

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.4915 OF 2025

Aashish Kumar Fatendranth Mishra

...Petitioner

Versus

Shanaya Aashish Kumar Mishra

Thr. her Mother & Natural Guardian

...Respondent

Mr. Satyam Dubey i/b J. S. Tiwari, for the Petitioner.

Ms. Usha Tiwari a/w Ms. Vandana Tiwari, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 2nd MAY 2025

P.C.:

1. Heard Mr. Dubey, learned Counsel appearing for the Petitioner and Ms. Tiwari, learned Counsel appearing for the Respondent.

2. The challenge in this Writ Petition is to the order dated 26th March 2024 passed by the learned Judge, Family Court No.5, Mumbai below Exhibit-37 in Petition No. C-15 of 2021. The said Application bearing Exhibit-37 is filed by the present Petitioner-husband under Order VII Rule 11 of the *Code of Civil Procedure, 1908* (“CPC”) seeking the relief that the said Petition No. C-15 of 2021 be rejected or returned to the Respondent.

3. It is the main contention of Mr. Dubey, learned Counsel appearing for the Petitioner that the Respondent has filed an Application No.949 of 2016 before the Family Court of Azamgarh, Uttar Pradesh seeking maintenance under Section 125 of the *Code of Criminal Procedure*,

1973 (“CrPC”). In the said Application ex-parte order granting maintenance of Rs.14,000/- per month to the wife and Rs.4,000/- per month to the Respondent i.e. daughter was passed. He therefore submits that the present Petition filed under Section 20(1) and 20(2) of the *Hindu Adoption and Maintenance Act, 1956* (“HAMA”) is not maintainable. He relies on the judgments of the Supreme Court in the case of *Abhilasha v. Prakash & Ors.*¹ and *Rajnish v. Neha & Anr.*²

4. On the other hand Ms. Tiwari, learned Counsel appearing for the Respondent submitted that the said Petition is maintainable. She submits that in any case as far as order passed by the learned Judge, Family Court, Azamgarh, Uttar Pradesh is concerned the same is stayed by the High Court of Allahabad. She submits that the learned Judge, Family Court, Mumbai by order dated 26th July 2024 granted maintenance of Rs.25,000/- per month to the daughter towards educational and other expenses by passing order below Exhibit-6 in Petition No. C-15 of 2021. It is submitted that to delay the passing of order on said Application the Petitioner took various steps including filing of Application bearing Exhibit-37 under Order VII Rule 11 of CPC. She submits that just to deny maintenance to the daughter various proceedings are filed and therefore, the Petition be not entertained.

5. Perusal of the record shows that marriage between the Petitioner

¹ AIR (2020) SC 4355

² AIR (2021) SC 569

and mother of the Respondent took place on 29th January 2015. The Respondent-daughter was born on 24th January 2016. The mother of the Respondent filed Application No.949 of 2016 before the learned Judge, Family Court, Azamgarh, Uttar Pradesh on 24th January 2016 seeking maintenance under Section 125 of CrPC. The learned Judge Family Court, Azamgarh, Uttar Pradesh granted maintenance to wife of Rs.14,000/- per month and to Respondent i.e. minor daughter Rs.4,000/- per month. The present Petitioner approached Allahabad High Court against said ex-parte order and by order dated 10th May 2019 Allahabad High Court has stayed the order passed by the learned Judge, Family Court, Azamgarh, Uttar Pradesh granting maintenance.

6. Thereafter, in or about 16th February 2021 the Respondent i.e. minor child through natural guardian-mother filed Petition No. C-15 of 2021 under Section 20(1) and 20(2) of the HAMA. In the said Petition Interim Application is filed seeking maintenance bearing Exhibit-6 on or about 26th February 2021. Thereafter, the Petitioner filed an Application bearing Exhibit-37 on 1st April 2023 seeking that by exercising power under Order VII Rule 11 of CPC, the said Petition No. C-15 of 2021 be rejected or returned to the Petitioner. By the impugned order dated 26th March 2024 the said Application bearing Exhibit-37 has been rejected.

7. The main contention of learned Counsel appearing for the Petitioner is that as the proceedings are pending which have been filed

in the Family Court, Azamgarh, Uttar Pradesh under Section 125 of CrPC, the present Petition filed under Section 20(1) and 20(2) of the HAMA is not maintainable.

8. However, in the decision of the Supreme Court in the case of *Rajnish V. Neha* (supra) the said point is extensively discussed. The final directions issued by the Supreme Court concerning overlapping jurisdiction is as under :-

(a) Issue of overlapping jurisdiction

“To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.”

(Emphasis added)

Thus, what the Supreme Court has held that to overcome the issue of overlapping jurisdiction and avoid conflicting orders being passed in different proceedings where successive claims for maintenance are

made by a party under different statutes, the Court would consider an adjustment or set-off of the amount awarded in the previous proceedings while determining whether any further amount is to be awarded in the subsequent proceeding.

9. In this particular case admittedly the Respondent daughter is 9 years old. Admittedly the Petitioner who is the father has not paid any maintenance to the daughter except an amount of Rs.3,10,000/-. The arrears are to the tune of Rs.12,00,000/-. The said order of maintenance is also challenged in this Court and a conditional stay has been granted. It is an admitted position that order dated 10th May 2019 *inter alia* granting maintenance of Rs.4,000/- per month to the daughter granted by the learned Judge, Family Court, Azamgarh, Uttar Pradesh is stayed by the Allahabad High Court.

10. In any case in the facts and circumstances and in view of the law laid down in *Rajnish v. Neha* (supra) no interference in the impugned order is warranted.

11. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]