

F.A. No.161 of 2024

With
CAN 1 of 2024

Mrs. Abhilasha Rajgarhia

Vs.

Sri Kushal Rajgarhia

Mr. Aniruddha Chatterjee, Sr. Adv.,
Mr. Abir Lal Chakraborty

....for the appellant

Mr. Shreyash Mohta,
Mr. Suparno Ghosh,
Mr. Partha Ghosh

....for the respondent

In Re: CAN 1 of 2024
(Application for Alimony)

1. The present appeal has been preferred by the plaintiff-wife against the dismissal of her suit for divorce against the respondent-husband. The instant application has been filed by the appellant-wife claiming alimony against her husband to the tune of Rs.5,50,000/- per month and Rs.10,00,000/- as litigation costs.
2. The appellant-wife claims that she has no income apart from the amount of Rs.60,000/- per month paid by the respondent-husband as maintenance *vide* order dated March 27, 2023 passed in connection with a proceeding under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the 2005 Act”).

- 3.** The appellant-wife is a Bachelor of Architecture and admittedly does occasional freelancing in architectural projects but claims to have no regular income, whereas the respondent-husband is a mechanical engineer employed in the automobile industry in the United States of America (USA), admittedly earning a monthly salary to the tune of Rs.13,55,660/-, translated to Indian currency.
- 4.** The parties have no issue from their marriage.
- 5.** Learned counsel for the respondent-husband opposes the alimony application on the ground that alimony has been claimed for the first time in the appeal. Throughout the pendency of the suit in the Trial Court, no alimony application was filed, thereby indicating that the appellant-wife was not in need of money and was satisfied with the quantum of maintenance granted to her under the 2005 Act.
- 6.** It is next contended that the appellant is an Architect of some repute and has her own business of interior designing, under the name and style of ABN Designz Studio. Placing reliance on Annexure-K at page 133 of his affidavit-in-opposition, the respondent-husband argues that the said annexure is a printout from the Facebook (a social media platform) webpage of the appellant which shows that she is the owner and founder of the said concern. It is alleged that such fact is also corroborated by the profile maintained by

the appellant-wife in the professional website LinkedIn.

7. Next relying on the bank statement of the wife, as disclosed in her affidavit-of-assets, it is contended that several entries in the same indicate that she draws an income from the said concern.
8. It is next argued by the respondent that the appellant-wife has income sufficient to maintain herself and, as such, the present application for alimony, which is to be treated to be an original application under Section 36 of the Special Marriage Act, is not maintainable at all.
9. By placing reliance on certain entries in the bank statement of the wife, learned counsel for the husband argues that at least two bulk amounts of Rs.13,00,000/- and Rs.7,00,000/- were debited by the wife in favour of her mother, which itself shows that she is channelising the alimony earned from the husband to her mother and parental family and does not require the same for her own upkeep.
10. Learned counsel for the respondent-husband next argues that the bank statement of the appellant-wife indicates that she has been regularly making payments to different corporates, indicating that she has regular transactions with those and has a regular income.
11. It is further contended that admittedly, the wife resides at a rented accommodation, paying rent at the

rate of Rs.40,000/- per month, which would not have been possible unless she has her own fixed income.

- 12.** Learned counsel for the respondent cites *Abhishek Parashar v. Neha Parashar*, reported at 2023 SCC OnLine MP 277, a Division Bench judgment of the Madhya Pradesh High Court rendered in the context of an application for permanent alimony under Section 25 of the Hindu Marriage Act, where it was held that in the absence of any application preferred under Section 25, no directions can be issued by the Appellate Court for grant of permanent alimony.
- 13.** On the premise of the said judgment, it is argued that the appellant-wife, having not filed any alimony application in the Trial Court, is not entitled to alimony for the first time before the Appellate Court.
- 14.** Learned counsel next cites *M.A. Sathar and Others v. Thiruvananthapuram Citizens Protection Forum and Others*, an unreported judgment of a learned Single Judge of the Kerala High Court, in support of the proposition that in the absence of any pleading as to requirement for alimony in the Trial Court, the Appellate Court cannot, for the first time, grant such relief.
- 15.** Learned counsel for the respondent further contends that since the wife has suppressed her income from her profession as an architect and from her concern, ABN Designz, the court ought to draw adverse

inference against her by construing that she has sufficient income to maintain herself.

16. Learned counsel for the respondent-husband next cites *Ramjas Foundation and Another v. Union of India and Others*, reported at (2010) 14 SCC 38, for the proposition that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his/her grievance. Having suppressed her income, the appellant, it is argued, is not entitled to alimony.
17. Learned counsel for the respondent next cites an unreported Division Bench Judgment of the Madras High Court in the matter of *Suchitra v. Zubin Shekary*, for the proposition that the quantum of alimony is to be fixed to ensure that adequate financial support is provided for the husband or wife when there is no independent income to maintain herself or himself during the pendency of the matrimonial proceedings. At the same time, it cannot be used as a tool by one of the spouses to lift the status or standard at par with each other. The financial status of the husband or wife can be taken note of by the court only for fixation of quantum of maintenance and it is not a criterion for matching the financial status of one of the spouses with the other.
18. Learned senior counsel for the appellant-wife controverts the submissions of the respondent and contends that there is no bar to alimony being claimed

for the first time in an appeal, although not prayed for in the Trial Court. Moreover, the order passed under the 2005 Act to the tune of Rs.60,000/- per month had been granted approximately within two months of the institution of the suit and, as such, the wife did not claim any further alimony at that juncture. However, from the pleadings of the husband in his affidavit-of-assets filed before this court, it was learnt that the husband earns more than Rs.13.5 lakh per month. It is argued that the law provides that the alimony granted to one of the spouses is to be commensurate with the status which she would have had if she resided at her matrimonial home.

- 19.** Learned senior counsel cites *Rajnish v. Neha and Another*, reported at (2021) 2 SCC 324, in support of the proposition that the court has to see whether the income is sufficient to enable the wife to maintain the same standard of living as she was accustomed to in her matrimonial home. 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 income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. A careful and just balance must be drawn between all relevant factors.

- 20.** Learned senior counsel next cites *Manish Jain v. Akanksha Jain*, reported at (2017) 15 SCC 801, where the Supreme Court observed that the court exercises a wide discretion in the matter of granting alimony pendente lite and is to be guided on sound principles of matrimonial law to be exercised within the ambit of the provisions of the Act, having regard to the object of the Act. The court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of allegations made by the parties. An order for maintenance pendente lite is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her/his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance.
- 21.** Insofar as the amounts paid by the wife to her mother are concerned, those were gifts by the wife in consideration of the huge amounts spent by her mother on her due to dearth of maintenance being provided by the husband. Two isolated instances of such payment cannot be sufficient indication that the

wife is not in requirement of money. The appellant-wife has all along been dependent on the support from her brother and mother and has been living a frugal lifestyle, at the expense of which she repaid some of the amounts spent by her mother on her.

- 22.** It is argued by the appellant that no proof has been furnished by the respondent that the wife earns any income and the appellant-wife cannot furnish negative proof to that effect. Sporadic payments do not tantamount to regular salary.
- 23.** It is argued that the alimony granted should be commensurate with the status of the other spouse and as such, the income of the husband, which was not disclosed to the wife during the trial stage, should be looked into.
- 24.** The alleged corporate payments by the appellant-wife were only meagre expenses for food and regular necessities of life.
- 25.** Insofar as the rental payments are concerned, in view of the inconvenience of the wife to carry on residing at her parental home, the wife was compelled to shift to a rental accommodation. Such shifting has taken place only two months back in January, 2025 and, as such, the argument of the respondent that the appellant could not have borne such rental income from her maintenance so long is misplaced.
- 26.** Upon considering the submissions of the parties, we find that several facets are involved in the matter.

- 27.** The argument of the respondent-husband that since the wife did not claim alimony at the trial stage, she is not entitled to alimony in the appeal, is not tenable in the eye of law. An appeal is deemed to be a continuation of the suit and, as such, in view of the language of Section 36 of the Special Marriage Act, the wife can claim alimony at any stage of the proceeding. Moreover, under Section 107 of the Code of Civil Procedure, the First Appellate Court exercises co-equal powers as vested in the Trial Court. Section 40 of the Special Marriage Act, 1954 provides that the provisions of the Code of Civil Procedure shall be applicable to proceedings under the said Act. As such, there is no impediment in the alimony application being filed for the first time before this Court.
- 28.** Moreover, we find from the time-lines of grant of maintenance to the wife under the 2005 Act that the period during which the wife was receiving alimony from the respondent-husband at the rate of 60,000/- per month under such order is roughly co-extensive with the suit. As such, we find it plausible that the wife, who was already earning alimony under the said order, was not required to file a further superfluous application for alimony in connection with the matrimonial suit. Hence, the argument of the respondent in that regard cannot be accepted.
- 29.** The respondent-husband has alleged that the appellant-wife is the owner of ABN Designz Studio on

the sole premise of certain Facebook posts of the appellant-wife. We find from Annexure-K at page 133 of the husband's affidavit-in-opposition that in the self-same webpage, where the expression "Owner and Founder" is used by the wife, in the same breath she states that she "Started a new job at ABN Designz Studio". Thus, the expression "Owner and Founder" by itself does not unerringly indicate that she is the owner of the said concern, since such phrase is diluted by the expression "Started new job at" such concern. Moreover, the said Facebook post was of January 25, 2020 which was about the period when the appellant-wife had to return from her matrimonial home at USA. It is understandable that the appellant put up such post to solicit work, since she was in dire need of money, being deprived of alimony at that stage.

- 30.** The different webpages relied on by the respondent all indicate that the appellant-wife had some job experiences with different interior designers including ABN Designz and other architects. However, there is nothing on record to show that the wife owns any concern or company and/or has a regular salary. Rather, the sporadic and discrete entries of incomes, as reflected in her bank statement, go on to support her contention that she does freelancing architectural jobs and the payments received by her were job-based.

Thus, it cannot be said that the wife has any sort of regular salary or income.

- 31.** We also cannot overlook the fact that posts on social media are often embellished insofar as the job experience or expertise of the person concerned goes and have more of a character of advertisements than gospel truth. Thus, social media posts cannot be taken to be a sacrosanct proof of the person uploading such post being actually well-established in her profession and/or earning a regular income.
- 32.** Although the respondent-husband has furnished merely social media posts, he did not take the trouble of producing any trade licence or other concrete evidence to show that the wife is actually the owner of ABN Designz. Although the income of the wife is her special knowledge, in the teeth of her categorical denial of any regular income, she could not be expected to furnish negative proof in support of such contention and the onus shifted on the respondent-husband to show that the appellant owns any concern or earns a regular income from any service. The few and far-between occasional incomes of the wife are reflected from her bank statement itself, which only bolsters the wife's contention that she does not have a regular income.
- 33.** As to the contention of the respondent-husband that the appellant-wife has sufficient income to maintain herself, we have to take note of the evolution in

judicial opinion on such count. Whereas the statute provides that the spouse claiming alimony cannot have income sufficient to maintain herself, the term “sufficiency” of the income has been expanded by successive judgments of the Supreme Court and several High Courts much beyond the bare necessities of life. Such sufficiency has to be correlated with a life of dignity of the spouse claiming alimony.

- 34.** It has been the consistent view of the Supreme Court, as crystalized in *Rajnesh (supra)*, that the wife is entitled to alimony sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home. Moreover, as reiterated in *Manish Jain (supra)*, it is no answer to a claim of maintenance by the wife that the wife is educated and could support herself. Mere notional capacity of the wife to earn, in the absence of any real and concrete income, would not suffice to deprive her of alimony.
- 35.** Seen in such context, the income of the husband, as disclosed by himself in his affidavit-of-assets, is to the tune of Rs.13,55,660/- per month. The husband is a mechanical engineer employed in the automobile industry in the USA, whereas the appellant-wife is a mere holder of Bachelor’s degree in Architecture and does not have a regular source of income. Thus, if balanced on such yardsticks, taking into account the status of the appellant-wife which she would have enjoyed if she was able to continue in her matrimonial

home in USA with her husband, it is the income of the husband which has to be considered as the parameter for awarding alimony.

- 36.** The two isolated instances of payment of Rs.13,00,000/- and Rs.7,00,000/- by the appellant-wife to her mother cannot *per se* be taken to indicate that she has extra income which can be spared. The said payments might very well have been a payback to her mother due to the constant support provided by her and the wife's parental family at the time of need of the wife.
- 37.** The bank statement of the wife for a period of the last three years has been annexed to her affidavit-of-assets. We find that most of the entries therein pertain to small expenditures, to meet food expenses, regular necessities and other similar expenses. In fact, most of the payments are for purchase of food, grocery, etc., as well as minimum entertainment on OTT Platforms, as we find from the recipients of such payments as reflected in her bank statement. Undoubtedly, the wife's expenditure is not at all extravagant but meets the bare necessities of life. Hence, the argument of the husband that the wife has income beyond her necessity is not acceptable.
- 38.** The appellant-wife has shifted to her rental accommodation only in the month of January, 2025, that is, two months back. It is well-settled that the right of maintenance includes the right to residence.

Since the wife is not being able to reside with her husband, she has every entitlement to claim alimony also for the purpose of meeting the rental expenses of her present accommodation. Also, the rental of Rs.40,000/- per month is not exorbitant, particularly keeping in view the status of her husband.

39. Upon consideration of all the above circumstances, we are of the opinion that even after allowing for the expenditure which might be incurred by the respondent-husband for himself in the USA, at least an amount between $1/3^{\text{rd}}$ and $1/5^{\text{th}}$ of the husband's income should be granted as alimony to the appellant-wife.
40. $1/5^{\text{th}}$ of the income of the husband (which is Rs.13,55,660/-) comes to around Rs.4,51,886/- and $1/3^{\text{rd}}$ of such amount comes to around Rs.2,71,132/-. Taking the average of the two, the quantum comes to around Rs.3,61,509/- per month. Rounding off the figure, it comes to Rs. 3,60,000/- which, in our opinion, would be the appropriate alimony commensurate with the lifestyle which the appellant-wife would have enjoyed if she continued to reside with her husband in her matrimonial home. Insofar as litigation costs are concerned, keeping in view the expenses of litigation before this Court, an *ad hoc* amount of Rs.5,00,000/- would be adequate for the present.

- 41.** Accordingly, CAN 1 of 2024 is allowed on contest, thereby directing the respondent-husband to pay alimony pendente lite to the appellant-wife to the tune of Rs.3,60,000/- per month till the disposal of the appeal and one-time *ad hoc* litigation costs of Rs.5,00,000/- for the present.
- 42.** Such alimony shall be paid from the date of filing of the application, that is, from the month of September, 2024. The current alimony, starting from the month of April, 2025, shall be paid by the 15th day of each current month.
- 43.** The arrears of alimony at the rate of Rs.3,60,000/- per month, calculated from September, 2024 till March, 2025, shall be paid in two equal monthly instalments. The first of such instalments shall be paid by April 15, 2025 and the next by May 15, 2025. The total amount of alimony paid between September, 2024 and March, 2025 pursuant to the order under the Protection of Women from Domestic Violence Act, 2005 at the rate of Rs.60,000/- per month shall be deducted from such arrears in making such payments.
- 44.** There will be no order as to costs.

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- 45.** In view of appearance of the respondent-husband through his learned advocate, service of notice of appeal on the respondent is dispensed with.

- 46.** The Trial Court Records shall be brought by special messenger at the cost of the appellant, to be deposited within a week from date. The appellant shall prepare and file the requisite number of paper books within eight (08) weeks from the date of service of notice of arrival of the Trial Court Records on the learned advocate for the appellant.
- 47.** Liberty to the parties to mention the appeal for enlistment as and when the same is made ready for hearing.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)