

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18927 OF 2024

Samir Girish Bhatia

...Petitioner

Versus

Jagruti Samir Bhatia

...Respondent

Mr. Vijay Dhingreja i/b VJ Juris, for the Petitioner.

Ms. S. S. Gokhale, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 09 JUNE 2025

JUDGMENT :

1. Heard Mr. Dhingreja, learned Counsel appearing for the Petitioner and Ms. Gokhale, learned Counsel appearing for the Respondent.
2. By the present Writ Petition preferred under Article 227 of the Constitution of India the challenge is to the legality and validity of the common Judgment and Order dated 25th September 2024 passed in Petition No. Civil M.A.89/2015 and Petition No. Criminal M.A.10/2016 (“**impugned Order**”). The operative portion of the impugned Order reads as under :-

“1. Civil M.A.No.89/2015 is partly allowed as follows.

2. Respondent do pay maintenance of Rs.60,000/- per month instead of Rs.40,000/- per month to petitioner from the date of filing of Civil M.A. No.89/2015 i.e. 18.03.2015. This enhanced maintenance amount

includes rent.

3. *The amount of maintenance paid by respondent be adjusted in calculating the outstanding dues.*
4. *The prayers for separate rent and accommodation are rejected.*
5. *The Criminal M.A. No.10/2016 is rejected.*
6. *Petitioner shall pay cost of Rs.10,000/- each to her daughters by depositing in this Court.*
7. *This order shall come into force only upon payment of cost by petitioner.*
8. *Parties to bear their own cost.*
9. *Copy of this Judgment and Order be kept in Criminal M.A. No.10/2016.”*

(Emphasis added)

3. At the outset, it is required to note the Order dated 15th January 2025 passed by this Court in this Writ Petition, which reads as under :-

“1. Heard Mr. Vijay Dhingreja, learned Counsel appearing for the Petitioner and Ms. Gokhale, learned Counsel appearing for the Respondent.

2. *The only challenge which requires consideration is direction issued by Judgment and Order dated 25th September 2024 by the learned Judge, Family Court No.2, Mumbai in Petition No. Civil M.A. No.89/2015 that the maintenance of Rs.60,000/- per month is to be paid instead of Rs.40,000/- per month from the date of filing of Civil M.A. No. 89/2015 i.e. from 18th March 2015. The relevant directions in the impugned Order dated 25th September 2024 reads as under:*

“2. Respondent do pay maintenance of Rs.60,000/- per month instead of Rs.40,000/- per month to petitioner from the date of filing of Civil M.A. No.89/2015 i.e. 18.03.2015. This enhanced maintenance amount includes rent.

3. *The amount of maintenance paid by respondent be adjusted in calculating the outstanding dues."*

3. *In this behalf, it is relevant to note that by the Order dated 17th July 2014, passed in Petition No. E-17 of 2011, the learned Judge, Family Court granted maintenance of Rs.40,000/- per month to the present Respondent. Immediately on 18th March 2015, the said M.A. No.89 of 2015 has been filed seeking enhancement in maintenance.*

4. *The learned Judge, Family Court has granted maintenance of Rs.40,000/- per month by Order dated 17th July 2014 and the same has been increased to Rs.60,000/- per month by Order dated 25th September 2024. **Considering inflation and other facts and circumstances, there is no illegality in passing the said order granting maintenance of Rs.60,000/- per month and the same is fair and reasonable. In view of the same, Mr. Vijay Dhingreja, learned Counsel appearing for the Petitioner, on instructions of the Petitioner, who is present in the Court today states that he is confining the challenge only with respect to the direction to pay the maintenance from the date of filing of Civil M.A. and not from the date of the Order and he is accepting the order of maintenance granted at the rate of Rs.60,000/- per month.***

5. *Thus the only issue which is required to be considered in this Writ Petition is whether the enhanced maintenance can be granted from the date of application or from the date of the order or from any other date, in the facts and circumstances of this case.*

6. *It is admitted position that the Petitioner is maintaining both the daughters. The elder daughter is of 22 years old and the younger daughter is of 20 years old.*

7. *It is very clear that there are many judgments, which specifies that the maintenance should be granted from the date of filing of the application, but in the facts and circumstances of this case, particularly when admittedly both the daughters are staying with the Petitioner and they are maintained by the Petitioner and particularly when the application for enhancement of maintenance has been filed within a period of eight months, the challenge to that aspect is required to be considered. **Prima facie, the learned Judge***

should have determined when the change in circumstances have taken place necessitating enhancement of the maintenance.

8. Mr. Vijay Dhingreja, learned Counsel appearing for the Petitioner, on instructions of the Petitioner, states that w.e.f. 25th September 2024, the Petitioner is paying maintenance to the Respondent @ Rs.60,000/- per month and that he will continue to pay the maintenance @ Rs.60,000/-. He states that the maintenance amount per month will be paid to the Respondent on or before 10th day of each month. The said statements made on instructions of the Petitioner, who is present in the Court, are accepted as undertakings given to this Court.

9. Accordingly for consideration of above referred limited issue, stand over to 26th February 2025 at 2.30 p.m. However, ***it is clarified that except that issue, the impugned Order dated 25th September 2024 is fair and reasonable and stands confirmed and it is recorded that the challenge to the quantum of the maintenance is expressly given up by the Petitioner.***

(Emphasis added)

Thus, it is clear that the challenge to the impugned Order at the instance of the Petitioner-husband is confined only with respect to the direction to pay maintenance from the date of filing of Civil Miscellaneous Application. It is the submission of the Petitioner that the said maintenance should have been directed to be paid from the date of the Order and not from the date of filing of Civil Miscellaneous Application No.89 of 2015.

4. Mr. Dhingreja, learned Counsel appearing for the Petitioner submitted that the learned Family Court on 17th July 2014 *inter alia* passed the Order in Petition No. E-17 of 2011 filed by wife seeking

maintenance under Section 125 of the *Code of Criminal Procedure, 1973* (“CrPC”) directing payment of maintenance of Rs.40,000/- per month. Learned Counsel submits that within a period of 8 months i.e. on 18th March 2015, a fresh Petition bearing Petition No. Civil M.A.89/2015 has been filed by the wife seeking enhancement of the maintenance. He states that therefore the maintenance should have been granted from the date of the Order and not from the date of filing of the Petition. Mr. Dhingreja, learned Counsel appearing for the Petitioner, to substantiate his contention, has relied on the decision of the Supreme Court in *S Vijikumari v. Mowneshwarachari C*¹.

5. On the other hand, Ms. Gokhale, learned Counsel appearing for the Respondent states that, in the facts and circumstances, maintenance should be granted from the date of the Order and accordingly granted by the learned Family Court. She states that maintenance which was earlier sought in the Petition which was filed in the year 2010 and therefore maintenance should be granted from the date of the Application.

6. At this stage, it is required to note that several contentions are raised by both the learned Counsels. However, as the issue for consideration is very limited as set out in Paragraph Nos.4 and 5 of the Order dated 15th January 2025 passed in this Writ Petition, namely direction to pay maintenance from the date of filing of Civil

1 2024 SCC OnLine SC 2930

Miscellaneous Application or from the date of the Order or any other date, other contentions are not relevant.

7. Before considering this issue, it is necessary to set out certain factual aspects :-

i. Marriage between the Petitioner and Respondent took place on 19th July 1999.

ii. On 7th August 2002, daughter Esha was born and on 4th May 2004 daughter Riya was born.

iii. On 24th June 2010, Petition No. A-1585 of 2010 was filed by the Petitioner seeking divorce under Section 13(1)(ia) of the *Hindu Marriage Act, 1955*.

iv. On 23rd December 2010, Petition No. E-17 of 2011 was filed by the Respondent under Section 125 of CrPC seeking maintenance of Rs.1,00,000/- per month.

v. On 17th July 2014, learned Judge, Family Court No.2, Mumbai disposed of both Petition No. A-1585 of 2010 and Petition No. E-17 of 2011. The operative part of said Order dated 17th July 2014 reads as under :-

“ORDER

1 Petition No. A-1585 of 2010 is partly allowed.

2 The marriage dated 19th June 1999 solemnized between the petitioner and the respondent is hereby declared as dissolved under Sec.13 (1) (ia) of the Hindu Marriage Act, 1955.

3 *The permanent custody of elder daughter viz. Esha born on 7th August 2002 has already crossed over to the petitioner Samir. The permanent custody of younger daughter Riya born on 4th May 2004 is also granted to the petitioner Samir with immediate effect.*

4 *Petition No. E-17 of 2011 is allowed.*

5 *The petitioner-husband to pay maintenance inclusive of rent @ Rs.40,000/- per month with effect from 01/07/2014 to the respondent wife.*

6 *The petitioner husband also to pay litigation expenses of Rs.15,000/- to the wife and bear his own.*

7 *The respondent wife shall be entitled to access as already agreed and regularly acted upon i. e. every alternate Saturdays-Sundays with over night stay and 50% vacations and 50% on birthdays of the daughters and the respondent wife herself.”*

(Emphasis added)

Thus, the learned Judge, Family Court, Mumbai directed maintenance inclusive of rent at the rate of Rs.40,000/- to be paid to Respondent No.1 with effect from 1st July 2014. However, it is significant to note the discussion of the learned Judge in Paragraph No.36 regarding maintenance, which reads as under :-

“36 *The issue and point under consideration are in respect of final order. The husband is entitled to divorce under Sec. 13(1)(ia) of the Hindu Marriage Act 1955, so also for permanent custody of the younger daughter Riya. **As against this, the wife is entitled to maintenance, residence and access. As far as quantum is concerned, she prayed for Rs.10,000/- per month for herself and both the daughters. There is no amendment to the said pleading. After handing over permanent custody of both the daughters to the husband, said maintenance amount would shrink. Nevertheless one cannot***

forget price rise in last couple of years and attaining circumstances the husband at present is paying Rs.16,000/- per month towards rent so also without any court's order Rs.6500/-per month towards maintenance to the wife. Questions of increased rent and change of rented premises are also there. The wife will have to maintain the daughters every alternative Saturday-Sundays, 50% vacation periods etc. Wife's application under Sec.24 of the Hindu Marriage Act, 1955 is also pending. The wife's Petition No. B-25 of 201 for injunction and possession of the premises at Andheri (West) Mumbai is also pending. Since that premises does not belong to the husband himself, the petition would frustrate. Taking stock of the circumstances, so also earning potentiality of the wife, I am of the view that maintenance @ Rs.40,000/-per month with effect from 01/07/2014 inclusive of rent amount would meet the real ends of Justice. As far as litigation expenses are concerned, an amount of Rs.15,000/- needs to be awarded to the wife by directing the husband to bear his own expenses.”

(Emphasis added)

vi. The above referred Order dated 17th July 2014 concerning Petition No. E-17 of 2011 was challenged in this Court by filing Criminal Revision Application No.17 of 2015. The said Criminal Revision Application No.17 of 2015 was dismissed by Order dated 20th January 2015 passed by a learned Single Judge. It is required to be noted that both the learned Judge, Family Court as well as the learned Single Judge who has passed the Order dated 20th January 2015, have assumed that the Petitioner has only sought maintenance of Rs.10,000/- per month and inspite of that the learned Family Court has granted Rs.40,000/- per month and therefore the learned Single Judge, while passing the Order dated 20th January 2015, has not interfered in the

said Order. It is admitted position that the Respondent has sought maintenance of Rs.1,00,000/- per month and both the learned Judge, Family Court and learned Single Judge of this Court erroneously assumed that the maintenance sought by Respondent-wife was Rs.10,000/- per month instead of 1,00,000/- per month.

vii. It is further significant to note that the Criminal Application No.35 of 2015 was filed in said Criminal Revision Application No.17 of 2015 in this Court seeking recall of the said Order dated 20th January 2015 passed by the learned Single Judge in Criminal Revision Application No.17 of 2015 . The main ground for recall of said Order was that both the learned Judge Family Court and the learned Single Judge of this Court have assumed that the maintenance sought was only Rs.10,000/- per month instead of Rs.1,00,000/- per month.

viii. It is significant to note that the learned Single Judge has recalled the said Order dated 20th January 2015 by Order dated 5th February 2015 passed in Criminal Application No.35 of 2015. The relevant observations of the learned Single Judge in Order dated 5th February 2015 passed in Criminal Application No.35 of 2015 in Criminal Revision Application No.17 of 2015, read as under :-

*“14. For all these reasons, I am more than satisfied that in the facts and circumstances of the present case, **this Court committed a clerical or arithmetical error while dismissing the Revision Application on the premise that the applicant had claimed maintenance at the rate of Rs.10,000/- per month. In***

view thereof, the order dated 20.1.2015 is recalled. Rule is made absolute accordingly.

15. Ms. Sarnaik, upon taking instructions from the applicant who is present in the Court, states that she may be permitted to withdraw the Revision Application with a liberty to take out appropriate application before the Family Court for recalling the order dated 17.7.2014 passed in Petition No. E-17 of 2011. Mr. Chaturvedi states that respondent no.1 is also present in the Court.

16. In view thereof, by consent of the parties, Criminal Revision Application No.17 of 2015 is taken on Board. On the motion made by Ms. Sarnaik, Revision Application No.17 of 2015 is allowed to be withdrawn with a liberty as prayed for. All contentions on merits of the parties on the proposed Application are kept open. The Family Court will decide the Application uninfluenced by the observations made herein.

All the parties including the Family Court to act on the authenticated copy of this order.”

(Emphasis added)

ix. Thus, it is clear that the learned Single Judge recalled said Order dated 20th January 2015 and granted liberty to file application before learned Judge, Family Court to recall said Order dated 17th July 2014. Pursuant to said liberty granted by the learned Single Judge by Order dated 5th February 2015, the Respondent filed on 18th March 2015 Petition No. Civil M.A.89 of 2015 under Section 127 of CrPC for enhancement of the maintenance.

x. On 4th January 2016, the Petitioner filed Petition No. Criminal M.A.10 of 2016 under Section 127 of CrPC for reduction of the maintenance amount.

xi. Both these Petitions have been disposed of by the impugned Order dated 25th September 2024 by *inter alia* directing that instead of maintenance of Rs.40,000/- per month, Rs.60,000/- per month be directed to be paid by the Petitioner to the Respondent with effect from the date of filing of said Civil Miscellaneous Application No.89 of 2015 i.e. 18th March 2015.

8. As already noted earlier, the only issue which requires consideration is the date from which the maintenance at the enhanced rate of Rs.60,000/- per month is required to be granted. The said issue is required to be decided in the light of the above factual aspects.

9. The Supreme Court in the decision of ***Rajnish v. Neha***² has considered this issue from Paragraph Nos.95 to 113. The relevant discussion is in Paragraph Nos.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.*”**

2 (2021) 2 SCC 324

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.”

(emphasis supplied)

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 held 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.

10. In view of the above decision of the Supreme Court in **Rajnesh** (supra), it is necessary to consider the Judgment in the case of **S Vijikumari** (supra) on which Mr. Dhingreja, learned Counsel appearing

for the Petitioner has relied. He has more particularly relied on Paragraph Nos.14 and 15 of the said decision, which read as under :-

“14. However, for the invocation of Section 25(2) of the Act, there must be a change in the circumstances after the order being passed under the Act. Alexander Sambath Abner v. Miron Lede, 2009 SCC OnLine Mad 2851 is also to the same effect. Thus, an order for alteration, modification or revocation operates prospectively and not retrospectively. Though the order for grant of a maintenance is effective retrospectively from the date of the application or as ordered by the Magistrate, the position is different with regard to an application for alteration in an allowance, which may incidentally be either an increase or a reduction - to take effect from a date on which the order of alteration is made or any other date such as from the date on which an application for alteration, modification or revocation was made depending on the facts of each case.

15. The position is analogous to Sections 125 and 127 of the CrPC, 1973, wherein the legislature under Section 125(2) of the CrPC, 1973 had given power to the Magistrate to grant maintenance from the date of the application, but did not give any such power under Section 127 of the CrPC, 1973. Therefore, under the Act, the order of alteration or modification or revocation could operate from the date of the said application being filed or as ordered by the Magistrate under Section 25(2) of the Act. Thus, the applicant cannot seek its retrospective applicability, so as to seek a refund of the amount already paid as per the original order.”

11. Mr. Dhingreja, learned Counsel submits that as far as the decision in the case of *Rajnesh* (supra) is concerning the initial application, however, the decision in *S Vijikumari* (supra) is concerning Section 127 of CrPC i.e. change in maintenance amount in view of the change of

circumstances. He submits that, in fact, the said Judgment is concerning Section 25(2) of the *Protection of Women from Domestic Violence Act, 2005* (“DV Act”), however, the said provision is similar to Section 127 of CrPC. Said Section 127 of CrPC reads as under :-

“127. Alteration in allowance.—[(1) On proof of a change in the circumstances of any person, receiving, under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the

period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to [maintenance or interim maintenance, as the case may be] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a [monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under Section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.”

(Emphasis added)

12. It is required to be noted that even the decision in ***S Vijikumari*** (supra) on which learned Counsel appearing for the Appellant has heavily relied also held that though the order for grant of a maintenance is effective retrospectively from the date of the application or as ordered by the Magistrate, the position is different with regard to an application for alteration in an allowance, which may incidentally be either an increase or a reduction - to take effect from a date on which the order of alteration is made or any other date such as from the date on which an application for alteration, modification or revocation was made depending on the facts of each case. Therefore, in the decision of ***S Vijikumari*** (supra), it is not held that in any circumstances the enhancement order passed under Section 127 shall come into effect

only from the date of the order. It has been held that it depends on the facts and circumstances of the case and the same can also be from the date of application.

13. In view of the law laid down by the Supreme Court in *Rajnish* (supra) as well as *S Vijikumari* (supra), it is relevant to note the following facts of this case:-

(i) Admittedly in Petition No. E-17 of 2011 filed by the wife under Section 125 of CrPC which has been filed on 23rd December 2010 a prayer was made seeking maintenance of Rs.1,00,000/- per month.

(ii) On 17th July 2014 said Petition was allowed by directing maintenance of Rs.40,000/- per month. However, it is required to be noted that said Rs.40,000/- per month was granted as the learned Judge of the Family Court assumed that maintenance sought was only Rs.10,000/-.

(iii) Said Order dated 17th July 2014 of the learned Family Court has been challenged by filing Criminal Revision Application No.17 of 2015 and a learned Single Judge of this Court dismissed the said Revision by Order dated 20th January 2015 on the same assumption that only Rs.10,000/- per month was sought by the wife and inspite of the same what Rs.40,000/- per month was granted by the learned Family Court.

(iv) Thereafter, as noted herein above said Order has been recalled by Order dated 5th February 2015 by learned Single Judge by giving

liberty to the Respondent to file a fresh application and accordingly the fresh application has been filed on 18th March 2015.

(v) One more aspect which is required to be taken into consideration is that although wife has filed enhancement application on 18th March 2015, the said application has been disposed of on 25th September 2024 i.e. after a period of about 9 years.

14. Thus, the observations in the decision of *Rajnesh* (supra) as set out hereinabove are squarely applicable to this case. Even on the touchstone of the law laid down by the Supreme Court in the case of *S Vijikumari* (supra) also, the date on which enhancement should take effect can be the date of the order or the date of the application, depending on the facts of each case.

15. Thus, in the facts and circumstances and in view of the law laid down by the Supreme Court, no interference in the impugned Order is warranted under the jurisdiction of this Court under Article 227 of the Constitution of India.

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

[MADHAV J. JAMDAR, J.]