

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CRR(F)-847-2022
Date of decision: 29th January, 2024

Manish Goswami

...Petitioner(s)

Versus

Shikha

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Aashish K. Singla, Advocate and
Mr. Sanjay Goswami, Advocate for the petitioner.
Mr. D.P.S. Joura, Advocate for the respondent.

MANISHA BATRA, J (ORAL):-

The present revision petition has been filed by the petitioner challenging the order dated 29.08.2022 passed by Learned Principal Judge, Family Court, Hisar in petition No. MNT/125/591 of 2019 titled as ‘Shikha vs. Manish Goswami’ whereby interim maintenance to the tune of ` 25,000/- was directed to be paid by him to the respondent-wife.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the respondent-wife has filed a petition under Section 125 of Cr.P.C. as against the present petitioner submitting therein that she got married with him on 23.11.2017 as per Hindu rites and ceremonies. Sometime after their marriage, there were matrimonial discords between them. No issue was born out of the wedlock. The respondent-wife was ultimately made to leave the company of the petitioner as on 03.12.2018 and has been living separately since then. She submitted that she was having no source of income and was unable to maintain herself and while further

claiming that the present petitioner was an able bodied person, running his own business and was earning an amount of more than ₹80,000/- per month apart from having substantial movable and immovable properties, she prayed for grant of monthly maintenance to the tune of ₹30,000/-.

3. The petitioner received notice of the application for grant of interim maintenance and contested the same by submitting reply alleging therein that he had never neglected and refused to maintain the respondent, rather she had left her nuptial home at her own. He further submitted that the respondent was a highly qualified person having done M.Sc. in Mathematics and had been serving as a teacher in Ryan International School from where she was fetching salary to the tune of ₹18,000- 20,000/- per month and was fully capable of maintaining herself.

4. After hearing learned counsel for the parties and considering the declarations made by both of them in their respective sworn affidavits, the learned Family Court directed the present petitioner to pay an amount of ₹25,000/- per month to the respondent as interim maintenance during the pendency of the petition.

5. Feeling dissatisfied by the order of learned Family Court, the present petition has been filed by the petitioner-husband. It is submitted in the petition and learned counsel for the petitioner has vehemently argued that the impugned order is not sustainable in the eyes of law as the same has been passed without considering the fact and the respondent-wife is guilty of concealing material and true facts from the Court. It is submitted that the learned family Court did not consider the fact that the respondent was

serving as a teacher in Ryan International School, Hisar and was earning an amount of ₹18,000/- to 20,000/- per month and was fully capable of maintaining herself whereas, he himself was earning a sum of ₹7,000/- per month only by doing a job in a shop. His parents have dis-inherited him from their movable and immovable properties and proclamation in this regard had also been got published in newspaper. He is living in a rented accommodation and has been paying an amount of ₹3,000/- as rent, with regard to which receipt has also been produced by him on record alongwith rent deed. It is further argued that learned Family Court had wrongly observed that the petitioner had been visiting different countries and this fact proved that he was having good source of income. With these broad submissions, it is argued that the impugned order is liable to be set aside as he is not in a position to pay the amount of ₹25,000/- to the respondent as his income being not more than ₹7,000/- per month, this amount is highly excessive.

6. *Per contra*, learned counsel for the respondent had argued that infact, though she is qualified M.Sc. Mathematics, but she is not making any earning nor she is working in any school and has no source of income. It is further submitted that the petitioner alongwith his parents own substantial properties. Rather he is having an entire market in the name of Goswami Market in his vicinity where he is running business of selling clothing and therefore, the amount as directed to be paid by him is not excessive and the same is rather proper and sufficient to meet with day to day requirement of food, clothing and lodging etc of the respondent, who is living at the mercy

of her parents.

7. I have heard learned counsel for the parties at considerable length and gone through the record.

8. It is revealed from the contents of the impugned order that both the parties have filed their respective affidavits before the Family Court in compliance of the directions issued by Hon'ble Supreme Court in '*Rajnesh Vs. Neha 2020 SCC online SC 903*', thereby disclosing their source of income etc. The respondent has sworn his affidavit submitting that she has no source of income whereas the petitioner is shown to have been saying that he is earning a sum of ₹7000/- per month only by working as a helper in shop of M/s Maa Laxmi Enterprises. So far as, the plea as taken by the petitioner that the respondent wife has been working in Ryan International School is concerned, alongwith this petition, he has attached 2-3 photographs showing the respondent while giving some award to some student and while standing with students and teachers of Ryan International School. However, from these photographs only, at this stage, no definite conclusion can be drawn that she is working as a teacher in the above mentioned school and this fact has to be proved by the petitioner while leading evidence before the learned Family Court. Similarly, with regard to the plea as taken by the respondent wife that he is earning an amount of more than ₹80,000/- per month whereas the petitioner in his affidavit shown his income as ₹7,000/- per month only is concerned, undoubtedly, at the time of disposing of the application for grant of interim maintenance, the learned trial Court was convinced from the fact that the photographs were shown by

the respondent wife to the effect that there was a market under the name and style of “Goswami Market” on the Bill board of which cell phone number of the petitioner was mentioned and also took into consideration the fact that in his statement recorded before the women cell on 30.08.2018, he stated that he was running a readymade garments shop and at that time he had given the same cell number which is shown on the bill board of the abovesaid Goswami Market. The genuineness and veracity of these photographs has to be proved during trial. However, the statement as shown to have been recorded by the petitioner before the women cell thereby saying that he runs a readymade garments shop cannot be ignored and if that is so, then it cannot be assumed that he is earning an amount of ₹ 7,000/- per month only, because even a labourer does not earn less than ₹15000/- to 20,000/- per month these days. However, at the same time, so far as the observations made by learned trial Court to the effect that he must be earning an amount of ₹60,000/- per month can also not be stated to have been made on the basis of some material evidence and the Court has simply presumed to do so. In Rajnesh’s (supra) case, it was held that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities, if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs

of living. The plea of the husband that he does not possess any source of the income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

9. Taking into consideration the fact that at this stage when the learned Family Court has assessed the interim maintenance of the respondent to the tune of ₹25,000/-, there is no definite evidence as to the exact financial capacity of the petitioner and his actual annual income and in view of the overall facts and circumstances as discussed above, in my opinion, the amount of ₹25,000/- which was directed to be paid by petitioner to respondent is on excessive side. Accordingly, the order dated 29.08.2022 is modified and the petitioner is directed to pay an amount of ₹10,000/- per month instead ₹25,000/- to the respondent-wife by way of interim maintenance from the date of filing of the application. The remaining impugned order as passed by the learned Family Court shall remain the same.

10. The petition is disposed of accordingly.

11. It is, however, clarified that these observations will not affect merits of the case.

[MANISHA BATRA]
JUDGE

29th January, 2024
Parveen Sharma

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No