

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5267 OF 2024

Mrs. Sangita Chawla D/o Mr. Satish ...Petitioner
Kumar Chawla

Versus

Mr. Suryanarayan Ganesh S/o Mr. K.N. ...Respondent
Ganesh

Ms. Kokila Kalra, Advocate for Petitioner.

Mr. Gopalkrishna R. Hegde, Advocate for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 2nd September 2025

JUDGMENT:

1. Heard Ms. Kokila Kalra, learned Counsel appearing for the Petitioner and Mr. Hegde, learned Counsel appearing for the Respondent.

2. The challenge in this Writ Petition filed under Article 227 of the Constitution of India is to the legality and validity of the Order dated 4th December 2023 passed by the learned Judge, Family Court, Mumbai in the Interim Application No.39 of 2019 i.e. Exhibit-14 in Petition No.A-276 of 2018 to the extent of directing payment of maintenance from the date of passing of the impugned Order instead of from the date of filing the application.

3. Learned Counsel appearing for the Petitioner relied on the judgment of the Supreme Court in the case of **Rajnish Vs. Neha**¹ and more particularly on paragraph 113 of the same. She therefore, submitted that the learned Family Court should have directed payment of interim maintenance from the date of filing of the Application.

4. On the other hand, Mr. Hegde, learned Counsel for the Respondent submitted that without any Order passed by any Court, the Respondent i.e. father was paying Rs.25,000/- per month as maintenance and also investing Rs.1,50,000/- annually in the name of the daughter in "Sukanya Saving Account". He therefore submits that the Order passed is a valid order and therefore, in the facts and circumstances the same should not be interfered with.

5. Perusal of the record shows that the learned Judge, Family Court has passed the following operative Order on 4th December 2023 :-

¹ (2021) 2 SCC 324

- “1. The application at Exh.14 is partly allowed.*
- 2. The petitioner is directed to pay interim maintenance of Rs.50,000/- per month to the daughter from the date of passing this order.*
- 3. The petitioner is directed to deposit the interim maintenance amount in the designated account of the daughter on or before 10th day of each month as per English Calendar.*
- 4. The petitioner husband is directed to pay Rs.25,000/- to the respondent towards cost of litigation.”*

(Emphasis added)

6. The reasons given by the learned Judge of the Family Court are reflected in paragraph nos. 9 to 12, which reads as under :

“9. The relation between the parties is not disputed. The respondent has not sought any maintenance for herself and has only sought maintenance for her daughter. Because she appears to be employed and earning salary of Rs.1,50,000/- to Rs.2,00,000/- per month which is also revealed from her affidavit of assets and liabilities vide Exh.22.

10. On perusal of affidavit of assets and liabilities of the petitioner it appears that his educational qualification is that B.E. MBA and his monthly income is to the tune of Rs.4,90,000/- per month. It also appears that he is paying Rs.25,000/- per month in saving account and also Rs.1.5 Lakh annually in Sukanya Saving Account.

11. Be it so it appears that the daughter is with the respondent and it is not expected that she should alone maintain the daughter. The petitioner being father obligation is cast upon him to contribute towards the daughter. Even though it appears that he is contributing Rs.25,000/- per month and also investing Rs.1,50,000/- Annually in the name of daughter in Sukanya saving account. But above amount is not sufficient if the needs of daughter are considered. Therefore, in such contingency it would be just and appropriate to grant Rs.50,000/- per month towards the interim maintenance of the daughter and Rs.25,000/- towards litigation expenses.

12. But even though application for interim maintenance was filed on 22.03.2019, but the written arguments are recently filed in the month of June 2023 the parties. Therefore, in such contingency interim maintenance to the daughter is granted from the date of order and not from the application.”

(Emphasis added)

7. Thus, it is clear that the learned Judge has taken into consideration various aspects including that the Petitioner- mother is earning about Rs.1,50,000/- to Rs.2,00,000/- per month, the Petitioner has not sought any maintenance for herself and has sought maintenance only for her daughter and that the Respondent is earning Rs.4,90,000/- per month. The Court has also taken into consideration the aspect that Rs.25,000/- per month is being

contributed by the husband for the daughter's maintenance and also husband is investing Rs.1,50,000/- annually in the name of daughter in Sukanya Saving Account. The learned Judge, Family Court further observed that the said amount is not sufficient for the maintenance of the daughter.

8. Admitted position is that the daughter is a special child. It is also an admitted position that the said Order dated 4th December 2023 passed by the learned Judge, Family Court is not challenged by the Respondent-father. It is also an admitted position that the child is staying with the Petitioner-mother and mother is single handedly looking after the child. Thus, the only challenge raised by the Petitioner-mother is direction to the Respondent-father to pay maintenance from the date of passing of the Order and not from the date of filing of the application. The learned Judge for directing payment of interim maintenance from the date of passing of the Order has given reason to the effect that even though the application for interim maintenance was filed on 22nd March 2019, the written arguments were filed in the month of June 2023 and therefore, the interim maintenance to the daughter is to be granted

from the date of the Order and not from the date of the application.

9. The Supreme Court in the case of **Rajnesh** (supra) has considered this aspect and issued directions concerning the same. The relevant discussions is to be found in paragraphs 109 to 113, which reads 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.”

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.”

(Emphasis added)

Thus, what the Supreme Court has said that there is significant delay in disposal of the applications for interim maintenance and the delay is for many years. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application. The Supreme Court has directed that the

maintenance be awarded from the date on which the application was made before the court concerned and 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.

10. In view of the above legal position, it is necessary to consider the grounds raised by the Petitioner in the Writ Petition in support of her contention that the maintenance to the child should be awarded from the date of the application and not from the date of the order. The said grounds are raised in Clause (vii), (viii), (ix) and (x) of the Writ Petition, which read as under :-

“vii. That the Ld. Judge failed to consider to give the Interim Maintenance from the date of the Application, instead granted it from the date of the order.

viii. That the Ld. Judge failed to consider that the delay took place in the hearing of the Interim Maintenance Application as the Court as the Presiding officer was on leave and/or the Petitioner was absent and many holidays were there also which can be reflected from the Roznama. Hereto annexed an marked as EXHIBIT "F" copy of the Roznama.

ix. That the Ld. Ought to have considered that Post March 2020 to 2021 the Corona Pandemic was also there and the national lock down took place and therefore the matter has not proceeded;

*x. That the Ld. Judge failed to consider the assets & liability documents produced in the court and **the special need and limited career option as the daughter is challenged with learning disability and therefore the order passed is bad in law.***

(Emphasis added)

11. Thus, it is very clear that the above observations of the Supreme Court in the case of **Rajnesh** (supra) are squarely applicable to the present case.

12. Although, it is the contention of Mr. Hegde, learned Counsel for the Respondent that the Respondent was voluntarily paying maintenance of Rs.25,000/- per month and therefore the maintenance has been directed to be paid from the date of the order, however, said contention is not correct as the learned Judge has passed the order directing payment of maintenance from the date of the order on the ground of delay in the disposal of the application. The said reasoning is directly contrary to what has been held by the Supreme Court in the case of **Rajnesh** (supra).

13. Apart from that, it is required to be noted that the Petitioner-mother is single handedly looking after the child and the child is the special child. Thus, it is necessary that the Respondent-father

shall at least contribute financially. Thus, in view of the law laid down by the Supreme Court in the case of **Rajnesh** (supra) and also in the facts and circumstances, it has to be directed that the interim maintenance of Rs.50,000/- per month to the daughter shall be paid from the date of the application and not from the date of passing of the Order.

14. Accordingly, the impugned Order dated 4th December 2023 to the extent indicated above is modified.

15. At this stage, Mr. Hegde, learned Counsel appearing for the Respondent seeks stay of this Order. However, as in the impugned Order, it has been recorded that the salary of the husband is Rs.4,90,000/- per month and as the child is the special child, who has been single handedly looked after by the mother i.e. the Petitioner, no case is made out for granting said request. Accordingly, the said request is rejected.

16. However, in the facts and circumstances, the Petitioner is granted time to pay the arrears. The arrears be paid in six equal monthly instalments.

17. The Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)