

**CRR(F)-893-2023**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
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CRR(F)-893-2023
Date of decision: 11 .11.2024

EKTA AND ANOTHER

... PETITIONERS

GOURAV GOEL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vimal Kumar Gupta, Advocate
for the petitioners.

Mr. Rohit Singh, Advocate
for the respondent.

SUMEET GOEL, J.

1. The instant petition has been preferred against the order dated 09.03.2023 passed by the learned Principal Judge, Family Court, Karnal (hereinafter to be referred as 'impugned order') praying for modification of the said order for enhancing the quantum of interim maintenance awarded by the said order. Vide the impugned order; the petitioner No.2 (minor son herein) has been awarded interim maintenance at the rate of Rs.8,000/- per month to be paid by the respondent (herein) from the date of the application alongwith litigation expenses of Rs.5000/- while the petitioner No.1-wife was denied interim maintenance. The petitioners (herein) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court,

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Karnal stating that they are the wife and minor son of the respondent (herein) and are unable to maintain themselves and hence the interim maintenance ought to be awarded to them.

2. Learned counsel appearing for the petitioners has iterated that the learned Family Court has erred in determining the quantum of interim maintenance awarded to the petitioners (herein) insofar as the income of the respondent is concerned. It has been submitted by the learned counsel that the petitioner No.1 has never been employed and has no independent source of income. Despite this fact, the learned Family Court has not granted any interim maintenance to petitioner No.1-wife and only awarded a paltry sum to petitioner No.2 (minor son) which is grossly inadequate. It has been further iterated that, in the instant case, the petitioner No.1 is experiencing significant hardship and obstacles in maintaining a stable life. It has been urged by the learned counsel that the petitioners have an equal right to a similar standard of living as the respondent. It has been further submitted that the Family Court ought to have considered the disparity between the actual income of the respondent and the paltry sum awarded to petitioner No.2, which is grossly inadequate to meet even the basic necessities of life. It has been further argued that the sole ground on which the maintenance was denied to the petitioner No.1 (herein)-wife is that she was employed/working as Director of one company namely M/s Reek Employee Screening Solution Private Ltd. and was earning sufficiently, is erroneous and without giving due regard to the real



facts of the case. Learned counsel has submitted that the said employment was merely nominal/titular in nature and pertains to the period before the petitioner No.1 got married with the respondent. Learned counsel has further submitted that the interim maintenance awarded by the Family Court is grossly inadequate. Thus, the enhancement of the interim maintenance amount is prayed for.

3. *Per contra*, learned counsel for the respondent has argued that the learned Family Court has determined the quantum of interim maintenance as awarded to petitioner No.2 (herein), in the right perspective and after giving due regard to the income of the respondent. Learned counsel has submitted that the petitioner-wife is working as a Director in M/s Reek Employee Screening Solution Private Ltd and earning handsomely and hence the Family Court has rightly declined the interim maintenance to her. Hence, dismissal of the instant petition has been prayed for.

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 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 CrPC 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 s 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

(1) 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. Indubitably, the relationship between the parties is not in dispute. The facts of the instant case reflect that vide the impugned order; the petitioner No.2 (herein), who is a minor, has been granted interim maintenance at the rate of Rs.8,000/- per month. The Family Court has declined to award any interim maintenance to the petitioner No.1-wife, primarily on the ground that she was earlier employed/working as Director of one company namely M/s Reek employee Screening Solution Private Ltd.. In this regard, learned Family Court has relied upon the testimony of wife recorded before the said Court and has observed as in paragraph No.10 of the impugned order, relevant whereof reads as under:-

“10 xxx xxx xxx

There is nothing on record at this stage to suggest that. Smt. Ekta is not an earning hand, rather as per her own admission she has a sound job. The petitioner No.2 does not have any known source of income whatsoever, There is no bar on the petitioners in eking out a living in case she is not being provided for by her man. It was conceded during arguments that Ekta was Director of M's Reek Employee Screening Solution Private (which fact has also been admitted by her in her cross-examination is approximately Rs. 30,000/- per month which assertion was not challenged on behalf of Ekta.

xxx xxx xxx”

7.1 The credence placed by the learned Family Court upon the testimony of the petitioner No.1 (herein) is fallacious. The petitioner No.1 (herein) had stated in her cross-examination that she was a Director in a company owned/managed by her brother but had never attended the meeting of the Board of Directors. She has further,



specifically, denied that she was still working or earning as a Director of the aforesaid company. In fact, the record indicates that the petitioner No.1-wife (herein) had resigned from her post on account of her getting married and the said resignation was duly accepted w.e.f. 10.02.2019. It is observable herein that she is stated to have been relieved from her duties on 10.02.2019, whereas her marriage with respondent (herein) took place on 23.02.2019. It is also clearly forthcoming, from the material on record, that the company in which the petitioner No.1-wife (herein) was employed, prior to her marriage, was owned/managed by her brother. It is, thus, indubitable that after the marriage, the petitioner No. 1-wife has not been working in the said company i.e. M/s Reek Employee Screening Solution Private Ltd.

7.2 It is a well-established and universally acknowledged judicial principle that a Court ought not to adjudicate from an '*ivory tower*' and that the judicial decisions must resonate with practical realities of the Society rather than being shackled to abstract interpretation(s) of legal doctrine(s). The Courts, indubitably, hold a dual responsibility; to uphold the rule of law as also to ensure that justice remains relevant and responsive to the dynamic conditions of the Society. The Courts are required to adopt a purposive interpretation which convenes societal needs and evolving norms as well. There is no gainsaying that the interpretation of material before the Court, by the nature of law being ever evolving, derives its legitimacy from its responsiveness to the social-economic and



societal context in which it functions. Application of the principles of adjudication coalesced with percipience towards the pragmatic and functional social realities are of particular import in the cases relating to matrimonial dispute(s). An adjudication without a pragmatic lens runs the risk of prioritising procedural/technical formalities over the substantive justice, which could eventuate in dilution of justice. The Courts, especially while dealing with the matrimonial litigation(s), ought to take cognisance of the pragmatic exigencies of the society in shaping its decision(s) in a way(s) that fosters societal progression. Public trust; is indubitably rooted in the belief; that the Courts understand, respect and take into account the social reality(s). Therefore, a pragmatic approach in judicial decision(s), especially while dealing with the matrimonial related litigation(s), ought to be done in a manner that adapts to the societal changes and remains faithful to the purpose of fostering a just and inclusive society.

7.3 A fact that cannot be lost sight of is that, more often than not, an unmarried daughter or sister, is given a nominal or a titular employment in the family run business which, in reality, is more of a tokenism. Even if any monetary benefit is accorded on account of such tokenism, in practical essence, it is merely a paper transaction. When such daughter/sister gets married, she is removed from all the benefits of employment which actually is given purely on account of familial relationship. If such a situation is, *ipso facto*, read as capacity for employment or generating income on her own (on the part of sister/daughter), as she has been working/earning earlier, it would be



a misconstrued conclusion. Accordingly, for a husband to plead that, in a situation like this, (i.e. where the wife has been removed from employment in her parental family business upon her getting married), that the wife is well-empowered to earn on her own, as she has been working before marriage, is a misplaced argument. In adjudicating claims for maintenance, Courts are mandated to adopt a pragmatic approach by focusing on the substantive financial realities rather than being influenced by the mere formal appearance of employment or income. This principle underscores the judiciary's commitment to ensuring that justice is delivered in consonance with the objective of maintenance laws, which are designed to prevent destitution and uphold the dignity of the dependent spouse. By adopting this nuanced approach, Courts balance equity and justice, ensuring that maintenance is awarded based on genuine economic realities. This perspective aligns with the larger objective of safeguarding the financial security of a dependent spouse while discouraging fraudulent or contrived defences to evade liability.

8. In the case at hand, the material available on record reflects that the petitioner No.1 (herein)-wife was earlier employed in the company of her brother, but had left the same upon her getting married to respondent (herein)-husband. This, by no stretch of imagination, can be deemed to be a factor sufficient by itself & in absence of any further material against the wife, to be a ground against petitioner No.1 (herein-wife) for disentitling her for grant of interim maintenance by the husband. Even if it is assumed that the



above said employment of petitioner No.1, as a Director of M/s Reek Employee Screening Solution Private Ltd. was in practicality, an employment whereby she was getting some real income, it can be ascertained from the records of the case that it was during the period before petitioner No.1 got married with the respondent. The mere fact that a wife has previously been employed or had an independent source of income in the past cannot serve as a valid ground for denying her maintenance claim from her husband. Section 125 of the Criminal Procedure Code, 1973 clearly provides that a wife, unable to maintain herself, is entitled to claim maintenance from her husband. What is crucial is her present inability to maintain herself, not her past employment or previous financial independence. The rationale lies in the recognition that circumstances can change; a wife who was once employed may have lost her job or may no longer be in a position to sustain herself due to factors beyond her control. Thus, the mere existence of prior employment is not dispositive of the issue of maintenance. The overarching principle remains that a husband's obligation to maintain his wife flows from the very fabric of marital responsibilities, encapsulating not only financial sustenance but also ensuring the wife's dignity and well-being.

8.1 Another pertinent aspect of the matter merits consideration at this juncture. The respondent has failed to place on record any cogent evidence, let alone sufficient material, to substantiate his contention that the wife was gainfully employed or possessed an independent source of income. Mere allegations of her



having been employed or possessing earning capacity, devoid of substantive proof, cannot be accepted as a valid defence to shirk the statutory duty enshrined under Section 125 of Cr.P.C. The burden of proof lies squarely on the respondent to demonstrate with credible evidence that the wife has independent means sufficient to sustain herself at a standard of living commensurate with the matrimonial status. Absent such material, the claim of the wife cannot be negated on this mere conjecture of her being an earning member. This circumstance assumes more importance in light of the fact that the impugned order was passed by a Family Court, constituted under The Family Courts Act, 1984. Section 14 of the Family Courts Act provides for exception to the general rule of evidence regarding admissibility of statements and documents if permissible by the Court etc. By virtue of Section 14 of the Family Court Act, a Family Court is empowered to look into whatever material is placed before it; take a decision on admissibility of material in a broad based manner and may ignore the technicalities of evidence law. A profitable reference in this regard may be made to a judgment of this Court in the case titled as ***Karan Puri vs. Sonika Chaudhary; 2024(1) RCR(Civil) 531***, relevant whereof reads as under:-

“Analysis (re law)

9. Sections 10(1) of the 1984 Act empowers a Family Court to be a Civil Court for the purposes of exercising all powers vested in a Civil Court and the provisions of CPC have been made applicable to the proceedings before the Family Court, but at the same time it has been expressly stipulated in Section 10(1) of the 1984 Act itself that such application of CPC shall be "subject to the other provisions of this Act and the Rules". Section 10(3) of the 1984 Act postulates that nothing in Section 10(1) shall prevent the Family Court from laying down its own procedure so as to deal with



the matter in issue before it i.e. for arrival at a settlement in respect of the lis of any suit/proceedings before it or to determine the truthfulness of the facts in dispute. This provision by itself shows that the legislature, while broadly mandating for application for CPC to proceedings before a Family Court, has vested discretion in favour of such Family Court to devise a procedure on its own. The provisions of Section 10(1) and Section 10(3) of 1984 Act, when juxtaposed, reflect the clear legislative intent to the effect that CPC does not apply compulsorily to proceedings before Family Court.

9.1 Further a perusal of Section 20 of the 1984 Act shows that it contains a clause having overriding effect viz-a-viz anything contained in any other law for the time being in force.

9.2 The Golden Rule of Interpretation (Literal Rule of Interpretation), as relied upon by the Hon'ble Supreme Court in the judgments of Dikshitulu's case (supra) and Laxmi Narain Dhut's case (supra), when applied in the present scenario to the provisions of 1984 Act, shows that the language as also phraseology employed in the legislation in question is precise, plain, unambiguous and unequivocal. The legislative intent, that CPC does not mandatorily apply in full force to proceedings under 1984 Act, is clearly decipherable from a bare reading of the legislation in question.

10. The statement of objects and reasons recorded for enactment of the Family Courts Act, 1984 reads;

"The Law Commission in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure, 1908 was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest to establish Family Courts for speedy settlement of family disputes.

10.1 The Statement of objects and reasons for the enactment in question i.e. Family Courts Act, 1984 further states:

"The Bill, inter alia, seeks to,-

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by a legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute"

10.2 A critical analysis of the above, when interpreted in light of the Heydon's Rule of Interpretation (as relied upon by the Hon'ble Supreme Court in the judgment of R.M.D. Chamarbaugwalla's case-supra), reflects that the 1984 Act was enacted to adopt a radically different approach from that adopted in ordinary civil proceedings & simplify the rules of evidence/procedure so that a Family Court could more effectively deal with a matrimonial dispute. This aspect, when examined in the backdrop of Section 13 of the 1984 Act (where entitlement, as of right, to a legal practitioner



has been denied and discretion has been vested with the Family Court to allow assistance of a legal expert) clearly indicates that the technicalities & intricacies of the CPC are not to apply to the proceedings before the Family Court. A bare perusal of Section 14 of the 1984 Act shows that the same has also been introduced to wither away the rigours of Indian Evidence Act, 1872 & the Family Court has been empowered to take any material into evidence which as per its opinion furthers the cause of effective adjudication of a matrimonial dispute. The Bombay High Court in Shivanand Damodar Shanbhag's case (supra) has also held that the Family Court should not go into technicalities of the Evidence Act and should take a broad decision on the material placed before it.

11. The 1984 Act is a special law brought in by legislation exclusively for adjudicating matrimonial lis. CPC is a general procedural law for civil litigation. Also, CPC was enacted in the year 1908 whereas the Family Courts Act has been enacted in the year 1984. The 1984 Act has been brought into force in Haryana w.e.f 02.11.1992, in Punjab w.e.f 01.01.2013 and in Union Territory, Chandigarh w.e.f. 16.02.2015. Therefore, it is clear that the 1984 Act is not only a special legislation but has also been enacted subsequently in point of time than CPC. Hence, it would be pragmatic approach; as per principle of generalia specialibus non derogant (as relied upon by Hon'ble Supreme Court in judgment of Jose Paulo Coutinho's case-supra) as well, to come to an inevitable conclusion that Family Courts are not fully bound by provision of CPC.

12. The provision of Order VIII Rule 1-A was inserted in CPC by way of Code of Civil Procedure (Amendment) Act, 1999 w.e.f. 01.07.2002. As per sub-rule (1), a defendant is required to produce documents, sought to be relied upon by him, at the time of filing his written statement. Sub-Rule (3) provides that in case it is not so done, the defendant may still produce the same in evidence on his behalf at the time of hearing of the suit albeit with leave of the Court. In other words, a document not produced by a defendant along with his written statement may still be received in evidence on his behalf at the time of hearing of suit with leave of the Court. An evaluative analysis of this provision, in light of judgment of Hon'ble Supreme Court in Sugandhi's case (supra), leads to the conclusion that a Court is required to liberally consider the issue of grant of permission to bring into evidence such documents which have not been produced by a defendant along with the written statement. The Hon'ble Supreme Court in Sugandhi's case (supra) was seized of a matter arising out of a civil suit whereas the instant appeal arises from an order passed by a Family Court. This aspect assumes more significance in light of the statutory scheme of the 1984 Act, especially the provisions contained in Sections 10, 13, 14 and 20 of the 1984 Act.

13. As an upshot of above discussion, the following principles of law can be culled out:

(I) Sub Section (3) to Section 10 read with Section 20 of the Family Court Act, contains non-obstante clause and gives supremacy to the provisions of the said Act, vis-a-vis the provisions of other enactments/Acts.

(II) CPC, 1908 is not applicable with its full rigours to proceedings under the Family Courts Act, 1984. In other words; a Family Court is entitled to lay down its own procedure, as warranted by



facts/circumstances of a given case and it is not bound by the procedural rigours of CPC, 1908. However, while devising its such own procedure, the Family Court ought to ensure that such procedure is in consonance with the basic cannons of the jurisprudence such as principles of natural justice, good conscience and equity.

(III) A Family Court is well within its powers to take into evidence any material, which in the judicial discretion of such Family Court, may be essential for effectively adjudicating a lis before it whether or not such material fulfills the requirements of Indian Evidence Act, 1872. However, while exercising such discretion, the Family Court ought to bear in mind that receiving of such material by way of evidence does not violate the basic principles of our legal system.

(IV) Order VIII, Rule 1-A CPC of 1908 is not a mandatory provision and rather it is a directive in nature only especially with respect to the proceedings under Family Court Act, 1984. A Family Court will be well within its judicial discretion to take into evidence any material in terms of sub-rule (3) of Order VIII, Rule 1-A of CPC, 1908 without any formal application for grant of leave by the defendant. However, while exercising such discretion the Family Court is required to pass a reasoned order.”

In view of the above, the Family Court (while dealing with a plea for grant of maintenance whether interim or final) is well entitled look into all the material(s)/circumstance(s) brought before it, though the same may not be fully able to meet the rigours of the Indian Evidence Act, 1872/The Bharatiya Sakshya Adhiniyam, 2023.

9. It is apparent from a bare perusal of the Affidavit of Assets, Liabilities, Income and Expenditure of the respondent-husband (which is annexed as Annexure P-9 with CRM-33406-2024), it transpires that the monthly income of the respondent is approximately Rs.86,000/- per month. While determining the amount of interim maintenance, there must be a fair balance between the financial capacity of the husband and the reasonable needs of the wife. It is trite law that the financial capacity of the husband and the needs/income of the wife must be balanced while determining the quantum of interim maintenance, in order to ensure that the wife is



not subjected to financial hardship. The Court must consider the standard of living previously enjoyed by the wife, the current potential earning of the husband and other relevant factors to prevent undue hardship to the wife. Interim maintenance should enable the wife to meet her essential needs, preserving her dignity and well being, while the proceedings are ongoing.

9.1. Accordingly, the present petition is partly allowed and the impugned order dated 09.03.2023 passed by the Family Court is modified to the extent that the respondent (herein)-husband shall pay to petitioner No.1 a sum of Rs.15,000/- per month from the date of filing of the petition till decision of the main case pending adjudication before the Family Court. However; the instant petition seeking enhancement of maintenance amount qua petitioner No.2- minor son stands dismissed.

10. 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.

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

(SUMEET GOEL)
JUDGE

November 11 , 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No