



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)
Date of decision: 09.09.2024**

Vaneet Singla

. . . Petitioner

V/s

Nidhi Gupta and ors.

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sudhir Sharma, Advocate for the petitioner
in CRR(F)-1648-2023 and for respondent in
CRR(F)-343-2024.

Mr. Ishan Gupta, Advocate and
Ms. Harita Pandey, Advocate for the petitioners
in CRR(F)-343-2024 and for the respondent
in CRR(F)-1648-2023.

SUMEET GOEL, J.

1. This order shall decide two criminal revision petitions bearing numbers CRR(F)-343 of 2024; and CRR(F)-1648 of 2024 filed by the rival parties against inter-alia, a common order dated 23.08.2023 passed by Additional Principal Judge, Family Court, Ludhiana, in case bearing CIS No.MNT/125/1944/2019.

2. In order to ward off any confusion, while appreciating the facts of the case, the parties in the present case are referred to as husband and wife, respectively.

3. Facts germane to the adjudication of the present case are that the marriage between the parties was performed on 25.09.2006.

Out of their wedlock twin daughters were born on 25.06.2007. In



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

2

view of the differences having arisen between the husband and wife, both started living separately and both the daughters of the couple have been residing with the wife.

4. The wife along with both the minor daughters, filed a petition under Section 125 of the Cr.P.C. in the Family Court, Ludhiana seeking maintenance for their sustenance. The said maintenance petition was finally decided by the Family Court vide impugned order dated 23.08.2023, thereby granting maintenance of Rs.20,000/- per month to the wife; and Rs.30,000/- per month each to both the daughters.

5. The husband by way of revision petition bearing No. CRR(F)-1648-2023 has challenged the impugned order dated 23.08.2023. Whereas, the wife (along with the twin daughters) has preferred the revision petition bearing No. CRR(F)-343-2024 seeking modification of the impugned order dated 23.08.2023 for enhancement of the maintenance amount so awarded.

6. On behalf of the husband, it is argued that the learned trial Court, during the pendency of the proceedings under Section 125 Cr.P.C., had improperly, wrongly and illegally curtailed his right to present/lead his defence and his right to cross-examine the wife, who appeared as PW-3. It is submitted that curtailment of the right of the husband to lead his defence has significantly impaired his valuable right and as such the entire proceedings conducted by the Family Court are vitiated by procedural illegality. The curtailment placed on the husband's defence has resulted in the grant of relief to the wife



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

3

and both daughters on the basis of inaccurate & misleading financial details submitted before the Court, thereby causing a windfall in the amount of maintenance granted. It is submitted that the Family Court failed to take into account the husband's own financial obligations, including dependency of his elderly parents on him. It is further submitted that the Family Court has committed material illegality in not considering the earnings of the wife while awarding the maintenance to her. It is argued that the impugned order passed by the Family Court is not sustainable as it is not based on any sound reasoning and appreciation of material available on the record of the case.

7. While laying a challenge to the impugned order dated 23.08.2023 passed by the Family Court, the husband has also questioned the legality and sustainability of various orders passed by the Family Court in proximity to the final order dated 23.08.2023. The challenge is primarily based on the contention that the Family Court imposed an onerous condition on the husband, requiring him to clear 50% of the interim maintenance & subsequently 65% of the total outstanding amount within a very short period. The stringent requirement, according to the husband, was unmanageable and led to the striking off of his defence, thereby prejudicing his case.

8. To the contrary on behalf of the wife, while refuting the submissions made on behalf of the husband, it is submitted that there is no procedural illegality committed by the Family Court in passing the impugned order. The defence of the husband was rightly struck-



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

4

off by the Family Court, as he failed to adhere to the interim maintenance passed by the Family Court. It is further submitted that the averments made on behalf of the husband in his pleadings are bound to be disregarded as his right to lead defence was curtailed. The learned counsel further raised the submissions that as the defence of the husband has been struck-off, the claim pleaded by the wife (alongwith the daughters) should have been allowed in toto by the Family Court. The wife finds fault with the impugned order for not granting an adequate amount of maintenance, especially in the absence of any rebuttal from the husband. Consequently, the wife seeks an enhancement of the maintenance amount awarded vide the impugned order dated 23.08.2023.

9. I have heard the learned counsel for both the sides and gone through the record of the case carefully.

10. The application for interim maintenance filed by the wife and minor daughters was decided by the Family Court vide order dated 12.05.2022. No interim maintenance was granted to the wife on the grounds that she is able to maintain herself, whereas the minor daughters were granted interim maintenance at the rate of Rs.30,000/- per month, effective from the date of filing of the petition. However, a perusal of the order dated 11.01.2023 passed by the Family Court shows that while adjourning the case to 08.02.2023 for cross-examination of PW-3 (wife), the husband was directed to make payment of half of the interim maintenance by the next hearing, with the stipulation that failure to do so would result in the



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

5

curtailment of husband's right to cross-examine. Subsequently, the case was thereafter, taken up by Family Court on 06.03.2023 and it was recorded that the husband instead of making payment of half of the total outstanding amount had paid Rs.60,000/- only. On that date, although PW-3 (wife) was present for cross-examination, the same was not permitted due to the husband's failure to pay half of the total outstanding maintenance amount. The Family Court then adjourned the case to 03.04.2023 with a direction to make the payment of at least 65% of the total outstanding amount, failing which the husband's right to cross-examine shall be curtailed.

11. On 03.04.2023 husband failed to make the payment of 65% of the total outstanding amount & instead paid Rs.60,000/- as part payment, which was duly accepted by the wife on behalf of both the minor daughters. Despite this, the Family Court curtailed husband's right to cross-examine the prosecution witnesses (PWs). Thereafter, on 03.06.2023 an application for recalling of the order dated 06.03.2023 was filed before the Family Court. The said application was adjourned to 05.07.2023 for consideration, however, the Family Court, imposed a condition in the said order itself, that if the husband failed to make the entire payment of the amount due by the next date, his right to lead evidence would stand excluded. On the next date, 18.07.2023, the Family Court noted that the husband had not paid the entire interim maintenance amount due and, consequently, excluded his right to adduce evidence. The case was then posted for final arguments.



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

6

12. After going through the above-mentioned interim orders passed by the Family Court, eventually closing the right of the husband to cross-examine the PWs as well as to lead his own evidence, I find the approach adopted by the Family Court to be incongruous. Hon'ble Supreme Court of India in a landmark judgment titled ***Rajnish vs Neha, 2020(4) RCR (Criminal) 879***, while dealing with the concept of non-payment of the interim maintenance by a person, held as under:

"Discussion and Directions on Enforcement of Orders of Maintenance"

127. The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

128. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children."

13. The judgment of the Hon'ble Supreme Court in ***Rajnish (supra)***, clearly establishes that the course of striking off the defence, as employed by the Family Court, should not be adopted casually and in a routine manner. Rather, the said course is to be adopted as a measure of last resort. The Family Court, in the present case, without thoroughly considering the husband's financial means & intentions and without applying judicious mind to the supervening



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

7

circumstances, passed the orders excluding the right of the husband to cross-examine prosecution witnesses (PWs) as well as to lead his own evidence, in a very casual and cavalier manner. The Family Court failed to take into account that on two separate occasions, when the right of the husband was curtailed, he made payments by Rs.60,000/- on 06.03.2023 and another Rs.60,000/- on 03.04.2023, which were duly accepted by the wife on behalf of both the minor daughters. The Family Court overlooked a fundamental principle of jurisprudence; the right to plead a defence against any accusation or claim laid against a person, being his cherished legal right to a legal remedy as well as a principle of natural justice, ought not to be tinkered with casually and lightly, without there being willful and contumacious neglect on part of that person qua compliance of the order(s) passed by the Court. The Family court before curtailing the right of the husband to lead the evidence and to cross-examine the prosecution witnesses (Pws), has failed to record any findings in any of its orders that the lapse on the part of the husband to pay entire arrears of interim maintenance was willful and deliberate. The facts of the case demonstrate that the husband paid an amount of Rs.1,20,000/- within a short span of less than one month towards the arrears of maintenance. In these circumstances the Family Court ought to have afforded a reasonable opportunity to the husband to clear the entire arrears of interim maintenance, which got accumulated, due to one of the reasons being the fixation of interim



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

8

maintenance from the date of filing of the petition, at the stage when the proceedings in the matter have advanced substantially.

14. Besides this, the orders passed by the Family Court curtailing the right of the husband even to cross-examine the prosecution witnesses (PWs), making the testimonies of prosecution witnesses (PWs) go totally unrebutted, without being tested on the touchstone of cross-examination, is not sustainable in law. The Hon'ble Supreme Court in the case of **Rajnesh (Supra)** has held that in the event of non-payment of interim maintenance by a person his defence may be struck off as a measure of last resort only.

15. However, a division bench of Hon'ble Bombay High Court in a case titled **Sheshrao Raibhan Ingale vs. Shilpa Sheshrao Ingale, 2005(2) RCR (Civil) 802**, has held as under:

“18. In the case at hand, it is true that the written statement of the defendant was struck out, it simply means that he was not entitled to press his pleas and might not even be entitled to adduce evidence. But that could not prevent him from cross-examining the plaintiff and his witnesses and from showing that on the basis of the material on record, the plaintiff was not entitled to any decree. The striking out defence does not necessarily mean that the plaintiff's suit should automatically stand decreed. The learned trial Court was, therefore, wrong in holding that, Exhibit-45, seeking to recall the witnesses of the plaintiff for cross-examination, was not maintainable or



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

9

that the defendant was not entitled to participate in the proceedings for want of his defence on record.”

16. Similar view was taken by a division bench of Hon’ble Allahabad High Court in case a of ***Vinay Kumar Rastogi vs. Nandita Rastogi, 2001(2) FJCC 65***, wherein it is held as under:

“The appellant had a legal right to cross-examine the witnesses and to address the court regarding the merit of the evidence of the respondent even though he was prevented from putting-forth any defence and producing any evidence in support of the defence.”

17. Hon’ble Delhi High Court in a case titled ***IGNOU vs M/s Bluestar Pvt. Ltd., 2014 RCR (Civil) 554*** held as under:

“4. If this Court allows the relief claimed in the present petition, the same would amount to doing violence to the language of Order 8, Rule 1 CPC which fixes time for filing of the written statement. Time was fixed by the 1999/2002 amendment of CPC in view of the delay being caused to the disposal of the suit by the actions of the defendant in delaying the filing of the written statement. Merely because the petitioner is a Government body does not mean that it is not bound by the provision of Order 8, Rule 1 CPC.

5. Even if the written statement of the petitioner will not be on record, the respondent/plaintiff will have to prove its case in accordance with law and the petitioner/defendant will have a



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

10

right to cross-examine the witness of the respondent/plaintiff as also address arguments.”

18. Again, Hon’ble Bombay High Court in a case titled ***Sonali Ramchandran Ayyar vs. Ramchandran Venkatraman Ayyar, 2014 (Supp) CivCC 145*** held as under:

“20. In light of the above discussion, it is held that the respondent has a right to cross-examine the petitioner and her witnesses, however, the interrogatories sought by him below exhibits 12 and 16 cannot be granted in view of the fact that the said interrogatories could have been filed in his defence and that the order striking off the defence of the respondent has attained finality. Hence, in the peculiar facts of this case, the petition deserves to be allowed in terms of prayer clause 'a' and 'b'.”

19. Further, the Hon’ble Supreme Court of India, in a case titled ***Modula India vs. Kamakhya Singh Deo, 1988(2) RCR (Rent), 530*** held as under:

“18. We agree that full effect should be given to the words that defence against ejectment is struck off. But does this really deprive the defendant tenant of further participation in the case in any manner? While it is true that, in a broad sense, the right of defence takes in, within its canvass, all aspects including the demolition of the plaintiff's case by the cross-examination of his witnesses, it would be equally correct to say that the cross-examination of the plaintiff's witnesses really



constitutes a finishing touch which completes the plaintiff's case. It is a well established proposition that no oral testimony can be considered satisfactory or valid unless it is tested by cross-examination. The mere statement of the plaintiff's witnesses cannot constitute the plaintiff's evidence in the case unless and until it is tested by cross-examination. The right of the defence to cross-examine the plaintiff's witnesses can, therefore, be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff's evidence cannot be acted upon. Looked at from this point of view it should be possible to take the view that, though the defence of the tenant has been struck out, there is nothing in law to preclude him from demonstrating to the court that the plaintiff's witnesses are not speaking the truth or that the evidence put forward by the plaintiff is not sufficient to fulfill the terms of the statute.

19. To us it appears that the basic principle that where a plaintiff comes to the court he must prove his case should not be whittled down even in a case where no defendant appears. It will at once be clear that to say that the Court can only do this by looking the plaintiff's evidence and pleadings supplemented by such questions as the court may consider necessary and to completely eliminate any type of assistance from the defendant in this task will place the court under a great handicap in discovering the truth or otherwise of the plaintiff's statements.



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

12

For after all, the court on its own motion, can do very little to ascertain the truth or otherwise of the plaintiff's averments and it is only the opposite party that will be more familiar with the detailed facts of a particular case and that can assist the court in pointing out defects, weaknesses, errors and inconsistencies of the plaintiff's case."

20. As such the order passed by the Family Court, curtailing the right of the husband to cross-examine the PWs examined by the wife, to prove her entitlement to claim the maintenance from her husband, is clearly not sustainable in law and facts of the case.

21. Consequent to my above-mentioned findings the impugned order dated 23.08.2023 passed by the Additional Principal Judge (Family Court), Ludhiana is set aside. The impugned orders dated 11.01.2023, 06.03.2023, 03.04.2023 and 03.06.2023 passed by the Additional Principal Judge (Family Court), Ludhiana, insofar as they have curtailed the right of the husband to cross-examine the prosecution witnesses (PWs), as well as, to lead his own evidence in the case, are also set aside. As a natural corollary thereof, the petition filed by the wife and both the minor daughters, insofar as the relief of enhancement of maintenance is concerned, is dismissed. However, since the matter is being remitted back to the Family Court, to allow the husband to cross-examine the prosecution witnesses (PWs) as also to lead his evidence, it is deemed appropriate that the order dated 06.09.2021 passed by the Family Court (whereby application under Section 91 of Cr.P.C., filed by the wife) was dismissed, be also set aside and the said application be decided afresh by the concerned Family Court, in accordance with law.



CRR(F)-1648-2023 (O&M)
CRR(F)-343-2024 (O&M)

22. The matter is remitted back to the Family Court, Ludhiana for its adjudication afresh, by affording the husband reasonable opportunity to cross-examine the prosecution witnesses (PWs), as well as, to lead his own evidence in the case. However, this opportunity of defence shall be afforded to the husband, subject to his clearing the entire arrears of interim maintenance as fixed by the Family Court vide order dated 12.05.2022. The husband shall continue to pay an amount of Rs.30,000/- as interim maintenance to both the minor daughters till the time the matter is decided afresh by the Family Court, Ludhiana. The husband shall also be liable to pay the cost of Rs. 25,000/- to the wife and both the minor daughters as a condition precedent to afford him the opportunity to lead his defence in the matter.

In view of the long pendency of the matter, the trial Court is directed to conclude the matter afresh, conclusively, within a period of 6 months from the date of receipt/production of a certified copy of this order.

The parties are directed to appear before the Family Court, Ludhiana, either in person or through their counsel on 25.09.2024.

(SUMEET GOEL)
JUDGE

September 09, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No