



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR(F)-796-2024

Date of decision:20.08.2024

Baldev Singh  
Karamjit Kaur @ Soni and others

V/s

...Petitioner  
...Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Rahul Rampal, Advocate for the petitioner.  
Mr. Namish Sodhi, Advocate for the respondents.

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SUMEET GOEL, J.

1. Present revision petition has been preferred against the order dated 02.05.2024 passed by the Additional Principal Judge, Family Court, Ludhiana (hereinafter to be referred as the ‘concerned Family Court’) whereby the petitioner (herein) has been directed to make payment of ad-interim maintenance at the rate of Rs.3500/- per month to respondent No.1 and Rs.2000/- per month to respondent No.3 from the date of application till the adjudication of the application for interim maintenance on merits.
2. Learned counsel for the petitioner has argued that the impugned order dated 02.05.2024 is against the statute as there is no legislative mandate for grant of any ad-interim 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, in any case, the quantum of ad-interim maintenance awarded is on the higher side as respondent No.1 is a working lady and has sufficient income to maintain herself and the children. Thus, it has been prayed that the instant petition be accepted and the impugned order dated 02.05.2024 be set-aside.



3. Learned counsel appearing for the respondents has argued that the petitioner (herein) has been directed to pay ad-interim 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 ad-interim maintenance yet, the factual matrix of the *lis* indicates that the ad-interim 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.

5. It would be apposite to refer herein to a judgment passed by this Court in case titled as ***Rahul Dewan vs. Micky Dewan and another :2024 PHHC:106589***; relevant whereof reads as under:

“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 exists. 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.”*

6. The petition, for grant of maintenance filed by the respondents (herein), was pending since 2018 and the same was earlier disposed of vide



an *ex-parte* order dated 23.08.2021, whereinafter the said proceedings/order were set-aside. It emerges from the record that the affidavits (of disclosure of assets and liabilities) of rival parties were already on record when the impugned order dated 02.05.2024 was passed thereby directing the petitioner (herein) to pay to the respondents (herein) ad-interim maintenance. In the considered opinion of this Court, once the application for interim maintenance was pending and affidavits (of disclosure of assets and liabilities) of rival parties were already on record, the Family Court ought to have decided the same, in a expeditious manner. 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 02.05.2024 deserves to be set-aside insofar as it relates to grant of ad-interim maintenance.

### **Decision**

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

(i) The impugned order dated 02.05.2024 passed by Additional Principal Judge, Family Court, Ludhiana is set-aside, insofar as, the petitioner (herein) has been directed to pay a sum of Rs.3500/- per month to respondent No.1 and Rs.2000/- per month to respondent No.3 from the date of order i.e. 03.12.2018.

(ii) The Family Court, Ludhiana 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 six weeks

from the date of receipt/production of certified copy of this order.



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- (iii) 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.
- (iv) Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)  
JUDGE

August 20, 2024  
*Ajay*

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