

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.638 of 2014**

Rekha Sharma, Wife of Sudhir Kumar and Daughter of Sri Rajeshwar Sharma, Resident of Mohalla - Govindpuri Bibiganj, P.S.- Sadar District Muzaffarpur, prsently resident of Mohalla Hathsaraganj, P.S.- Hajipur Town, District- Vaishali

... .. Appellant/s

Versus

Sudhir Kumar, Son of Late Surya Narain Sharma, Resident of Mohalla - Govindpuri Bibiganj, P.S.- Sadar, District -Muzaffarpur

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Sunil Kumar, Advocate.

For the Respondent/s : Mr. Amit Anand, Advocate.

Mr. Deep Shekhar, Advocate.

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**

**and**

**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)**

**Date : 18-04-2025**

Heard both the parties.

2. This appeal by the appellant-wife has been preferred against the judgment dated 22.04.2014 passed by learned Principal Judge, Family Court, Muzaffarpur in Matrimonial Case No.187 of 2008 whereby the petition filed by the respondent-husband against the appellant-wife seeking dissolution of their marriage by a decree of divorce on the ground of cruelty and desertion was allowed.

3. The factual background of the present case is that marriage between appellant-wife and respondent-husband



was solemnized on 29.06.2006 according to Hindu rites and customs. The respondent's wife started living at her matrimonial house and from their conjugal life they blessed with a son on 11.02.2007. It is alleged by the respondent-husband that the appellant-wife became disobedient to the respondent and his family members and began to speak abusive language against them. The respondent-husband fell seriously ill but appellant-wife did not look after him and insisted to go to her parental house and went there on 25.02.2007. After one month, the respondent went to bring back his wife but the family members used filthy language against him and he was informed that appellant-wife will not go to his house. In March, 2007, the petitioner's brother with his relative went to bring back the appellant-wife and, thereafter, petitioner also went there for her *Bidayee* but she refused to join her matrimonial house. Hence, the respondent filed the petition for divorce on the ground of cruelty and desertion.

4. The appellant-wife in her written statement filed on 07.04.2009 denied the allegations made against her in the petition and submitted that with consent of respondent-husband and his family members she had gone to her parental house and she was ready to go with respondent-husband. It is alleged that



due to non fulfillment of demand of dowry the respondent and his family members ousted her from her matrimonial home due to which she alongwith her son were living in her father's house.

**5.** The conciliation between the parties failed.

**6.** In view of facts and circumstances and materials available on record learned Family Court, Muzaffarpur after analyzing the evidence held that the act of the wife amounts to cruelty and the wife has deserted the respondent-husband so the husband is entitled to a decree of divorce. It is further held that the appellant-wife is entitled for alimony and she can get alimony through the process of the court. The marriage is accordingly dissolved and the suit has been decreed vide impugned judgment dated 22.04.2014.

**7.** It is evident that the relationship between the parties has been strained since its inception and has progressively deteriorated over time. Attempts at reconciliation have been unsuccessful. It is pertinent to note that the parties cohabited only for a brief period during the subsistence of the marriage. Although a son was born out of the wedlock, the parties have been living separately for approximately eighteen years and it was invisible divorce. They have levelled serious



allegations against each other and have been engaged in continuous litigations since their separation. There is a clear absence of intention on either side to resume cohabitation or revive the matrimonial bond, as they have not lived together since the year 2008. The prolonged separation, nature of disputes, pendency of litigation, and mutual unwillingness to reconcile are sufficient evidence that the marriage has irretrievably broken down.

8. It is also relevant to take note of that the respondent-husband stated that after the decree of divorce granted by the Family Court, he had married for the second time on 10.11.2014 and from the second marriage, they are now blessed with two children. One son was born on 04.07.2015 and another son was born on 11.08.2016. The respondent-husband is paying monthly maintenance of Rs. 3,000/- (Rs. 2,000/- per month to appellant and Rs.1,000/- per month to their son) vide order dated 04.09.2012 in Maintenance Case No. 120 of 2009. It is claimed by the respondent-husband that in compliance of *panchayati*, the respondent-husband purchased a property on 08.03.2016 in the name of appellant-wife worth Rs. 3,58,000/-. However, it is stated on behalf of the appellant-wife that 0.9 decimals (4 dhurs) of land was purchased by her father in her name.



9. Learned counsel for the parties conceded that in view of the facts and circumstances of the case, the relationship between the appellant-wife and the respondent-husband has irretrievably broken down. Since 2008, both the parties are residing separately and there is no hope of any restoration of their conjugal relationship at this distance of time and it is impracticable in view of later development. It is in the interest of justice that this case may be disposed of by granting permanent alimony to be paid to appellant-wife by the respondent-husband. The respondent-husband proposed to pay one time settlement amount to the tune of Rs.10,00,000/- (Rs. Ten lakhs) along with arrears of maintenance amount, if any. The appellant-wife has not accepted the said proposal and submitted that respondent-husband may be directed to provide accommodation to the appellant and child and also make arrangement for further education of the child. Learned counsel for the parties submitted to decide the quantum of permanent alimony to be paid by respondent-husband to appellant-wife on the basis of material on record.

10. In view of the rival contentions, it is to be decided by this Court *“what is a reasonable amount to be paid by the respondent-husband to the appellant-wife for her claim*



*towards permanent alimony in the facts and circumstances of this case.”*

**11.** Section 25 of Hindu Marriage Act, 1955 provides for grant of permanent alimony and maintenance. The primary objective of granting permanent alimony is to ensure that the dependent spouse is not left without any support and means after the dissolution of the marriage. It aims at protecting the interests of the dependent spouse and does not provide for penalizing the other spouse in the process.

**12.** The Hon’ble Supreme Court in its various judgments clarifies that there cannot be a fixed formula for determination of quantum of permanent alimony. In the case of **Rajnesh v. Neha** reported in **(2021) 2 SCC 324**, the Hon’ble Supreme Court laid down a detailed and structured framework for determining the amount of maintenance, particularly focusing on the aspect of permanent alimony. The Court outlined a comprehensive set of factors to be considered in such determinations across all matrimonial proceedings. This guiding framework has been subsequently affirmed and reiterated by the Hon’ble Supreme Court in **Kiran Jyot Maini v. Anish Pramod Patel**, reported in **2024 SCC OnLine SC 1724**.

**13.** The Hon’ble Supreme Court in **Kiran Jyot**



**Maini** (*supra*), while discussing the husband's obligation to maintain the wife and the importance of his financial capacity in deciding the quantum, observed under para 26 that:-

*“26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation.”*

**14.** The Hon'ble Supreme Court, in **Pravin Kumar Jain v. Anju Jain** reported in **2024 SCC OnLine SC 3678**, examined various precedents to clarify the legal position concerning the determination of permanent alimony. The Court emphasized the necessity of considering relevant factors to ensure that the amount awarded is just, fair, and reasonable. In paragraph 31 of the judgment, it has been held as under:

*“31. There cannot be strict guidelines or a*



*fixed formula for fixing the amount of permanent maintenance. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of the marriage; and such other similar factors. This position was laid down by this Court in Vinny Paramvir Parmar v. Paramvir Parmar, and Vishwanath Agrawal v. Sarla Vishwanath Agrawal.”*

15. The Hon’ble Apex Court, taking note of **Rajnesh v. Neha** (*supra*) and **Kiran Jyot Maini** (*supra*), in para 32 of **Pravin Kumar Jain** (*supra*) laid down the following eight factors to be looked into in deciding the quantum:

- “i. Status of the parties, social and financial.*
- ii. Reasonable needs of the wife and the dependent children.*
- iii. Parties’ individual qualifications and employment statuses.*
- iv. Independent income or assets owned by the applicant.*
- v. Standard of life enjoyed by the wife in the matrimonial home.*
- vi. Any employment sacrifices made for the family responsibilities.*
- vii. Reasonable litigation costs for a non-working wife.*
- viii. Financial capacity of the husband, his income, maintenance obligations, and*



*liabilities.*

*These are only guidelines and not a straitjacket rubric. These among such other similar factors become relevant.”*

16. Duration of the marriage is also one of the relevant factors in determining the permanent alimony. The Hon’ble Supreme Court in **Rajnesh v. Neha** (*supra*) in para 74 observed that:-

*“74. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.”*

17. The conduct of the party seeking the relief is also relevant. The three-judges Bench of Hon’ble Supreme Court in the case of **Sukhdev Singh v. Sukhbir Kaur** reported in **2025 SCC OnLine SC 299**, observed in para 26 as under:

*“26. ....We must note that sub-section 1 of Section 25 uses the word “may”. A grant of a decree under Section 25 of the 1955 Act is discretionary. If the conduct of the spouse who applies for maintenance is such that the said spouse is not entitled to discretionary relief, the Court can always turn down the prayer for the grant of permanent alimony under Section 25 of the 1955 Act. Equitable considerations do apply when the Court considers the prayer for maintenance under Section 25. The reason is that Section 25 lays down that while considering the prayer for granting relief under Section 25, the*



**conduct of the parties must be considered.”**  
**(emphasis supplied)**

**18.** In the light of decision of the Hon’ble Supreme Court in the case of **Rajnesh v. Neha** (*supra*) and **Aditi @ Mithi v. Jitesh Sharma** reported in **2023 SCC OnLine SC 1451**, the parties have filed their affidavit of assets and liabilities.

**19.** In the present case, the parties are living separately for about 17 years. Appellant-wife is residing in her parental house and her son, aged about 18 years, is studying in X<sup>th</sup> standard. The respondent-husband is Post Graduation in M.Sc. Botany. He claimed that he does not have any regular job. He is maintaining himself, his parents, and present wife along with two children by means of private tuition. He asserted in his affidavit that he is presently working as a carpenter and he earns a monthly income of Rs.15,000/- only. Also, that he has no assets except 12 *Kattha* share in the ancestral land property. The appellant-wife claimed that there are more than 2 *kattha* (10.06 decimals) of land recorded in the name of respondent’s mother in Muzaffarpur Town on which four-storied building has been constructed on one *kattha* and a three-storied building on another *kattha* and total value of these properties is approximately Rs. 4 crores. It is stated by the appellant-wife that she came to know that respondent-husband is employed in the



bank at Muzaffarpur, earning a monthly income over Rs.60,000/- per month which is denied by the respondent-husband. However, no documentary proof has been filed on behalf of the appellant-wife to prove her claim.

**20.** The Hon'ble Supreme Court in the case of **Pravin Kumar Jain** (*supra*) while considering obligation of father to support child beyond majority for education and financial security has observed in para 41 as under:

*“41. It is also equitable and only obligatory for a father to provide for his children, especially when they have the means and the capacity to do the same. Even though the son is now major and has just finished his engineering degree, the High Court has rightly observed that it is only after completion of a college/university degree and in some cases, completing a post-graduation/professional degree, would the child be able to secure employment. In fact, it can safely be concluded that, in today's competitive world, gainful employment may be feasible only after the child has pursued education beyond 18 years of age. Mere completion of his engineering degree does not guarantee a gainful employment, in these competitive times. The appellant herein has sufficient means to support his child, and thus provision should also be made for his maintenance and financial security as well. An amount of Rs 1 crore (Rupees one crore only) towards the maintenance and care of the son appears to be fair, which he can utilise for his higher education and as security till he becomes financially independent.”*

**21.** It is legal and moral obligation of the father to ensure adequate provision for the maintenance and financial



security of his child, irrespective of gender, even beyond the age of 18 years, particularly in circumstances where the child is unable to sustain themselves due to reasons such as continued education, physical or mental incapacity, or other justifiable grounds. The duty of a parent, especially that of the father, does not cease merely upon the child attaining the age of majority, but extends so long as the dependency persists and the need for support is genuine and established.

**22.** Keeping in view of the fact that the appellant-wife is residing separately for 18 years from respondent-husband alongwith her son and it has not been brought on any documentary evidence to show that she has no any other source of income other than maintenance amount granted by the Court. We feel it appropriate to grant permanent alimony to the tune of Rs.20 Lakhs to be paid by the respondent-husband as one time settlement with respect to her permanent alimony including the educational and other expenses of the child to the appellant-wife, thereby, upholding the principle of fairness and equity in matrimonial disputes, within a period of four months from the date of passing of this judgment.

**23.** It is hereby clarified that the aforesaid amount shall not preclude or otherwise affect the right of the son of the parties to inherit property, if any, to which he may be legally



entitled.

24. Further, it is clarified that any arrears amount payable to appellant and her son for their maintenance in Maintenance Case No. 120 of 2009 till the date of this judgment shall be calculated and paid by the respondent-husband without fail and at the earliest.

25. This Miscellaneous Appeal stands **disposed of** with aforesaid directions.

26. Pending I.A's., if any, stands disposed of.

**(Sunil Dutta Mishra, J)**

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**(P. B. Bajanthri, J)**

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