



CRR(F)-836-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR(F)-836-2023

Date of decision: 11.09.2024

Sourabh Kashyap

....Petitioner

V/s

Nishu Kashyap @ Nishu Bala and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Saransh Sabharwal, Advocate for the petitioner.
Mr. Bikram Singh Tikka, Advocate for the respondents.

SUMEET GOEL, J. (Oral)

1. The instant revision petition has been preferred against the order dated 21.04.2023 passed by the Principal Judge, Family Court, Panchkula (hereinafter to be referred as 'impugned order') praying for modification of the said order for reducing the quantum of interim maintenance awarded by the said order from Rs.30,000/- to Rs.10,000/-. Vide the impugned order; the respondent No.2 (herein) has been awarded interim maintenance at the rate of Rs.30,000/- per month from the date of the application till final decision whereas the application for grant of interim maintenance *qua* respondent No.1 was dismissed. The respondents (herein) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court, stating that they are the wife and minor son, respectively, of the petitioner (herein) and are unable to maintain themselves and hence the interim maintenance ought to be awarded to them.



2. Learned counsel appearing for the petitioner has argued that the amount of interim maintenance of Rs.30,000/- awarded to respondent No.2 (minor son) is on the higher side keeping in view the income of the petitioner. It has been further argued that the Family Court has completely overlooked the fact that the respondent No.1-wife has sufficient source of income to maintain herself and the minor son as she is running a partnership firm and doing the business of medical equipments. According to the learned counsel, the Family Court, while assessing the quantum of interim maintenance, has gone completely amiss in holding that the petitioner was earning Rs.67,000/- per month whereas from the material placed on record (i.e. the loan installments), the petitioner was left only with a meager sum of Rs.31,830/-/- per month. Learned counsel has further argued that the Family Court ought to have considered that since both the parents (i.e. petitioner and respondent No.1) are earning, therefore, it is their bounded responsibility jointly to maintain the minor child. Learned counsel has further argued that, in any case, the Family Court has adopted an unpragmatic approach while granting the quantum of interim maintenance and the same is based upon surmises and conjectures. Hence, it has been prayed that the quantum of interim maintenance awarded vide impugned order be modified and reduced accordingly.

3. *Per contra*, learned counsel for the respondents has argued that the learned 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 education of respondent No.2 (minor son) as



also taken due consideration of the relevant facts and circumstances of the case. Thus, it has been prayed that the present petition be dismissed.

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

5. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Rajnesh vs. Neha & Anr.: 2021(2) SCC 324***; relevant whereof reads 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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(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, indubitably, is subject to final adjudication and it is a provisional step subject to final determination to be made at the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

7. Relationship between the parties is not in dispute. The facts of the instant case reflect that vide the impugned order; the respondent No.2, who is the minor son of the petitioner, has been granted interim maintenance

at the rate of Rs.30,000/- per month during the pendency of the application



whereas application for grant of interim maintenance in respect of petitioner No.1-wife was dismissed. While going through the impugned order, it transpires that as per the income tax returns of the petitioner, especially for the assessment year 2022-2023, his gross earnings during the said period was Rs.7,05,890/-. Furthermore, as per pay slip of the petitioner for the month of August 2022, his gross salary is Rs.71,330/-. The contentions raised by the learned counsel for the petitioner in the present petition that the interim maintenance awarded vide impugned order to respondent No.2 (minor son) is on the higher side keeping in view the income of the petitioner, are in fact, matter of trial and hence the same should not be delved into at this stage. The same can be ascertained only after adducing evidence by the parties. Moreover, the impugned order is only an interim measure 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. In the instant case, the amount of interim maintenance, which has been directed to be paid by the petitioner (herein), 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 present case.

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



9. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced therefrom.
10. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

September 11, 2024
Ajay

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