

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13452 OF 2023

Bathena Sivakumar Srinivasalu Reddy ...Petitioner

Versus

Bathena Yasodhara Sivakumar Srinivasalu Reddy ...Respondent

(Maiden name: Yasodhara Audisesha

Reddy Tikkavarapu

WITH

WRIT PETITION NO.10885 OF 2023

Bathena Yasodhara Sivakumar Srinivasalu Reddy ...Petitioner

Versus

Bathena Sivakumar Srinivasalu Reddy ...Respondent

WITH

INTERIM APPLICATION NO.1704 OF 2025

IN

WRIT PETITION NO.10885 OF 2023

Bathena Yasodhara Sivakumar Srinivasalu Reddy ...Applicant

IN THE MATTER BETWEEN:

Bathena Yasodhara Sivakumar Srinivasalu Reddy ...Petitioner

Versus

Bathena Sivakumar Srinivasalu Reddy ...Respondent

Ms. Swatantri Waghmare, for the Petitioner in WP/13452/2023 and for the Respondent in WP/10885/2023.

Mr. Avinash D. Kango, for the Petitioner in WP/10885/2023, for the Respondent in WP/13452/2023 and for the Applicant in IA/1704/2025.

CORAM: MADHAV J. JAMDAR, J.

DATED: 20 MARCH 2025

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P.C.:

1. Heard Ms. Swatantri Waghmare, learned Counsel appearing for the Petitioner (Husband) in Writ Petition No.13452 of 2023 and Mr. Avinash Kango, learned Counsel appearing for the Petitioner (Wife) in Writ Petition No.10885 of 2023.

2. The challenge in both the Writ Petitions is to the Order dated 30th June 2023 passed by the learned Judge, Family Court, Mumbai below Exhibit - 15 in Petition No. A-1603 of 2018 (“**impugned Order**”). By the impugned Order, the said Application filed under Section 24 of the *Hindu Marriage Act, 1955* seeking interim maintenance has been allowed and Rs.25,000/- per month has been directed to be paid to the Respondent - wife from the date of the Order i.e. with effect from 30th June 2023.

3. It is the submission of Ms. Waghmare, learned Counsel appearing for the Petitioner - husband that the Petitioner is aged 64 years, he was working as a Freelance Journalist and that now he is not working anywhere and therefore he is not having any source of income. She submitted that the son and daughter are 32 and 24 years old respectively, and both of them are working and getting good income. She submitted that the Respondent - wife is staying with the children and therefore the children can maintain the wife. Ms. Waghmare, learned Counsel submitted that the Respondent - wife is getting

substantial amount of Rs.40,000/- through the Leave and Licence charges.

4. On the other hand, Mr. Kango, learned Counsel appearing for the Respondent - wife submitted that the Petitioner - husband, inspite of Order dated 30th June 2023, has not paid the regular maintenance to the wife. He further submitted that the learned Judge, Family Court, has directed payment of maintenance from the date of the Order which is in contravention of the decision of the Supreme Court in *Rajnish v. Neha*¹. He submitted that, apart from the other aspects, the Petitioner - husband has not come to this Court with clean hands and has not disclosed about various important aspects. He submitted that the Petitioner has sold several properties at his native place and received very valuable consideration, which is not disclosed.

5. Perusal of the record shows that by Order dated 30th June 2023, the learned Judge, Family Court has directed the payment of Rs.25,000/- per month as maintenance to the Respondent - wife from the date of the Order i.e. 30th June 2023. In the Application, the interim maintenance of Rs.75,000/- has been sought by the Respondent - wife. The learned Judge, Family Court, has taken into consideration the income of the Petitioner and granted the interim maintenance of Rs.25,000/- to the Respondent - wife. The documents which are produced before the learned Family Court along with the Application

¹ (2021) 2 SCC 324

dated 14th November 2021 filed by the wife, shows that the ancestral land has been sold by the Petitioner - husband and very valuable consideration of Rs.96,00,000/- has been received by the Petitioner. The said fact is not disclosed to the learned Family Court in the reply to the maintenance Application. Thus, by taking into consideration various aspects, no interference in the impugned Order dated 30th June 2023 is warranted at the instance of the Petitioner - husband.

6. As far as the Writ Petition No.10885 of 2023 filed by the wife, it is her contention that the maintenance of Rs.25,000/- has been granted is totally inadequate and therefore the same be enhanced. However, as noted herein above, the age of the Petitioner - husband is 64 years. The wife is admittedly staying with her two children i.e. son, aged 32 years and daughter, aged 24 years. Both of them are gainfully employed. Accordingly, the Respondent - wife is not entitled for enhancement.

7. As far as the contention raised by Mr. Kango, learned Counsel that the learned Family Court should have directed payment of maintenance from the date of the Application and not from the date of the Order, it is required to be seen that in the said decision of ***Rajnesh*** (supra), the said aspect is discussed in Paragraph No.94 onwards. In Paragraph Nos.109 to 113 the conclusions of the Supreme Court on that aspect are recorded, which read 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.”

(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)

8. Thus, Mr. Kango, learned Counsel, is right as far as the aspect that the maintenance Application should have been allowed from the date of filing of the Application.

9. The learned Judge, Family Court in the impugned Order has observed that the Application has been filed on 5th March 2020 but the arguments were advanced recently and therefore the Application has been allowed from the date of the Order. However, that cannot be the factor for deciding the date from which the wife is entitled for interim maintenance. In fact, as noted in ***Rajnish*** (supra) as delay occurs in deciding the maintenance application by the Court for various reasons it has been held that the maintenance be granted from the date of the application. Accordingly, the impugned Order is required to be modified to that extent.

10. For the above reasons, the Writ Petition No.13452 of 2023 filed by the Petitioner (Husband) is dismissed as no interference in the impugned Order under the jurisdiction of this Court under Article 227 of the Constitution of India is warranted.

11. As far as the Writ Petition No.10885 of 2023 filed by the Petitioner (Wife), the same is partly allowed by setting aside the impugned Order to the extent by which it directs that the Respondent - husband shall pay maintenance of Rs.25,000/- per month from the date of the Order i.e. 30th June 2023. It is directed that the Respondent -

husband shall pay maintenance from the date of the Application i.e. 5th March 2020.

12. Accordingly, both the Writ Petitions are disposed of, subject to above modification.

13. As the Writ Petitions are disposed of, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]