

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR(F)-1856-2023 (O&M)
Date of Decision: 02.05.2024

NEWTON SINGH LUTHRA

.....PETITIONER

Vs.

MASTER ANGAD

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Sarthak Soni, Advocate, for
Mr. Sanjiv Soni, Advocate,
for the petitioner.

Mr. Nilesh Kant Goyal, Advocate, for
Mr. A.S. Virk, Advocate,
for the respondent.

HARPREET KAUR JEEWAN J.

1. The petitioner-husband is aggrieved by the order dated 27.10.2023, passed by the Additional Principal Judge, Family Court, Patiala, directing the petitioner to pay a sum of ₹50,000/- per month to the respondent-minor child as interim maintenance during the pendency of the petition filed under Section 125 Cr.P.C.

2. Learned counsel for the petitioner *inter alia* contends that after solemnization of marriage of the petitioner with the mother of the respondent on 29.11.2020, the mother of the respondent stayed with the petitioner only for 81 days in the matrimonial house and thereafter, she left the company of the petitioner. A baby boy was born out of the said wedlock on 12.09.2021 but the petitioner was not even informed about the birth of the child.

However, a petition under Section 125 Cr.P.C. was filed on behalf of

the minor son, apart from various other complaints which were filed by the wife of the petitioner before various authorities.

2.1 It is further contended that during the pendency of the petition under Section 125 Cr.P.C., the petitioner had submitted his reply to an application for grant of interim maintenance which was filed by the mother of the respondent. However, the petitioner could not submit his affidavit regarding his movable and immovable properties due to sickness of his father who was in critical medical condition and had to undergo liver transplant surgery and as such, was admitted in the Medanta Hospital, Gurugram, and ultimately discharged from the hospital on 26.10.2023, as per the medical record (Annexure P-7). Despite the request by the petitioner for granting time to file such an affidavit on medical exigencies, especially, when the petitioner himself was a donor for the medical transplantation, the Family Court passed the interim order granting a sum of ₹50,000/- per month as interim maintenance to the minor child from the date of the filing of the application.

3. On the other hand, learned counsel for the respondent contends that the petitioner is in arrears of maintenance, as such, he is not entitled for any relief.

4. *Per contra*, learned counsel for the petitioner submits that the petitioner has already cleared 50% of the arrears in order to show his *bona fide*, in compliance of the order passed dated 10.01.2024 passed by this Bench.

5. I have considered the aforesaid submissions and perused the paper-book.

6. In order to streamline the procedure for deciding the applications for interim maintenance, a comprehensive Affidavit of Disclosure of Assets and Liabilities has been enclosed as Enclosure I and II with the judgment passed by Hon'ble the Supreme Court in Rajnish vs. Neha and another [2021 (2) SCC 32] and the guidelines have been issued to all the Family Courts to the effect that such affidavits shall be filed by the parties in all maintenance proceedings pending before the Family Court throughout the country. The said guidelines have been further reiterated by Hon'ble the Apex Court in Aditi Alias Mithi vs. Jitesh Sharma 2023 (4) R.C.R (Civil) 822. The relevant observations made by Hon'ble the Supreme Court in Aditi's case (*supra*) reads as under:-

“8. The manner in which maintenance payable under [Section 24](#) of the Hindu Marriage Act, 1955 or [Section 125 Cr.P.C.](#) is to be assessed, was considered by this Court in its celebrated judgment in [Rajnish 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.”

9. "Criteria was also laid down for determining the quantum of maintenance. Guidelines were laid down regarding maintenance to minor children in paras 91 and 92 thereof, which are extracted below:

“Permanent alimony

91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.

xxxx xxxx xxxx xxxx

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 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.*

15. *As in the case in hand, the impugned order passed by the High Court is cryptic and is bereft of reasons. In our opinion, the same deserves to be set aside and the matter is liable to be remitted to the High Court for consideration afresh. Ordered accordingly. As the respondent remained unrepresented, the High Court may issue notice for his appearance on the date so fixed by it."*

7. Though the petitioner has filed a reply (Annexure P-4) after receiving the notice from the Family Court admitting the relationship *inter se*

the parties but the petitioner has raised various debatable issues. The wife of the petitioner has not claimed any maintenance. The petition has been only filed qua the minor child who was born on 12.09.2021. The respondent has herself alleged in the affidavit (Annexure P-3) that both the petitioner and the mother of the respondent are working in IT companies since before their marriage.

8. In such circumstances, since the parents of the child qua whom the maintenance has been sought are working, as such, the disclosure of the assets and liabilities by both the parties by way of filing necessary affidavits in compliance with the direction given by Hon'ble the Apex Court in **Rajnish's** case (*supra*) is necessary for proper adjudication of the application for grant of interim maintenance.

9. Keeping in view the medical circumstances pointed out on behalf of the petitioner where the petitioner himself was a donor for liver transplant to his father, in such circumstances, an opportunity is required to be given to the petitioner to file such an affidavit.

10. Consequently, the present revision petition is allowed and the impugned order dated 27.10.2023, passed by the Additional Principal Judge, Family Court, Patiala, is set aside. The matter is remanded back to the Family Court for passing a fresh order on the application of the respondent for grant of interim maintenance after granting an opportunity of 30 days time to the petitioner-husband to file such an affidavit of disclosure of his assets and liabilities, in compliance with the direction given by Hon'ble the Apex Court in **Rajnish's** case (*supra*).

11. However, to protect the interest of the minor respondent, in the meantime, the petitioner would continue paying 50% of the amount awarded by the Family Court, vide impugned order dated 27.10.2023 passed by the Additional Principal Judge, Family Court, Patiala. The Family Court shall take a fresh decision on the application within a period of 02 months after receiving of the copy of this order.
12. Pending miscellaneous application (s), if any, shall also stand disposed of.

May 02, 2024

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(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking

Whether reportable

Yes/No

Yes/No