

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4414 OF 2025

Poonam Jaidev Shroff

Petitioner

.. (Orig. Respondent)

Versus

Jaidev Rajnikant Shroff

Respondent

.. (Orig. Petitioner)

-
- Mr. Girish Godbole, Senior Advocate a/w. Ms. Chandana Salgaonkar, Ms. Kimaya Prajapati, Ms. Vinita Dandekar, Advocates i/by Naik Naik & Co. for Petitioner.
 - Mr. Atul Damle, Senior Advocate a/w. Mr. Sameer Tapia, Ms. Siddhi Doshi and Mr. Rohan Marathe, Advocates i/by ALMT Legal for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 29, 2025.

P.C.:

1. Heard Mr. Godbole, learned Senior Advocate for Petitioner and Mr. Damle, learned Senior Advocate for Respondent.

2. This Petition was mentioned before this Court on 23.09.2025 due to order dated 01.08.2025 'Not Before Me' by the Regular Court. In view of the exigencies mentioned by Mr. Godbole and duly supported by Mr. Damle both learned Senior Advocates at the bar due to expedition order passed by Supreme Court, by consent of parties it is taken up for final hearing. It was listed on board on 25.09.2025 and 26.09.2025 alongwith 3 other companion Writ Petitions filed by Petitioner and fully heard. Arguments in the three companion Writ

Petitions were completed by Mr. Godbole in seriatim. However reply to the said three Writ Petitions by Mr. Naik, learned Senior Advocate is not concluded. On 26.09.2025 Mr. Godbole would request the Court that since present Writ Petition is fully heard, order therein maybe passed because the Trial Court has given one last opportunity to Petitioner to lead further evidence and has kept the matter on 29.09.2025. He apprehends that the case of Petitioner wife would be closed and hence he would persuade the Court to consider his request in order to avoid further multiplicity of proceedings. I have considered his request.

3. Present Petition assails order dated 31.01.2025 passed by learned Family Court in Application Exhibit '229' in M.J. Petition No. A-2742 of 2015. Petitioner is wife and original Defendant in M.J. Petition. M.J. Petition No. A-2742 of 2015 is filed by Respondent – husband in Family Court. On 18.03.2024, Application below Exhibit '229' is filed by wife seeking disclosure of assets and liabilities i.e. properties by the husband.

4. Briefly stated, Petitioner and Respondent married on 27.11.2004 under the Special Marriage Act, 1954. They have one daughter born out of this marriage. M.J. Petition No.A-2742 of 2015 is filed by the husband in Family Court, Mumbai in the year 2015 on the ground of alleged cruelty.

5. Written statement dated 20.02.2019 is filed therein, wife did not file any Counter Claim. However during the pendency of proceedings, wife filed Miscellaneous Application below Exhibit '40' dated 06.12.2016 for Interim Maintenance. By orders dated 30.07.2018 and 29.08.2018 Family Court directed husband to pay amount of Rs.7,00,000/- per month to wife, Rs.5,00,000/- to their daughter and one time litigation expense of Rs.20,00,000/-. Challenge to this order was dismissed by High Court on 06.02.2020 and further challenge thereto is pending before the Supreme Court in Civil Appeal No.2719 of 2022.

6. Before Family Court issues were framed on 22.10.2021. Husband filed Affidavit in lieu of examination-in-chief on 17.10.2022 alongwith compilation of documents however in the compilation, husband did not make any disclosure of his properties and assets in terms of guidelines laid down by Supreme Court in the case of ***Rajnish Vs. Neha and Anr.***¹.

7. Husband was thereafter cross-examined by wife's Advocate. During his cross-examination husband's Advocates persistently objected to any questions pertaining to his income / financial assets. There were several proceedings between the parties in the interregnum which reached the Supreme Court.

¹ 2021 2 SCC 234

8. By order dated 03.12.2021 Supreme Court expedited proceedings before the Family Court. In the meanwhile by order dated 18.09.2024 Supreme Court requested the Family Court to complete proceedings within a period of 6 months. The proceedings could not be completed and Family Court sought extension of time to complete the trial. Monitoring Committee of the Hon'ble Bombay High Court directed the Family Court to hear the matter on day-to-day basis.

9. On 18.03.2024 wife filed Application seeking permanent alimony. On 12.04.2024 filed pursis closing his evidence. Husband challenged the Permanent Alimony Application on the ground of maintainability. By order dated 19.11.2024, the objection on maintainability was rejected. On 23.01.2025, challenge thereto in this Court was withdrawn by Respondent - husband.

10. On 27.01.2025, Family Court heard the application. By order dated 11.02.2025 as the challenge was withdrawn by the husband, Family Court disposed of the Application holding that additional issue will have to be framed and Application will have to be considered at the stage of final disposal of Divorce Petition.

11. Husband filed Affidavit-in-reply to permanent alimony applicant without making disclosure of his income or assets. Since the husband did not disclose his income and assets, Petitioner - wife filed Application seeking direction to make disclosure in terms of judgment

of Hon'ble Supreme Court in *Rajnesh (supra)*. This Application came to be rejected on 31.01.2025. This order is under challenge in the Writ Petition.

12. Petitioner wife also filed separate Petition before the Family Court under Hindu Adoption and Maintenance Act, 1956 and sought its clubbing with Divorce Petition.

13. Mr. Godbole, learned Senior Advocate for Petitioner - wife would submit that after passing of the impugned order following two subsequent events took place:-

- (i) On 11.2.2025, Family Court delivered a Judgment overruling the objection of Respondent husband to the maintainability of application below Exhibit '224' filed by Petitioner wife seeking permanent alimony. The said objection was raised by filing Reply at Exhibit '314' opposing the Application at Exhibit '224' of the wife. The only point for consideration framed was whether the wife has right to file Application Exhibit '224' for permanent alimony. By Judgment and Order dated 11.02.2025, the Family Court held that Application at Exhibit '224' is maintainable and proceedings shall advance to the next stage for a substantive examination of the claims on merits and

that parties shall be afforded ample opportunity to substantiate respective claims of documentary and oral evidence.

- (ii) The second important subsequent event was that on 21.4.2025, Family Court framed additional issue regarding permanent alimony being Issue No. 4A which reads as "*whether the Respondent is entitled to the relief of permanent alimony as prayed? If yes, what amount*".

13.1. He would submit that Petitioner – wife’s Application for disclosure below Exhibit ‘229’ is dismissed by the impugned order on the following grounds :-

13.2. He would submit that the impugned order dismissed the Application below Exhibit ‘229’ on the ground that the issues were framed on 21.10.2021 and (at that stage) there was no issue regarding wife’s entitlement to maintenance, as no such claim existed in her written statement. He would submit that in paragraph No.28 the Family Court held that in the absence of any pleadings relating to maintenance on record, there was no necessity to direct Petitioner - husband to file Affidavit of disclosure.

13.3. He would submit that on account of the above referred subsequent events namely passing of orders dated 11.02.2025 and

21.04.2025, on the ground that there is no issue for permanent alimony framed, it does not survive since Issue No. 4A is now framed. He would submit that the second reason also does not survive since Application below Exhibit '224' seeking permanent alimony contains substantive pleadings.

13.4. He would submit that the impugned Judgment is unsustainable since the Family Court heavily relied upon the decision of the learned Single Judge of this Court in the case of *Jeevanjyoti Kaur Bansal Vs. Kulvinder Singh Bansal and Ors.*²; and Delhi High Court in the case of *Shraddha Gupta Vs. Sumit Jain*³, however both these Judgments are distinguishable and do not lay down a binding precedent.

13.5. He would submit that decision in the case of *Jeevanjyoti Kaur Bansal (supra)* lays down a proposition that directions issued by Supreme Court in *Rajnesh (supra)* are not applicable at final stage. He would submit that in that case, original proceedings were filed under Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') and were adjudicated and finally decided by judgment dated 18.02.2020 thereby directing husband to pay maintenance. Thereby aggrieved, husband filed Criminal Appeal before Sessions Court under Section 29 of DV Act. Pending Appeal, husband filed Application below

² Writ Petition (St) No.1931 and 1884 of 2024 decided on 20.01.2024.

³ 2023 SCC OnLine Del 4520.

Exhibit '4' in Appeal seeking directions against wife to file Affidavit of disclosure of assets and liabilities in terms of the guidelines of Supreme Court in the case of *Rajnish (supra)*. He would submit that Sessions Court passed order directing disclosure, which was assailed before High Court. While Family Court extensively considered *Rajnish (supra)*, the real issue which arose is whether such direction can be given at the Appellate Stage. While it is true that the other issue as to whether directions in the case of *Rajnish (supra)* apply only at the stage of fixing interim maintenance or can be applied even at the time of considering the claim for permanent alimony has been discussed, that issue did not arise for consideration therein.

13.6. He would submit that in any case, the Judgment in *Jeevanjyoti Kaur Bansal (supra)* is clearly per incuriam since attention of the learned Single Judge deciding the case was not invited to two binding precedents namely; ***Aditi alias Mithi Vs. Jitesh Sharma***⁴ wherein after quoting relevant paragraphs in the report of *Rajnish (supra)*, in para No.14 Supreme Court clearly observed that judicial officers have not been following guidelines regarding fixing maintenance, either interim or final, and instances were noticed where the claim for maintenance either interim or final, is decided without there being any Affidavit on Record filed by parties and further attention of the Single Judge deciding *Jeevanjyoti Kaur Bansal (supra)*

4 Criminal Appeal No. 3446 of 2023 decided by the Supreme Court on 6.11.2023

was also not invited to the decision of the Single Judge of this Court (Coram: Bharat P. Deshpande J.) in the case of ***Sana Razvi Vs. State of Goa and Ors.***⁵, which arose out of an order passed by the Trial Court which rejected Application for directing disclosure solely on the ground that the directions in the case of *Rajnesh (supra)* were applicable only at the interim stage and not at the time of final hearing. He would submit that in para No.6, similar argument was advanced by Advocate for husband - Respondent No.2 and it was rejected by relying upon observations of Supreme Court in the case of *Aditi alias Mithi (supra)* and particularly para No.14 thereof and thereafter conclusion was recorded in para No.10 of *Sana Razvi (supra)* which reads thus:-

"10. In view of the said pronouncement of the Supreme Court, it is clear that such directions in the case of *Rajnesh (supra)* are also applicable at the final stage. The principles laid down by the Apex Court in the case of *Rajnesh (supra)* and in the case of *Aditi (supra)* are required to be looked into without considering the stage of the matter."

13.7. Hence, he would argue that decision of the Single Judge in *Jeevanjyoti Kaur Bansal (supra)* does not lay down correct proposition of law. He would submit that the second judgment relied upon by Family Court in the case of *Shraddha Gupta (supra)* was decided by the Single Judge of the Delhi High Court on 25.7.2023 and thereafter decision of the Supreme Court in the case of *Aditi alias Mithi (supra)* was delivered. Hence, the ratio, if any, of the decision in the case of *Shraddha Gupta (supra)* stands impliedly overruled.

5 2024 of M.R. (Criminal) 3039

13.8. He would submit that in the case of *Kusum Sharma V/s Mahindrakumar Sharma*⁶ (which is extensively relied upon in *Rajesh (supra)*), the need for filing Affidavit of Disclosure is discussed and it held that maintenance is not a legal right but it is a part and parcel of basic human right and after considering the provisions of the Hindu Marriage Act, 1955, Section 125 of Cr.P.C., Special Marriage Act etc., various guidelines were issued. He would submit that in para Nos.16 and 17, Section 25 of the Hindu Marriage Act 1955 is specifically discussed and in para Nos.24 and 25, it is held as under:-

"24. This Court is of the view that a detailed affidavit of the assets, income and expenditure of both the parties is necessary to determine their true income.

25. The affidavit of assets, liabilities, income and expenditure of the parties is necessary not only to fix the maintenance under Section 24 but also to determine the payment alimony under Section 25 of the Hindu Marriage Act and right to joint properties under Section 27 of the Hindu Marriage Act."

13.9. He would submit that in paragraph No.26 onwards Section 10 of Family Courts Act, 1984 has been considered, in para No.36 powers of Court under Section 165 of Indian Evidence Act, 1872 are considered and in paragraph No.38 powers of Civil Court under Section 30 of Code of Civil Procedure, 1908 are considered. He would submit that extensive guidelines are issued and paragraph Nos.51, 52 and 53 consider three Supreme Court judgements and paragraph No.56 considers decision of this Court essentially dealing with Sections 24 and 25 of Hindu Marriage Act, 1955.

6 AIR 2015 Delhi 53

13.10. He would submit that if powers conferred under Sections 106 and 165 of Indian Evidence Act, 1872 and Order X and XI of the Code of Civil Procedure, 1908 can be exercised even at interlocutory stage for deciding claim for interim maintenance, it cannot be argued that these powers cannot be exercised at the time of final hearing of Petition filed by one of the spouses seeking decree of divorce when in such proceedings an Application for grant of permanent alimony under Section 25 of Hindu Adoption and Maintenance Act, 1955 is filed and is required to be decided with the Divorce Petition. He would submit that when the powers as indicated above can be exercised even at interlocutory stage, it would have a travesty of justice if it is held that such power cannot be exercised at the time of final hearing. Hence he would urge the Court to set aside the impugned order dated 31.01.2025 and allow the Petition.

14. *PER CONTRA*, Mr. Damle, learned Senior Advocate for Respondent - husband, in support of the impugned order has made the following submissions:-

14.1. He would submit that despite there being no pleading in the Petitioner's written statement or amended written statement, Petitioner sought to file Application for permanent alimony at Exhibit '229' seeking disclosure of assets and income of Respondent as per the guidelines laid down in *Rajnesh (supra)*.

14.2. He would submit that Petitioner relies on two subsequent developments in support of captioned Writ Petition, that Respondent's application below Exhibit '224' raising preliminary objection to Petitioner's application for permanent alimony was rejected and Writ Petition challenging said rejection order was withdrawn and additional issue relating to entitlement of permanent alimony of Petitioner (Issue No.4A) was framed by Family Court.

14.3. He would however submit that the decision of the Supreme Court in case of *Rajnish (supra)* is crystal clear in as much as the affidavit of assets and income of spouse is necessary to be filed only at the stage of interim maintenance and for deciding issue of permanent alimony parties ought to lead evidence. He would submit that in that decision discussion on payment of interim maintenance begins at paragraph No.62 under the heading: "*Payment of Interim Maintenance*" and its conclusions are set out in para No.72, however the issue of permanent alimony is dealt with separately in paragraph No.73.

14.4. He would submit that Supreme Court in para Nos.72 and 73 in the case of *Rajnish (supra)* has indicated this distinction and what is proposed in paragraph No.72 does not apply to paragraph No.73. He would submit that therefore a clear and precise distinction has been drawn by Supreme Court as to the modalities while considering grant

of interim maintenance and permanent alimony separately.

14.5. He would submit that this Court in the case of *Jeevanjyoti Kaur Bansal (supra)* followed *Rajnesh (supra)* and categorically reiterated the correct legal position that Affidavit of assets and income is to be filed only at the stage of deciding interim maintenance. The relevant portion of *Jeevanjyoti Kaur Bansal (supra)* is enumerated in paragraph No.14 therein. He would submit that decision in *Jeevanjyoti Kaur Bansal (supra)* is the latest judicial pronouncement relating to this matter and hence is required to be followed.

14.6. He would submit that a peculiar situation has arisen in the present case whereby Supreme Court in the matter of *Rajnesh (supra)* decided earlier stated that Affidavit of assets and income has to be filed at the stage of interim maintenance, whereas the later decision in the case of *Aditi alias Mithi (supra)* states that such affidavit ought to be filed even at the stage of deciding permanent alimony. He would fairly submit that these two judgments have been interpreted by this Court in the case of *Sana Razvi (supra)*, after considering the judgments of *Rajnesh (supra)* and *Aditi alias Mithi (supra)* holding that Affidavit of assets and income can be filed at the stage of deciding permanent alimony.

14.7. He would submit that *prima facie*, *Aditi alias Mithi (supra)* is in conflict with *Rajnesh (supra)* and *Sana Razvi (supra)* [citing

Rajnesh (supra) and *Aditi alias Mithi (supra)*] in conflict with *Jeevanjyoti Kaur Bansal (supra)* which seems to have not considered the said judgments.

14.8. He would submit that case before Family Court is ripe for final arguments (save and except a few miscellaneous applications which are to be heard). He would submit that Issue No.4A relating to entitlement and grant of permanent alimony has been framed and shall be decided in accordance with law. However he would argue that the wife sought to place on record numerous documents relating to purported income and assets of husband before Family Court during the course of trial. He would submit that none of these documents were rejected by Family Court, save and except those documents which were filed incorrectly by Petitioner (wife) for non-compliance with provisions of Section 65B of Indian Evidence Act, 1872. Hence, he would submit that Petitioner - wife herself accepted mandate of *Rajnesh (supra)* and at no stage made a grievance that she will not lead evidence relating to finances of Respondent – husband until such time as he filed his Affidavit of assets and income.

14.9. He would argue that subsequent developments do not have any bearing on the present Writ Petition. He would submit that subsequent to the issue relating to permanent alimony being framed on 21.04.2025, Petitioner - wife filed additional affidavit in lieu of

examination-in-chief along with compilation of documents dated 06.05.2025 before Family Court, exclusively dealing with the newly framed issue. He would submit that impugned order state many reasons for rejecting the application, one of which is the fact that no issue of permanent alimony is framed. He would submit that Family Court has correctly passed order thereby placing reliance on *Rajnish (supra)*, *Jeevanjyoti Kaur Bansal (supra)* and *Shraddha Gupta (supra)* in deciding the application below Exhibit '229'. He would therefore urge the Court to dismiss the Petition and uphold the impugned order.

15. In support of his submissions, he has referred to and relied upon the following decisions:-

- (i) *Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and Anr.*⁷;
- (ii) *Jaydeo s/o. Mahadeo Parate Vs. State of Maharashtra and Ors.*⁸;
- (iii) *A.P. Electrical Equipment Corporation Vs. Tahsildar and Ors.*⁹;
- (iv) *State of Uttar Pradesh and Ors. Vs. Ajay Kumar Sharma and Anr.*¹⁰;
- (v) *Indo Swiss Time Limited, Bundahera Vs. Umrao and Ors.*¹¹;

7 Civil Appeal No.5707 of 2023 – Dated 06.09.2023.

8 2006 (2) Mh.L.J. 497

9 2025 SCC OnLine SC 447

10 (2016) 15 SCC 289

11 1981 SCC OnLine P&H 45

- (vi) *Waryam Singh and Anr. Vs. Amarnath and Anr.*¹²;
- (vii) *Nagendra Nath Bora and Anr. Vs. The Commissioner of Hills Division and Appeals, Assam and Ors.*¹³;
- (viii) *Essen Deinki Vs. Rajiv Kumar*¹⁴;
- (ix) *Estralla Rubber Vs. Dass Estate (P) Ltd.*¹⁵ and
- (x) *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*¹⁶.

16. I have heard learned Senior Advocates Mr. Godbole for Petitioner – wife and Mr. Damle for Respondent – husband and with their able assistance perused the record. Submissions made by them have received due consideration of the Court.

17. In the present Petition, sum and substance argued before me is whether guidelines laid down by the Supreme Court in the case of *Rajnesh (supra)* are applicable in proceedings for deciding interim maintenance or at the time of determining permanent alimony. According to Mr. Godbole, the Family Court has interpreted decision in the case of *Rajnesh (supra)* by solely relying upon the judgment of the learned Single Judge of this Court (Coram: Sharmila U. Deshmukh, J.) in the case of *Jeevanjyoti Kaur Bansal (supra)* and held that the directives by the Supreme Court in the case of *Rajnesh (supra)* are applicable only at the interim stage. He would however contend that

12 (1954) 1 SCC 51

13 1958 SCC OnLine SC 45 : AIR 1958 SC 398

14 (2002) 8 SCC 400

15 (2001) 8 SCC 97

16 (1986) 4 SCC 447

said observations are also applicable at the final stage for determination of permanent alimony and the learned Family Court has therefore committed an error.

18. In order to adjudicate the aforesaid *lis* where case of both husband and wife are at variance with each other, reliance is placed by both on the following six decisions for consideration:-

- (i) *Rajnesh Vs. Neha and Anr. (supra)*;
- (ii) *Kusum Sharma Vs. Mahindrakumar Sharma (supra)*;
- (iii) *Jeevanjyoti Kaur Bansal Vs. Kulvinder Singh Bansal and Ors. (supra)*;
- (iv) *Shraddha Gupta Vs. Sumit Jain (supra)*;
- (v) *Aditi alias Mithi Vs. Jitesh Sharma (supra)*; and
- (vi) *Sana Razvi V/s State of Goa and Ors. (supra)*.

19. On 06.08.2020, the Delhi High Court in the case of *Kusum Sharma (supra)* after conducting an elaborate exercise and with reference to international based practices laid down substantive directions and guidelines for determination of permanent alimony of either spouse. While referring to those elaborate guidelines, Supreme Court in the case of *Rajnesh (supra)* on 04.11.2020 framed guidelines on the issue of maintenance which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of interim maintenance, the criteria for determining the

quantum of maintenance, the date from which maintenance is to be awarded and enforcement of maintenance orders under the title guidelines / directions on maintenance. It needs to be streamed that the guidelines framed by the Supreme Court were not with reference to and in *Rajnesh (supra)*, but as a matter of general disposition by appointing *amici*.

20. According to Mr. Damle, Supreme Court issued guidelines in *Rajnesh (supra)* only in a case where Application for maintenance is made at interim stage and they would not be applicable for determining permanent alimony. The said guidelines pertain to leading oral and documentary evidence with respect to income, expenditure, standard of living, etc before the Court concerned for fixing the permanent alimony payable to the spouse, for which appropriate disclosure affidavits of income, assets, properties are required to be filed. An elaborate procedure is recommended by Supreme Court in paragraph No.72 calling for a uniform format of Affidavit of disclosure of assets and liabilities to be filed in maintenance proceedings and accordingly guidelines are framed in exercise of power under Article 136 read with Article 142 of the Constitution of India. According to Mr. Damle, these guidelines would only be applicable for determination of interim maintenance and not for determination of permanent alimony whereas according to Mr. Godbole the said guidelines would be applicable for determination of

both i.e. interim maintenance as also permanent alimony. This is the question decided by me.

21. In the present case, it is seen that in the year 2017 i.e. before the aforesaid guidelines were framed, interim maintenance was decided by Family Court by directing Respondent – husband to pay a lumpsum amount of Rs.7 lakhs to the wife and Rs.5 lakhs to the daughter alongwith one time litigation expense of Rs.20 lakhs. It is seen that wife filed Application for determination of permanent alimony wherein she has led her evidence. However she has filed Application seeking directions to husband for disclosure of his assets and properties which is opposed by husband and by the impugned order Application is rejected.

22. Mr. Damle has referred to the interpretation of the decision in the case of *Rajnish (supra)* while relying upon the decision of the learned Single Judge of this Court in the case of *Jeevanjyoti Kaur Bansal (supra)* wherein the learned Single Judge held that Supreme Court proceeded to lay down general guidelines and directions which would apply only to cases concerning payment of interim maintenance. Learned Single Judge has held that what was under consideration of the Supreme Court was issue of payment of interim maintenance in that case which is required to be decided on the basis of pleadings involving certain guess-work for the purpose of *prima facie* assessment

of the quantum and filing Affidavits of assets and liabilities placed before the Court to make assessment of quantum of maintenance at the interim stage. The learned Single Judge has held that mandate of Supreme Court was to direct filing of Affidavit of disclosure at the stage of deciding Application for interim maintenance for grant of interim maintenance only. Based on aforesaid decision of learned Single Judge, Application filed by Respondent – wife has been dismissed by virtue of the impugned order.

23. However, it is seen that the decision in the case of *Rajnesh (supra)* has been re-visited by the Supreme Court in the case of *Aditi alias Mithi (supra)* and on 06.11.2023 the Supreme Court in paragraph Nos.8 and 15 clarified as under:-

“8. The manner in which maintenance payable under Section 24 of the Hindu Marriage Act, 1955 or Section 125 Cr. P.C. is to be assessed, was considered by this Court in its celebrated judgment in Rajnesh v. Neha, (2021) 2 SCC 324. Detailed guidelines were issued. It was noticed that the terms of maintenance are decided on the basis of pleadings of parties and on the basis of some amount of guess work. It is often seen that both the parties submit scanty material and do not disclose correct details. The tendency of the wife is to exaggerate her needs, whereas the husband tends to conceal his actual income. Keeping that in view, this Court laid down the procedure to streamline grant of maintenance. The judgments of various courts were referred to and response from various State Legal Services Authorities was sought. This Court even requested the National Legal Services Authority to submit a report on the suggestions received from the State Legal Services Authorities for framing guidelines on the affidavit of disclosure of assets and liabilities to be filed by the parties. Guidelines were issued in exercise of powers under Article 136 read with Article 142 of the Constitution of India, prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings. The judgment was delivered on 04.11.2020. The affidavit was to be submitted in all

maintenance proceedings including pending proceedings. The directions given are extracted as under:

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the

other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court."

9. Criteria was also laid down for determining the quantum of maintenance. Guidelines were laid down regarding maintenance to minor children in paras 91 and 92 thereof, which are extracted below:

"Permanent alimony

91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties."

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15. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in Rajnesh's case (*supra*), which was directed to be

communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr. P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.”

23.1. Thereafter another learned Single Judge of this Court in the case of *Sana Razvi (supra)* on 29.11.2023 while relying upon both *Rajnesh* and *Aditi alias Mithi's* decisions held that directions contained in *Rajnesh (supra)* and in *Aditi alias Mithi (supra)* are applicable at the final stage involving grant of maintenance and alimony. Both these decisions namely *Sana Razvi (supra)* and *Aditi alias Mithi (supra)* delivered on 06.11.2023 and 29.11.2023 were not placed before the learned Single Judge of this Court which decided the case of *Jeevanjyoti Kaur Bansal (supra)* on 20.03.2024.

24. In the above context, Supreme Court while deciding case of *Aditi alias Mithi (supra)* has in the said judgment after quoting the relevant paragraphs in the case of *Rajnesh (supra)* in paragraph No.14 clearly observed that the judicial officers have not been following

guidelines regarding fixing maintenance, either interim or final and instances are noticed where the claim for maintenance either interim or final, is decided without there being any Affidavit on record filed by the parties. This clarification and distinction by the Supreme Court is crucial and goes to the root of the matter.

25. After analyzing the aforesaid judgments namely principal judgment in the case of *Rajnesh (supra)* in its entirety read with the decisions in the case of *Aditi alias Mithi (supra)* and *Sana Razvi (supra)*, I am of the clear opinion that the judgment of the learned Single Judge of this Court in the case of *Jeevanjyoti Kaur Bansal (supra)* does not lay down the correct proposition of law. It is *per incuriam* it needs to be reiterated that decisions and guidelines framed in the case of *Rajnesh (supra)* depended extensively on the decision of Delhi High Court in the case of *Kusum Sharma (supra)* wherein the need for filing Affidavit of disclosure is discussed at length by considering international practices as also practices followed in the Indian Courts and it was held that maintenance is not a legal right but it is a part and parcel of basic human right and only after considering the various provisions of the Hindu Marriage Act, 1955, Section 125 of the Code of Criminal Procedure, 1973, Special Marriage Act, 1954, Family Courts Act, 1984, Indian Evidence Act, 1872, the powers to the Civil Court under Section 30 of the Code of Civil Procedure, 1908 and only thereafter the said guidelines were issued. Hence the submissions

made on behalf of Petitioner – wife deserve to be accepted.

26. The factors considered by the Supreme Court in the case of *Rajnesh (supra)* for determination of quantum of maintenance whether interim / permanent alimony are stated in paragraph Nos.77 and 78 thereof. For immediate reference and convenience, paragraph Nos.77 and 78 are reproduced below:-

“III. Criteria for determining quantum of maintenance

77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.”

27. In paragraph No.84 onwards in the case of *Rajnesh (supra)*, the Supreme Court has referred to a decision of the Delhi High Court in the case of ***Bharat Hegde Vs. Saroj Hegde***¹⁷ which laid down factors to be considered for determining maintenance. These factors pertaining to age and employment of parties, right to residence, where wife is earning some income, maintenance of minor children, and

¹⁷ 2007 SCC OnLine Del 622

serious disability or ill health. For immediate reference and convenience, paragraph Nos.84 to 93 as appearing in the decision of *Rajnesh (supra)* are reproduced herein below:-

“84. The Delhi High Court in Bharat Hegde v. Saroj Hegde [Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)

- “1. Status of the parties.*
- 2. Reasonable wants of the claimant.*
- 3. The independent income and property of the claimant.*
- 4. The number of persons, the non-applicant has to maintain.*
- 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6. Non-applicant's liabilities, if any.*
- 7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
- 8. Payment capacity of the non-applicant.*
- 9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10. The non-applicant to defray the cost of litigation.*
- 11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”*

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.

(a) Age and employment of parties

86. In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years.

(b) Right to residence

87. Section 17 of the DV Act grants an aggrieved woman the right to live in the “shared household”. Section 2(s) defines “shared household” to include the household where the aggrieved woman lived at any stage of the domestic relationship; or the household owned and rented jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the respondent is a member.

88. The right of a woman to reside in a “shared household” defined under Section 2(s) entitles the aggrieved woman for right of residence in the shared household, irrespective of her having any legal interest in the same. This Court in *Satish Chander Ahuja v. Sneha Ahuja* [*Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414, by a Bench comprising of Hon’ble Ashok Bhushan, R. Subhash Reddy and M.R. Shah, JJ.] held that “shared household” referred to in Section 2(s) is the shared household of the aggrieved person where she was living at the time when the application was filed, or at any stage lived in a domestic relationship. The living of the aggrieved woman in the shared household must have a degree of permanence. A mere fleeting or casual living at different places would not constitute a “shared household”. It is important to consider the intention of the parties, nature of living, and nature of the household, to determine whether the premises is a “shared household”. Section 2(s) read with Sections 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly.

89. Section 19(1)(f) of the DV Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.

(c) Where wife is earning some income

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In *Shailja v. Khobbanna* [*Shailja v. Khobbanna*, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the

Karnataka High Court in *P. Suresh v. S. Deepa*, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)] , this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [*Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] Sustenance does not mean, and cannot be allowed to mean mere survival. [*Vipul Lakhanpal v. Pooja Sharma*, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451]

90.2. In *Sunita Kachwaha v. Anil Kachwaha* [*Sunita Kachwaha v. Anil Kachwaha*, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in *Sanjay Damodar Kale v. Kalyani Sanjay Kale* [*Sanjay Damodar Kale v. Kalyani Sanjay Kale*, 2020 SCC OnLine Bom 694] while relying upon the judgment in *Sunita Kachwaha v. Anil Kachwaha*, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] , held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Parkash v. Shila Rani* [*Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] . The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. This Court in *Shamima Farooqui v. Shahid Khan* [*Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in *Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

(d) Maintenance of minor children

91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.

(e) Serious disability or ill health

93. Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.”

28. All the aforesaid factors contribute towards determination of maintenance namely alimony whether at interim stage or the final stage. In concluding paragraph Nos.126 to 132 while issuing final directions, the Supreme Court in the case of *Rajnesh (supra)* has held as under:-

“126. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children. Contempt proceedings for wilful disobedience may be initiated before the appropriate court.

VI. Final Directions

127. In view of the foregoing discussion as contained in Part B — I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India.

(a) Issue of overlapping jurisdiction

128. 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:

128.1. (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.

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

128.3. (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.

(b) Payment of Interim Maintenance

129. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

130. For determining the quantum of maintenance payable to an applicant, the court shall take into account the criteria enumerated in Part B — III of the judgment. The aforesaid factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

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.

(e) Enforcement/Execution of orders of maintenance

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21”

29. Thus from the above, it is seen that the Supreme Court has categorically held that Affidavit of disclosure of assets and liabilities format of which are annexed as Enclosures I, II and III to the said judgment as may be applicable, (*emphasis underlined*) shall be fixed

by both parties in all maintenance proceedings, (*emphasis underlined*) including pending proceedings before the Family Court concerned, as the case may be, throughout the country.

30. The Supreme Court holds that for determining the quantum of maintenance payable to an Applicant, the Court shall take into account the criteria enumerated in part B – III of the said judgment. The Supreme Court further holds that the factors are however not exhaustive and the Court concerned may exercise its discretion to consider any other factors which may be necessary or of relevance in the facts and circumstances of a case.

31. In the light of the above, the impugned judgment appended at Exhibit ‘A’ – page No.47 of the Petition passed by the Family Court holding that guidelines laid down in the case of *Rajnesh (supra)* do not apply to Application of wife, that there is no claim for maintenance or permanent alimony under Respondent - wife’s written statement and no issue has been framed in this regard when Issue No.4A has been subsequently framed on 21.04.2025 cannot be countenanced and deserves to be set aside.

32. The learned Single Judge holds that issue of maintenance which has already been decided by the Family Court in the year 2017 is now pending before Supreme Court. The entire judgment leans only on one fact that written statement of Respondent – wife does not

contain claim for permanent maintenance, instead it seeks dismissal of the Divorce Petition and no issue has been framed regarding wife's entitlement to maintenance therein.

33. The decision of Supreme Court in the case of *Aditi alias Mithi (supra)* and the decision of the learned Single Judge of this Court in the case of *Sana Razvi (supra)* has not been placed for consideration of the learned Single Judge in the case of *Jeevanjyoti Kaur Bansal (supra)*. In that view of the matter, the said decision of the learned Single Judge of this Court in the case of *Jeevanjyoti Kaur Bansal (supra)* is held to be *per incuriam* and the submissions made by Mr. Godbole as alluded to herein above deserve to be accepted in toto. In view of the fact that on 21.04.2025, learned Judge of the Family Court has framed the additional Issue No.4A regarding permanent alimony, the substantive reasons given by the learned Judge in the impugned order dated 31.01.2025 about the issue not been framed is therefore unsustainable and deserves to be quashed and set aside.

34. The judgment passed by the learned Single Judge of this Court in the case of *Jeevanjyoti Kaur Bansal (supra)* dated 20.03.2024 is clearly *per incuriam* since attention of the learned Single Judge at the time of decision of the said decision was not invited to the decision of the Supreme Court in the case of *Aditi alias Mithi (supra)* and the decision of the learned Single Judge of this Court in the case of

Sana Razvi (supra), both of which were decided in prior point of time.

35. The impugned judgment is bereft of the decision of the Supreme Court in the case of *Aditi alias Mithi (supra)* as also the learned Single Judge of this Court in the case of *Sana Razvi (supra)* referred to herein above which were placed before the learned Family Court while determining the Application below Exhibit '229'.

36. In view of the aforesaid observations, findings and the subsequent decision of the Supreme Court in the case of *Aditi alias Mithi (supra)* of equal strength clarifying the decision in the case of *Rajnesh (supra)* as also the discussion herein above, impugned order dated 31.01.2025 is unsustainable in law and deserves to be quashed and set aside. Impugned judgment dated 31.01.2025 is set aside. Resultantly Application filed below Exhibit '229' stands allowed.

37. Respondent – Original Petitioner is directed to file his Affidavit of disclosure of assets and liabilities within a period of three weeks from today in the Family Court to enable the Family Court to determine the proceedings strictly in accordance with law and as per the directions and guidelines passed by the Supreme Court in the aforestated decisions.

38. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

39. After the above order is pronounced in Court, Mr. Damle, learned Senior Advocate appearing for Respondent - husband persuades the Court to stay the effect of this order in order to test its legality and validity in the Supreme Court. Mr. Godbole, learned Senior Advocate for Petitioner - wife vehemently opposes for grant of any stay in view of the timeline in the present case as also the fact that present case was directed to be determined in the time bound programme by the Supreme Court in the year 2024 as also in the year 2025 by two separate orders. Considering the timeline in the present case which has been alluded to herein above, I am not inclined to stay the present order. Hence the request for stay made by Mr. Damle stands rejected.

40. Learned Trial Court shall take cognizance of a server copy of this order since the matter is listed before the Trial Court today at 03:00 pm.

[MILIND N. JADHAV, J.]

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