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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR(F)-817-2022 (O&M)

Date of decision: 25.11.2024

Sita Ram

...Petitioner

V/s

Lalita Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ishnoor Singh, Advocate and
Mr. Divyam Singh, Advocate for the petitioner.
Mr. Mohit, Advocate for the respondent.

SUMEET GOEL, J. (Oral)

1. The instant petition is directed against the order dated 06.06.2022 passed by Additional Principal Judge, Family Court, Panipat, Haryana whereby the petition filed by the respondent No.1-wife (herein) under Section 125 of Cr.P.C., 1973 for grant of maintenance was allowed as follows:

“7. Keeping in view the above discussion it is held that petitioners are entitled for maintenance to the tune of Rs.18,000/- per month, which the respondent is liable to pay from the date of filing the present application till expenses to the tune of Rs.8,000/-. Copy of this order be given to the petitioner, free of cost as envisaged under Section 128 Cr.P.C. The application stands partly allowed accordingly.”

2. Learned counsel for the petitioner has iterated that the learned Family Court has committed grave illegality while passing the impugned order and the same is totally contrary to the facts as also the ITR certificates produced by the petitioner-husband. It has been further iterated that the Family Court has erred in failing to consider the statements recorded on

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10.03.2022, wherein both the parties voluntarily agreed to an amicable settlement in which it has been explicitly recorded that the petitioner-husband would transfer one house to the respondents and the property jointly owned by the petitioner and respondent No.1 would be transferred solely to the petitioner-husband. According to learned counsel, despite this clear understanding and the readiness of the petitioner to honour the agreement, the Family Court has overlooked this crucial aspect and passed the impugned order which is legally unsustainable. Learned counsel has further argued that the petitioner is a small business owner and on account of covid-19, the business of the petitioner was adversely affected and is under the considerable financial burden. It is, thus, pleaded that the quantum of maintenance awarded by the learned Family Court deserves to be set-aside.

3. *Per contra*, learned counsel for the respondents submits that the learned Family Court has rightly determined the quantum of maintenance based on the calculation of the income of the petitioner and hence no interference is called for in the impugned order. According to him, both the children are in the custody of respondent No.1 and she was incurring all the expenses on their upbringing. Thus, it has been prayed that the present petition be dismissed.

4. I have heard counsel for the rival parties and have gone through the available records of the case.

5. During the course of hearing, it has transpired that the impugned judgment has been passed by the learned Family Court without seeking, from the rival parties, the affidavit(s) of assets and liabilities in



terms of the judgment of the Hon'ble Supreme Court in ***Rajnesh vs. Neha, 2021(2) SCC 324.***

6. It would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in ***Aditi @ Mithi vs. Jitesh Sharma, 2023 INSC 981***; relevant whereof reads as under:-

“8. The manner in which maintenance payable under Section 24 of the Hindu Mariage Act, 1955 or Section 125 Cr.P.C. is to be assessed, was considered by this Court in its celebrated judgment in Rajnesh v. Neha and Another, (2021) 2 SCC 324. Detailed guidelines were issued. It was noticed that the terms of maintenance are decided on the basis of pleadings of parties and on the basis of some amount of guess work. It is often seen that both the parties submit scanty material and do not disclose correct details. The tendency of the wife is to exaggerate her needs, whereas the husband tends to conceal his actual income. Keeping that in view, this Court laid down the procedure to streamline grant of maintenance. The judgments of various courts were referred to and response from various State Legal Services Authorities was sought. This Court even requested the National Legal Services Authority to submit a report on the suggestions received from the State Legal Services Authorities for framing guidelines on the affidavit of disclosure of assets and liabilities to be filed by the parties. Guidelines were issued in exercise of powers under Article 136 read with Article 142 of the Constitution of India, prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings. The judgment was delivered on 04.11.2020. The affidavit was to be submitted in all maintenance proceedings including pending proceedings. The directions given are extracted as under:

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1. (a) 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 Family



Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] . On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any



relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections (“EWS”), or are living below the poverty line (“BPL”), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA 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.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.”

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx

*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 in 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*



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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.”

Thus, it is unequivocal that filing of affidavit(s) of assets and liabilities of rival parties, as mandated by the Hon’ble Supreme Court, is pertinent and essential.

7. It is not in dispute and rather has been conceded by the learned counsels for the rival parties that, that the affidavit(s) of assets/liabilities of rival parties were not brought on record. As a result thereof, the impugned judgment cannot be sustained on this score alone.

8. Keeping in view the totality of facts and circumstances of the case, it is directed as follows:

(i) The impugned judgment order dated 06.06.2022 passed by Additional Principal Judge, Family Court, Panipat, Haryana is set-aside.

(ii) The parties are directed (through their respective counsel) to appear before the said Family Court on 12.12.2024 whereinafter the said Family Court shall proceed further, in accordance with law, with the matter & decide the same after taking affidavit(s) of assets/liabilities as directed for by the Hon’ble Supreme Court in the judgments titled as ***Rajnish vs. Neha, 2021(2) SCC 324*** and ***Aditi @ Mithi (supra)***.

(iii) The petition (under Section 125 of Cr.P.C. of 1973 for grant of maintenance) was instituted in the year 2021 & hence the said Family Court is directed to decide the matter expeditiously, in accordance with law,



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preferably within a period of 04 months from date of the receipt/production of certified copy of this order.

9. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

November 25, 2024
Ajay

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