

03.12.2025
Ct. No. 06
Items 7 & 50
Cp

C.O. No. 3909 of 2025

Sukriti Kumar Bowali
Vs.
Papiya Bowali

With

C.O. No. 4159 of 2025

Papiya Bowali
Vs.
Sukriti Kumar Bowali

Mr. Kushal Chatterjee
Mr. Pritam Roy
Ms. Triparna Roy

.....for the petitioner.
in C.O. No. 3909 of 2025.

Mr. Gangadhar Das
Mr. Tanmoy Chattopadhyay

.....for the opposite party
in C.O. No. 3909 of 2025.

1. C.O. 3909 of 2025 has been filed by the husband challenging an order dated September 18, 2025. By the order impugned, the learned Additional District Judge, 3rd Court at Barasat disposed of the Misc. Case No.210 of 2019, by directing maintenance pendente lite @ RS.10,000/- for the wife and Rs.12,000/- for the minor daughter. A lumpsum cost of Rs.20,000/- was awarded as litigation cost.

2. C.O. 4159 of 2025 has been filed by the wife challenging the same order on the ground that the amount awarded by the court was inadequate. By the time the order was passed, the husband was designated

as the Joint Commissioner of Sales Tax and he had an approximate income of Rs.1,50,000/-, per month.

3. Mr. Chatterjee, learned advocate appearing for the husband, submits that after deductions and after the payments are made towards EMIS for the loans which had been obtained, the husband has an expendable income of around Rs.50,000/- per month. The husband had purchased properties in the name of the wife. Some of them are landed properties and some of them are flats. The wife was residing in two of the flats, with the daughter.

4. It is next contended that the wife did not disclose her income from a beauty parlour and he relies on documents filed before the criminal court in the proceedings under the Protection of Women from Domestic Violence Act, to submit that the income tax returns of the wife had been considered by the said court.

5. It is submitted on behalf of the wife that she was running a beauty parlour for some time, but the same had been shut down. The electricity bills have been produced, which show that there is zero consumption. At the moment, the wife earns a meagre amount from private tuitions. The flats nos. 2A + 2B, on the 2nd floor of Om Mangalam Apartment, Dum Dum, in which the wife was residing with the minor daughter, were purchased on loan from the State Bank of India. The husband defaulted in repayment. The bank took possession of the flats and

the wife and the child were driven out. The letter of the wife to the bank manager, to permit her to take her belongings, has been annexed in C.O. 4159 of 2025.

6. The wife approached the Judicial Magistrate, 3rd Court, Barrackpore by filing an application under Section 25(2) of Protection of Women from Domestic Violence Act vide Misc. Case No. 361 of 2018. By an order dated May 17, 2024, the court allowed Rs.5000/- per month towards rent, upon taking note of the fact that the bank had taken over possession in terms of an order passed under Section 14 of the SARFAESI Act. It is also submitted that the said order has been violated. The wife initiated an execution case being Misc. Execution Case No. 80 of 2025 and warrant of arrest has been issued against the husband. The order has been produced before this court.

7. Although, Mr. Chatterjee vehemently urges this court to appreciate that substantial number of properties have been purchased in the name of the wife, this court finds that the residential accommodations out of those properties, are now in the possession of the bank. The wife and the child were forced to leave, when the bank authorities went to take possession of the property, on account of the default committed by the husband. Under such circumstances, even if the flats are in the name of the wife, there is no certainty that she will ever be able to reside there with the daughter in the near future. Thus, rental accommodation is the only alternative.

8. With regard to the deductions towards EMIS, the loan account with the State Bank of India has already been declared as an NPA. The personal loans from the third parties were not proved. Under such circumstances, and upon considering the designation of the husband, who is the Joint Commissioner of Sales Tax, it is expected that the wife and child must enjoy a minimum standard of living with bare minimum dignity, commensurating with the husband's status. The wife lives in Dum Dum Cantonment in a rented accommodation. The child is 15 years old. The expenses of the child towards education, tuition etc. is quite high. Thus, taking into account the rent, miscellaneous expenses, food, education, medical expenses, transport etc., this court is of the view that a sum of Rs.30,000/-, should be paid to the wife and the child as a whole, as maintenance pendent lite per month. Such payment shall be made from the date of the application, i.e. August 13, 2019.

9. Accordingly, C.O. 4159 of 2025 is allowed.

10. Mr. Chatterjee relies on a decision of the Hon'ble Apex Court in the matter of **Jasbir Kaur Sehgal (SMT) vs. District Judge, Dehradun & Ors.**, reported in **(1997) 7 SCC 7**, in support of his contention that the court has a discretion to decide the date from which the maintenance should be paid.

11. However, the law is well-settled that, maintenance should be paid from the date of the application and not

from the date of the order. Reference is made to the decision of the Apex Court in **Rajneesh V. Neha** reported in **(2021) 2 SCC 324** paragraphs 96-101, 110-113 and 131 are quoted below:-

“(a) From the date of application

96. The view that maintenance ought to be granted from the date when the application was made, is based on the rationale that the primary object of maintenance laws is to protect a deserted wife and dependent children from destitution and vagrancy. If maintenance is not paid from the date of 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.

97. The Orissa High Court in *Susmita Mohanty v. Rabindra Nath Sahu* [*Susmita Mohanty v. Rabindra Nath Sahu*, (1996) 1 OLR 361] held that the legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order.

98. In *Kanhu Charan Jena v. Nirmala Jena* [*Kanhu Charan Jena v. Nirmala Jena*, 2000 SCC OnLine Ori 217 : 2001 Cri LJ 879] , the Orissa High Court was considering an application under Section 125 CrPC, wherein it was held that even though the decision to award maintenance either from the date of application, or from the date of order, was within the discretion of the court, it would be appropriate to grant maintenance from the date of application. This was followed in *Arun Kumar Nayak v. Urmila Jena* [*Arun Kumar Nayak v. Urmila Jena*, 2010 SCC OnLine Ori 30 : (2010) 93 AIC 726] , wherein it was reiterated that dependants were entitled to receive maintenance from the date of application.

99. The Madhya Pradesh High Court in *Krishna v. Dharam Raj* [*Krishna v. Dharam Raj*, 1991 SCC OnLine MP 6 : (1993) 2 MPJR 63] held that a wife may set up a claim for maintenance to be granted from the date of application, and the husband may deny it. In such cases, the court may frame an issue, and decide the same based on evidence led by parties. The view that the “normal rule” was to grant maintenance from the date of order, and the exception was to grant maintenance from the date of

application, would be to insert something more in Section 125(2) CrPC, which the legislature did not intend. Reasons must be recorded in both cases. i.e. when maintenance is awarded from the date of application, or when it is awarded from the date of order.

100. The law governing payment of maintenance under Section 125 CrPC from the date of application, was extended to HAMA by the Allahabad High Court in *Ganga Prasad Srivastava v. Addl. District Judge, Gonda* [*Ganga Prasad Srivastava v. Addl. District Judge, Gonda*, 2019 SCC OnLine All 5428 : (2019) 6 ADJ 850] . The Court held that the date of application should always be regarded as the starting point for payment of maintenance. The Court was considering a suit for maintenance under Section 18 of the HAMA, wherein the Civil Judge directed that maintenance be paid from the date of judgment. The High Court held that the normal inference should be that the order of maintenance would be effective from the date of application. A party seeking maintenance would otherwise be deprived of maintenance due to the delay in disposal of the application, which may arise due to paucity of time of the court, or on account of the conduct of one of the parties. In this case, there was a delay of seven years in disposing of the suit, and the wife could not be made to starve till such time. The wife was held to be entitled to maintenance from the date of application/suit.

101. The Delhi High Court in *Lavlesh Shukla v. Rukmani* [*Lavlesh Shukla v. Rukmani*, 2019 SCC OnLine Del 11709] held that where the wife is unemployed and is incurring expenses towards maintaining herself and the minor child/children, she is entitled to receive maintenance from the date of application. Maintenance is awarded to a wife to overcome the financial crunch, which occurs on account of her separation from her husband. It is neither a matter of favour to the wife, nor any charity done by the husband.

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(b) From the date of order

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.”

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 which the maintenance proceedings remained pending is not within the control of the applicant.

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131. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B — IV above.”

12. Mr. Chatterjee submits that for two years between the date of the application and the date of the order, the entire country was attacked by the Covid Pandemic and the court should take into consideration such situation, thereby exempting the husband from his liability to pay maintenance during such period.

13. The husband who was an employee of the government was drawing his salary during that period. There is no contrary indication in the records that his salary was reduced. Life had come to a standstill for the wife, as the proceedings were delayed. The decision in ***Jasbir Kaur Sehgal (SMT) (supra)*** which has been relied upon by Mr. Chatterjee, clearly states that the discretion of the court to award maintenance depends on the conduct of the parties. The conduct of the husband in this case, has not been praiseworthy. He defaulted in payment of the loan in respect of the flats where the wife

and the child were residing. The wife and the child were forced out of the said flat by the bank. The wife had to plead with the Chief Manager of the bank to allow her to take back her articles. Further, the order passed by the Judicial Magistrate in the proceeding under the DV Act, has not been complied with, which has compelled the court to issue a warrant of arrest in the execution case. In such a situation, the discretion of the court can never be exercised in favour of either reducing the quantum of maintenance or directing that the maintenance should be paid from a later date. This is also not a case that the wife has inflated the income of the husband. The husband's income is available in his salary slip. Income of the wife from the beauty parlour was recorded by the court, but it appears to this court that the income tax returns filed by the wife were upto the year 2017-2018. Hence, there is no proof at this moment that, the wife has a steady income from the beauty parlour. Under such circumstances, the law laid down by the Hon'ble Apex Court that the maintenance should be paid from the date of the application has to be followed.

14. The arrear maintenance shall be paid in 12 equal monthly instalments along with the current maintenance of Rs. 30,000 per month, within the 15th of each month. First of such instalment shall be paid with the maintenance for December, 2025, within 15th December, 2025. Thereafter, each instalment shall be paid month by

month every month with the monthly maintenance within 15th of each month, till the entire amount is liquidated. The monthly instalment should continue to be paid till disposal of the Matrimonial Suit @ Rs.30,000/- per month, within 15th of each month.

15. Rs.1,00,000/- which has been paid to the wife as per direction of this court, will be treated as a lumpsum payment towards litigation cost. The proceedings under the DV Act, shall be decided on its own merits. If any amount has already been paid pursuant to the direction of the criminal court, that shall be adjusted from the arrears. In case of default, the suit shall remain stayed and the wife can proceed in accordance with law.

16. The order impugned is accordingly modified.

17. The revisional applications are accordingly disposed of. There shall be no order as to costs. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)