



2024:DHC:5791



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 26th JULY, 2024

IN THE MATTER OF:

+ **CRL.REV.P. 887/2024 & CRL.M.As. 20297/2024, 20298/2024**

NITISH ANAND

.....Petitioner

Through: Ms. Preeti Singh, Mr. Sunklan
Porwal, Ms. Shefali and Mr. Yash
Singhal, Advocates.

versus

GARIMA MAGGO & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging the Order dated 22.02.2024 passed by the Ld. Family Court, Tis Hazari Court, Central District, Delhi in MT No.135/2020. By the Impugned Order dated 22.02.2024, the Petitioner herein has been directed to pay a sum of Rs.13,000/- per month as interim maintenance towards his daughter, who is Respondent No.2 herein, from the date of filing of the application for interim maintenance.

2. The facts of the case reveal that the marriage between the Petitioner and Respondent No.1 herein was solemnized on 29.04.2019. The Respondent No.2/daughter was born out of the wedlock on 28.04.2020. It is stated that the Petitioner and Respondent No.1 have been living separately since May, 2020 and since separation, the Respondent No.2/daughter has



2024:DHC:5791



been in the care and custody of Respondent No.1. The Trial Court in the Impugned Order has observed that as per the income affidavit of Respondent No.1, she is employed as Office Superintendent with Northern Railway and at present her net salary is Rs.63,577/- per month. The Respondent No.1 and her daughter/Respondent No.2 is living with her parents and she has shown her monthly expenses Rs.30,000/- and Rs.25,000/- as monthly expenses for her daughter/Respondent No.2 and she is also paying a sum of Rs.10,000/- per month to her mother.

3. It was the contention of Respondent No.1 before the Trial Court that the Petitioner has done MBA and he is employed as Human Resource Specialist and earning a sum of Rs.1,50,000/- per month having his own property/house apart from owning two-three other properties and cars.

4. The Ld. Trial Court has noticed in the Impugned Order that as per the income affidavit filed by the Petitioner, he is a Team Leader/Human Resource in a private company, namely, Cvent India Pvt Ltd on a salary of Rs.86,925/- per month. He is living in a rented accommodation on a rent of Rs.20,000/- per month having monthly expenses of Rs.60,000/-. He also stated before the Trial Court that he is ready to contribute for the expenses for his daughter/Respondent No.2.

5. The Trial Court, after considering the facts and circumstances of the case, came to the conclusion that the Petitioner is earning approximately a sum of Rs.90,000/- per month. The Petitioner has not shown any rent agreement to substantiate his contention that he is living in a rented accommodation. The Petitioner has no dependents. It is further observed by the Ld. Trial Court that there is not much difference between the income of the Petitioner and Respondent No.1 and Respondent No.1 is gainfully



2024:DHC:5791



employed having sufficient means/income to maintain herself and, therefore, she is not entitled to maintenance. However, Respondent No.2/daughter is entitled to a sum of Rs.13,000/- per month as interim maintenance. The Ld. Trial Court *vide* the Impugned Order has directed the Petitioner to pay a sum of Rs.13,000/- per month as interim maintenance towards his daughter/Respondent No.2, from the date of filing of the application for interim maintenance.

6. The only contention raised by the learned Counsel appearing for the Petitioner is that the sum of Rs.13,000/- per month should be payable from the date of the Impugned Order and not from the date of filing the application for interim maintenance which is 15.07.2020. It is stated that the Petitioner was never reluctant to pay monthly expenses of his daughter/Respondent No.2, and therefore, the Petitioner should not be saddled with the burden of substantial amount of money.

7. The question as to whether the wife and child is entitled to maintenance from the date of the filing of maintenance application or the date of the Order of maintenance is no longer *res integra*. The rationale behind granting maintenance is to protect a deserted wife and dependent children from destitution and vagaracy and if maintenance is not paid from the date of filing of the application, the party seeking maintenance would be deprived of sustenance owing to the time taken for disposal of the application which often runs into several years. The Apex Court in Rajnesh v. Neha, (2021) 2 SCC 324 has considered in detail the issue from which date the maintenance should be awarded and ultimately concluded as under:

“109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even



though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

110. *In Shail Kumari Devi v. Krishan Bhagwan Pathak [Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839] , this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In Bhuwan Mohan Singh v. Meena [Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200] , this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.*

111. *The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to*



prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

112. In *Badshah v. Urmila Badshah Godse* [*Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51], the Supreme Court was considering the interpretation of Section 125 CrPC. The Court held : (SCC p. 196, para 13)

“13.3. ... purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.”

(emphasis supplied)

113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during



2024:DHC:5791



which the maintenance proceedings remained pending is not within the control of the applicant.”
(emphasis supplied)

8. The application for maintenance was filed on 15.07.2020 and Impugned Order has been passed by the Ld. Trial Court directing payment of maintenance on 22.02.2024. The Ld. Trial Court has taken about three and a half years to decide the application. It was the duty of the Petitioner to maintain his daughter/Respondent No.2. Just by saying that the Petitioner was never reluctant and was prepared to maintain his daughter/Respondent No.2 was not sufficient. No positive action has been taken by the Petitioner/father to pay the amount for maintenance of his daughter/Respondent No.2 voluntarily. It is the moral and legal obligation on the part of the Petitioner to maintain his daughter/Respondent No.2 and provide for her daughter regardless of the fact that his wife was earning or not.

9. In view of the above, the Impugned Order dated 22.02.2024 passed by the Ld. Trial Court does not warrant any interference from this Court. The Petitioner herein is liable to pay a sum of Rs.13,000/- per month as interim maintenance towards his daughter/Respondent No.2 herein, from the date of filing of the application for interim maintenance which is his moral and legal duty.

10. With these observations, the petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 26, 2024

S. Zakir