/father cannot be allowed to be derelict in his obligation to give his wife/children their dues. Especially, if this will otherwise lead to penury and hardship for the wife/children, it must be remedied beyond all other considerations. It is with this ineffable salutary objective that Section 125 of Cr.P.C., 1973/Section 144 of BNSS, 2023 have been enacted. This provision is a measure of social justice and has been specially enacted to protect women and children. It is trite law that a social statute is essentially the formidable application of equality jurisprudence, as evolved by the Parliament and the Hon'ble Supreme Court, in myriad situation brought forward before Courts where unequal parties are pitted in adversary proceedings & where the Courts are called upon to dispense justice. In such



a situation, the Court has to not only be sensitive to the inequalities of the parties involved but also positively inclined to the disadvantaged party if the imbalance were to result in miscarriage of justice. The statutory provision of maintenance; as contained in Section 125 of Cr.P.C., 1973/Section 144 of BNSS, 2023; would definitely fall in this category, which aims at empowering the disadvantaged & at achieving social justice or equality and dignity of the individual. There can be no doubt that this statute, calling for consideration by the Court, is not petrified print but vibrant compelling words with social functions to fulfill. Accordingly, in interpreting law of a kind, as Section 125 of Cr.P.C., 1973/Section 144 of BNSS, 2023 is, the Court must not only proceed on the dictionary or etymological meaning assigned to words employed by legislature but dispense justice by keeping in mind, at all times, not only the legal obligations but also moral and social obligations of a husband/father *qua* his wife/children. Instead of being fettered by sheer technicalities, it would be paramount to keep in view the interest(s) of wife/child. Interpretation of law ought to be in accordance with the veritable tenets of justice, equity and good conscience & must not be shackled by obsolete interpretation(s) that have lost their relevance in the present era. This aspect of construing this benevolent provision is yet reinforced by its purposive interpretation in accordance with the celebrated principle of statutory interpretation; namely Heydon's Rule of Interpretation (Mischief Rule of Interpretation); which has met with favour from the Hon'ble Supreme Court in the judgments of *Bengal Immunity Co. Ltd.* (supra) and *RMD Chamarbaugwalla* (supra).



9. Section 125 of Cr.P.C., 1973 (as it stood before 24.09.2001) did not contain any statutory mandate for grant of interim maintenance. The Hon'ble Supreme Court in the case of **Savitri** (supra) held that; despite the statutory provision(s) not giving any power to give any interim maintenance; the Court would have sufficient power to grant interim maintenance as well since the provision ought to be interpreted as conferring power, by necessary implication, upon the Court to pass an order for interim maintenance pending final disposal of the plea for grant of maintenance. Thereafter; vide Code of Criminal Procedure (Amendment) Act, 2001; Section 125 of Cr.P.C., 1973 was amended to incorporate a specific provision for grant of interim maintenance. The statement of objects appended to the Amendment Bill stated thus:

“It has been observed that an applicant, after filing application in a court under Section 125 of the Code of Criminal Procedure, 1973, has to wait for several years for getting relief from the Court. It is, therefore, felt that express provisions should be made in the said Code for interim maintenance allowance to the aggrieved person under said section 125 of the Code. Accordingly, it is proposed that during the pendency of the proceedings, the Magistrate may order payment of interim maintenance allowance and such expenses of the proceedings as the Magistrate considers reasonable, to the aggrieved person. It is also proposed that this order be made ordinarily within sixty days from the date of the service of the notice.”

Therefore, keeping in view the often protracted nature of maintenance litigation, the legislature brought into the statute book the provision for interim maintenance.

9.1. Another significant change brought into, by way of this amendment, was that a plea for interim maintenance shall, as far as possible



be disposed of within 60 days from service of notice of the application to the non-applicant.

9.2. At this juncture; it is pertinent to take note of the fact that the provision contained in Section 144 of BNSS, 2023 is on the same lines as the provision contained in Section 125 of Cr.P.C., 1973 (after the amendment w.e.f. 24.09.2001), insofar as, the aspect of grant of interim maintenance is concerned. It is further noticeable that the statute, even after the amendment in Section 125 of Cr.P.C., 1973 (w.e.f 24.09.2001), does not expressly provide for power to grant ad-interim maintenance muchless ex-parte ad-interim maintenance. To similar effect, are the provisions of Section 144 of BNSS, 2023. However, the statute also does not expressly bar the power of Court to grant ad-interim maintenance.

10. The Hon'ble Supreme Court in case of **Rajneesh** (Supra) has laid down, the meticulous methodology to be adopted by Courts, for grant/fixation of maintenance including interim maintenance. In accordance with the ratio decidendi of this judgment; the issue of fixation of maintenance amount (including interim maintenance amount) has to be determined taking into account the affidavits (of disclosure of assets and liabilities) by rival parties & the Courts must endeavour to decide the application for interim maintenance, by a reasoned order within a period of four to six months at the latest, after above affidavits have been filed before the Court. The Hon'ble Supreme Court in case of **Aditi @ Mithi** (supra) has enunciated, with certitude, that Courts have to zealously adhere to and comply with the directions/guidelines laid down in case of **Rajneesh** (supra)



for fixation of maintenance, interim or final, after taking into account the affidavits (of disclosure of assets and liabilities) by rival parties.

11. “*Ad-interim*” literally means “*in the meantime*”. In essence, ad interim relief(s) is meant to be a very short term basis kind of arrangement in the nature of a temporary measure and, in circumstances, where the Court finds that some kind of arrangement is required to be put into place to regulate the *inter se* affairs between the rival parties in light of conflict between such parties. In other words, ad-interim relief(s) is an urgent temporary stop-gap arrangement made in circumstances where the Court has to impart substantial justice on the balance of fairness. Such temporary arrangement is, of-course, subject to being revisited by the Court in near future. It is essentially a measure, which is make-shift in nature, predicated on fairness taking a course which appeals to such Court to carry the lower risk of injustice if it turns out that such decision deserves to be re-visited. More often than not, such an order is required to be granted ex-parte.

11.1 It goes without saying that it is an elementary principle of construction that a power to do an act cannot be implied unless the doing of such an act is essentially necessary for effectual exercise of the jurisdiction or power conferred by the statute so that if such implication is not made, it would not be possible to effectually exercise the jurisdiction or power and the conferment of the jurisdiction or power would be rendered futile or purposeless. The principle on which the implication of power is permitted to be made is that where the Legislature enacts a provision conferring a jurisdiction or power, it must be deemed to have also given at the same time by necessary implication, power to do all such acts and employ all such



means as are essentially necessary for its execution, for otherwise the legislative Will would be frustrated and the provision would be reduced to futility. The implication of power can, therefore, be made by judicial construction where it is clear that without such power a provision of the statute conferring jurisdiction or power would be rendered meaningless or ineffectual. The legal maxim “*QUANDO LEX ALIQUID ALICUI CONCEDIT, CONCEDERE VIDETUR ET ID SINE QUO RES IPSA ESSE NON POTEST*” means that whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect. A five - Judges Bench of the Hon’ble Supreme Court in case of *Bidi, Bidi Leaves and Tobacco Merchants’ Association, Gondia* (supra) has relied upon this maxim to hold that the doctrine of implied powers ought to be legitimately invoked when it is found that a duty has been imposed or a power has been conferred by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. Further; the maxim *UBI ALIQUID CONCEDITUR, CONCEDITUR ET ID SINE QUO RES IPSA ESSE NON PROTEST* reflects the basic principles of jurisprudence where anything is conceded, there is conceded also anything without which the thing itself cannot exist. Such a construction would, infact, advance the object of the legislation. This maxim has met with approval from the Hon’ble Supreme Court in case of *Savitri* (supra). In other words, implied powers are legitimate power granted by way of statute which are not clearly and explicitly stated in the Constitution. To put it differently, if details could not be read into by implication, the drafting of legislation would be an



indeterminable/infinite process and the legislative intent would likely be defeated by a most insignificant omission. This aspect of power, by way of doctrine of implication, has also met with favour from the Hon'ble Supreme Court in the five - Judges Bench judgment of ***Manoj Narula*** (supra). To put it simply, the law is required to be applied, not only to what appears to be regulated by its expressed dispositions but to all cases where a just application of such law may be made and which appear to be comprehended either within the consequences that may be gathered from it. Therefore, it is a settled proposition of law that where the principal power or main right to grant relief is conferred upon the Court, such Court also has power(s) to grant those and such relief(s) which are incidental to the main relief.

11.2 Time span involved in adjudicating the issue of interim maintenance is another aspect of the matter which requires to be delved into. Statutory mandate; as contained in Section 125 of Cr.P.C., 1973/Section 144 of BNSS, 2023; provide that application for interim maintenance shall, *as far as possible* be decided within sixty days from the date of service of notice of such application to the non-applicant/respondent. The ratio decidendi of the judgment of the Hon'ble Supreme Court in case of ***Rajneesh*** (supra), as reiterated by Hon'ble Supreme Court in the case of ***Aditi @ Mithi*** (supra), enunciates that the plea of interim maintenance should be decided within a period of four to six months at the latest after affidavit of disclosure have been filed by the rival parties. Judicial experience indicates that, despite Courts making an endeavour to decide plea(s) for interim maintenance in an expeditious manner, the adjudication of such plea(s) does take multiple months on account of various reasons.



11.3 There may be plea(s) which, unfortunately, reflect penurious state of applicant(s) seeking an urgent order(s) for grant of ad-interim maintenance. Such an order (ex-parte ad-interim *or* ad-interim order) may be required, if facts of such case so reflect, to ameliorate the agony and financial suffering of a wife/child so that some suitable arrangement(s) can be made by Court and they can sustain themselves. This is where the obligations of the husband/father become a prominent one. In a proceeding of this nature, the husband/father cannot take subterfuges to deprive the applicant(s) of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage, when seen in backdrop of statutory law that governs the field, it is the bounden obligation of the husband/father to see that the wife/children do not become destitute. There is no escape route for the husband/father from this sacrosanct duty unless the wife/children are not entitled for it on any legally permissible ground. For instance; there may be a case, where wife/child who is suffering from prolonged illness, may be required to be given immediate medical assistance/treatment and such person may not be able to meet such expense(s). Therefore, an urgent need may arise for immediate medical assistance/treatment & the wife/child may not be able to survive to obtain and/or reap the fruits of an order passed by the Court after few months without being provided an ex-parte ad-interim maintenance order/ad-interim maintenance order. There may also be an instance wherein the child cannot be sent to school for want of money. That the wife/child, in case of succeeding, will be entitled to arrears is neither any consolation nor a cause/source of solace for them. In view of the nature and scheme of the



statutory provision, its interpretation would result into inescapable conclusion that such ancillary or incidental power has been conferred on the Court by implication, where facts/circumstances of a case so warrant.

The statute provides for grant of interim maintenance but there is no express provision for grant of ad-interim maintenance. At the same time, the statute also does not bar grant of ad-interim maintenance. Accordingly, the Court would have power to grant ad-interim maintenance including ex-parte ad-interim maintenance as *firstly* such power can well be construed to be an implied/ancillary power vested in the Court; *secondly* such interpretation would further the salubrious objective behind enacting the statute. This Court must sound a word of caution herein *namely* that the ex-parte ad-interim maintenance/ad-interim maintenance ought to be awarded in exceptional cases where accentuating facts are put forth. It would be pragmatic that applicant(s) seeking such relief(s) ought to file affidavit (of disclosure of assets/liabilities) when making such prayer lest this equitable jurisdiction is sought to be misused.

12. It goes without saying that the exercise of power by a Court to grant ad-interim maintenance/ex-parte ad-interim maintenance shall be in accordance with the well established principles of judicial discretion and equity. No exhaustive set of guideline(s) to govern such power can possible be laid-down, however alluring this aspect may be. It is neither fathomable nor desirable to lay down any straightjacket formula in this regard. To do so would be to crystallize into a rigid definition, a judicial discretion, which for best of all reasons ought to be left undetermined. Any attempt in this regard would be, to say the least, a *quixotic* endeavour. Circumstantial flexibility,



one additional or different fact, may make a sea of difference between conclusions in two cases. Such exercise would thus, indubitably, be dependent upon the factual matrix of the particular case which the Court is in seisin of, since every case has its own peculiar factual conspectus.

13. As a sequel to above-said rumination, the following postulates emerge:

I. The Court has power to grant ex-parte ad-interim maintenance as also ad-interim maintenance in terms of Section 125 of Cr.P.C., 1973/Section 144 of BNSS, 2023.

II. In case applicant(s) seeks the relief of ex-parte ad-interim maintenance/ad-interim maintenance, such applicant(s) would essentially be required to file affidavit (of disclosure of assets/liabilities) in support of such plea.

III. The Court ought to consider a plea, for grant of ex-parte ad-interim maintenance/ad-interim maintenance, in accordance with the well established norms of judicial discretion and justice. No universal exhaustive guidelines can possible be laid-down for exercise of such power & the same shall be exercised by the Court in the facts/circumstances of a given case.

IV. The Court ought to award ex-parte ad-interim maintenance/ad-interim maintenance in exceptional cases where accentuating facts are put forth.

V. In a case where the Court has granted ex-parte ad-interim maintenance/ad-interim maintenance, the Court ought to take a conscious decision upon the plea for interim maintenance expeditiously.

Analysis (re facts of case in hand)



14. Now this Court reverts to the facts of present case to ratiocinate thereupon.

14.1 The petition under Section 125 of Cr.P.C., 1973 for grant of maintenance, along with an application for grant of ad-interim maintenance, was filed by the respondents (herein) on 30.05.2023. The said petition was firstly taken up by the concerned Family Court on 14.07.2023 whereupon the notice was directed to be issued to the petitioner (herein) for 28.09.2023. The matter was pending adjudication before the concerned Family Court for about more than 08 months thereafter; wherein the respondents (herein) had led their evidence and the same was even closed on 01.04.2024. The order for provisional maintenance (as the order for ad-interim maintenance has been termed as by the concerned Family Court) was passed on 01.04.2024 wherein the petitioner (herein) was directed to pay a sum of Rs. 15,000/- per month to the respondents (herein) from the date of order i.e. 01.04.2024. In the considered opinion of this Court, once the *lis* (including an application for interim maintenance) was pending adjudication before the concerned Family Court for about 08 months, there was no occasion for such Court to have passed an order for ad-interim maintenance (provisional maintenance). In-fact, the concerned Court ought to have passed a reasoned order upon the application for interim maintenance filed by the respondents (herein). No compelling or accentuating circumstances are either decipherable from the impugned order nor have been brought forth before this Court which may justify the passing of an order of ad-interim maintenance. Therefore, the impugned order dated 01.04.2024 deserves to be set-aside insofar as it relates to grant of ad-interim maintenance.



Decision

15. The instant revision petition is thus allowed in the following terms:

- (i) The impugned order dated 01.04.2024 passed by Additional Principal Judge, Family Court, Gurugram is set-aside, insofar as, the petitioner (herein) has been directed to pay a sum of Rs. 15,000/- per month to the respondent from the date of order i.e. 01.04.2024.
- (ii) The Family Court, Gurugram is directed to decide, in accordance with law, the application (for grant of interim maintenance) filed by the respondents (herein) expeditiously preferably within a period of 06 weeks from the date of receipt/production of certified copy of this order.
- (iii) The veracity of order dated 23.01.2024 passed by the Family Court, Gurugram has not been adjudicated upon in the instant petition & the same is left open to be considered upon in an appropriate petition, if so preferred.
- (iv) Any observations made 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 this order.
- (v) Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

August 13, 2024
Ajay

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