



* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Reserved on: 06th September, 2023
+ Pronounced on: 12th December, 2023
MAT. APP. (F.C.) 243/2019 & CM APPL. 41758/2019

[REDACTED]

..... Appellant
Through: Mr. Pankaj Gupta & Ms. Neelam
Kalsi, Advocates with appellant in
person.

versus

[REDACTED]

..... Respondent
Through: Mr. Bhopal Singh, Advocate with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 41759/2019 (Condonation of delay)

1. The present Application under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the applicant/appellant seeking condonation of 9 days' delay in filing the present appeal.
2. For the reasons and grounds stated in the present application, the delay of 9 days in filing the present appeal is hereby condoned.
3. Accordingly, the present application is allowed and disposed of.

MAT. APP. (F.C.) 243/2019

4. The present Appeal under Section 19 of the Family Courts Act, 1984 has been filed on behalf of the appellant/husband against the Order dated



30.07.2019 passed by the learned Principal Judge, Family Courts, South-East, Saket, New Delhi, whereby the Application under Section 24 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) filed by the respondent/wife was allowed thereby granting her interim maintenance in the sum of Rs. 30,000/- per month.

5. **The facts in brief** are that the appellant/husband filed the Divorce Petition bearing HMA No. 817/2015 under Section 13(1)(ia) of HMA, 1955 on 07.08.2015, against the respondent/wife on the ground of cruelty. During the pendency of the Divorce Petition, the respondent/wife filed an Application under Section 24 of HMA, 1955 seeking interim maintenance in the sum of Rs. 40,000/- per month along with Rs. 75,000/- towards litigation expenses.

6. **The respondent/wife in her Application under Section 24 of HMA, 1955** had asserted that she had no source of income to maintain herself as well as minor child and she was living at the mercy of her old-age widowed mother.

7. The respondent/wife asserted that the appellant/husband was a Chartered Accountant and was working as a Manager Taxation with M/s Win Medicare Pvt. Ltd. and getting a salary of Rs. 75,000/- per month. He also owns moveable and immoveable properties in Faridabad and Delhi. He also has huge amounts in his bank account, in addition to FDRs and Insurance Policies. The appellant/husband has no other responsibility, except to maintain the respondent/wife and their son which he is deliberately avoiding. *Hence, the respondent/wife claimed interim maintenance in the sum of Rs. 40,000/- per month from the appellant/husband.*

8. **The appellant/husband contested the said Application** by asserting



that the respondent/wife herself had left the matrimonial home on 10.01.2016 and had filed a complaint making false allegations in CAW Cell, Seemapuri on 22.01.2016.

9. The appellant/husband further claimed that the respondent/wife was a young lady of 34 years of age and was well educated, possessing a degree of Master of Arts in Hindi. She has work experience in different professions and had worked as a Tutor, Teacher, Assistant Accountant and had even run a Restaurant. The respondent/wife in association with her brother opened a Restaurant in the name of “*Goverdhan Catering*” at Preet Vihar. Thus, the respondent/wife is capable of working and cannot be allowed to sit idle only to claim maintenance from him.

10. It was further asserted that the respondent/wife had failed to disclose her true income and had not filed the details of her bank account. The respondent/wife was thus, not entitled to any interim maintenance.

11. **Learned Principal Judge, Family Court after considering the rival assertions observed that** merely because the respondent/wife was a Post-graduate in Hindi and had some past work experience, she cannot be denied maintenance. The gross salary of Rs. 99,000/- per month of the appellant/husband was considered and it was held that his net payable income was Rs. 75,000/- per month. Considering that the respondent/wife was also maintaining the minor child and was bearing all his expenses, the interim maintenance in the sum of Rs. 25,000/- per month was allowed w.e.f. the date of filing of the Application till December, 2017. Further, the enhanced amount of Rs. 30,000/- per month was directed to be paid from January, 2018 till the disposal of the Petition under Section 13(1)(ia) of HMA, 1955.



12. Aggrieved by the impugned Order dated 30.07.2019, the present Appeal has been preferred by the appellant/husband.

13. **Essentially, the grounds agitated in the Appeal are that** the appellant/husband has his father as a dependent, who is 67 years of age and has retired as a Chowkidar Grade-IV from MCD without sufficient pensionary benefits. His mother is suffering from Brain Tumor and his unmarried sister is pursuing law. The appellant/husband has the responsibility of his parents and the unmarried sister and he is bearing their medical expenses as well.

14. It was also claimed that not only the respondent/wife is educated but also has been doing business in the past and running a Restaurant, namely, “*Goverdhan Catering*” at Preet Vihar, in association with her brother, whereby she is earning a handsome income which is evident from the fact that the rent of Rs. 9,000/- per month was being paid by her for the rented accommodation. In addition, the respondent/wife has been doing catering services and supplying fast food and thereby having an independent income.

15. The appellant/husband has further contended that in the parallel proceedings initiated by the respondent/wife under the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as the “DV Act, 2005”*), the learned Metropolitan Magistrate *vide* Order dated 22.06.2019, had observed that the respondent/wife was a Post-graduate in Hindi and was well qualified to meet her ends and she should stand on her own feet and work, instead of claiming maintenance from the appellant/husband,

16. It was further asserted that the learned Metropolitan Magistrate had also not considered the law as propounded by the Apex Court that for claiming maintenance. There should be a proper explanation of the



expenditure and income of the spouse who is claiming maintenance. In the present case, the respondent/wife has reflected her expenditure as Rs. 40,000/- per month, but she has failed to disclose her source of income.

17. Furthermore, her claim for Rs. 40,000/- per month as maintenance is exorbitant and is not commensurate with income of the appellant/husband.

18. The Principal Judge, Family Court has failed to take into account the affidavit of the appellant/husband disclosing the expenses and responsibilities that he has to bear. The Family Distribution Theory has been erroneously applied to grant Rs. 30,000/- per month to the respondent/wife.

19. Moreover, it has been overlooked that the appellant/husband has the responsibility of taking care of his old-age parents and unmarried sister who is presently pursuing her law. After meeting all his expenses, the appellant/husband is left with no money in his hand. It is, therefore, submitted that the impugned Order dated 30.07.2019 is liable to be set aside.

20. **The respondent/wife in her Reply** has controverted all the assertions made by the appellant/husband. It has been pointed out that the appellant/husband in his Affidavit of Income had given his monthly income as Rs. 66,630/- per month. Thereafter, in his statement recorded in the Court on 25.07.2019, the appellant/husband disclosed his gross salary as Rs. 99,000/- per month and the net income in his hand was Rs. 75,000/- per month. Thus, the learned Principal Judge, Family Court has taken into account all the factors and has rightly granted interim maintenance to the respondent/wife.

21. **Submissions heard from the counsels of the parties and the documents as well as the evidence perused.**



22. The parties got married on 18.11.2011 and one son was born from their wedlock on 11.10.2014. The parties have been living separately from 10.01.2016. The Divorce Petition under Section 13(1)(ia) of HMA, 1955 on the ground of cruelty was filed by the appellant husband on 07.08.2015. The respondent/wife sought interim maintenance by way of her Application under Section 24 of HMA, 1955 dated 14.03.2016.

23. In order to have a comprehensive view of the rival submissions of the parties, it is pertinent to observe that after the parties separated, the respondent/wife filed a Complaint Case No. V-290/2017 under the DV Act, 2005 and the interim maintenance Order was made on 22.06.2019, wherein the interim maintenance to the respondent/wife was declined by observing that the respondent/wife was a Post-graduate in Hindi and well qualified to meet her ends. However, Rs. 15,000/- per month was allowed for the maintenance of the minor child.

24. Aggrieved by the Order dated 22.06.2019 of the learned Metropolitan Magistrate denying maintenance to the respondent/wife, she preferred the **Appeal bearing Criminal Appeal No. 69/2019 on 24.07.2019**. In the interim, the present impugned Order dated 30.07.2019 granting interim maintenance of Rs. 25,000/- per month enhanced to Rs. 30,000/- per month w.e.f. January, 2018 was passed under Section 24 of HMA, 1955 in the pending Divorce Petition.

25. The learned District and Sessions Judge, while disposing of the Criminal Appeal No. 69/2019 against the Order dated 22.06.2019 under the Protection of Women from the Domestic Violence Act, 2005 remanded the matter back to the learned Metropolitan Magistrate *vide* Order dated 29.08.2019, with the observation that various submission and authorities



raised before the Family Court, as recorded in the impugned order dated 30.07.2019 must be considered and the Interim Maintenance Application be re-adjudicated.

26. Consequently, the learned Metropolitan Magistrate disposed of the interim maintenance application under the DV Act, 2005 *vide* Order dated 25.11.2020, by observing that since Rs. 30,000/- per month has been granted by the learned Principal Judge, Family Court, there is no reason to enhance the amount of interim maintenance fixed.

27. The relief of maintenance, as a practice, is being granted at two stages. One is the interim maintenance, while the second is by way of permanent maintenance/alimony. From the above narration of facts, what emerges is that there are various provisions for seeking *interim maintenance* as well as *permanent maintenance* under different statutes and the interplay between these statutes is creating some confusion.

Statutory Remedy of Interim Maintenance

28. The statutory remedy of interim maintenance can be invoked under the following provisions of different statutes: -

- (i) **The Code of Criminal Procedure, 1973** (*hereinafter referred to as "Cr.P.C., 1973"*) provides for grant of interim maintenance under **Section 125** of Cr. P.C.. Initially, the cap of Rs. 500/- per month was prescribed, but the said cap was removed by way of amendment in the year 2001. Essentially, *the object of* the provision for interim maintenance in the Cr.P.C., 1973 was to address the destitution and vagrancy which became a precursor to the commission of offence. It was intended to ensure that no one is driven to penury compelling



them to commit crime for their survival. With this object, it was intended that at least some money must be given for sustenance and subsistence of the wife and the children.

- (ii) **The Hindu Marriage Act, 1955** is a complete Code which provides for the rights, liabilities and obligations arising from the marriage between two Hindus. Whenever litigation is undertaken under HMA, 1955, either by wife or husband, which may be for judicial separation, restitution of conjugal rights or dissolution of marriage, the gender neutral remedy of interim maintenance is invoked under **Section 24** of HMA, 1955. *The fundamental objective* of providing interim maintenance under Section 24 of HMA, 1955 is that either spouse, who does not have an independent source of income and is unable to maintain himself or herself, is granted interim maintenance so as to not only be able to sustain himself or herself but also be able to pursue the litigation effectively undertaken under HMA, 1955.
- (iii) **The Protection of Women from Domestic Violence Act, 2005** – The past history has indicated that women have been subjected to persistent “*domestic violence*” with little or no practical remedy. In consonance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the DV Act, 2005 was enacted with the objective to provide immediate relief to an “*aggrieved person*” who has been subjected “*domestic violence*”. The innovative remedies in the nature of “*Protection Orders, Residence Orders,*



Monetary Reliefs, Custody Orders and Compensation Orders” have been provided by way of immediate and interim relief. The most unique feature of the DV Act, 2005 is that while the remedies were essentially civil in nature, but considering the delays in civil adjudication, the procedures prescribed were of Cr.P.C., 1973. Under the DV Act, 2005, the provision for interim monetary relief was incorporated to provide the wife with immediate succour. The monetary relief as provided under **Section 20** of the DV Act, 2005 is far more expansive than the right of interim maintenance recognized under Section 125 of Cr.P.C., 1973. The relief is not limited to maintenance but also included expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence *inter alia* loss of earnings, medical expenses, the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person, in addition to the maintenance for the aggrieved person as well as her children, if any, including an Order under or in addition to an order of maintenance under Section 125 of Cr.P.C., 1973 or any other law for the time being in force.

Statutory Relief of Permanent Alimony/Maintenance

29. As observed above, in addition to the various provisions in the aforementioned legislations for grant of interim maintenance, there is also a provision for grant of permanent alimony under **Section 25** of HMA, 1955 which is invoked after the litigation under HMA, 1955 is concluded leading



to disruption of marital status, whether by way of divorce, judicial separation or nullity.

30. Essentially, a detailed procedure is required to be followed and evidence adduced by the parties is considered to ascertain the permanent alimony which may be awarded to be paid monthly or in lump sum, according to the status and earning of respective spouses, for their lifetime or till re-marriage.

31. **The Hindu Adoptions and Maintenance Act, 1956** (*hereinafter referred to as “HAMA, 1956”*) makes a provision for grant of maintenance to the wife under **Section 18** and under **Section 20** to the children and aged parents. Here again, after following the entire procedure of recording of evidence, the maintenance may be determined to be paid to the wife, children or the parents as the case may be.

32. In the case of *Rajnish vs. Neha*, (2021) 2 SCC 324, the Supreme Court, while considering the aforementioned provisions and Acts, observed that the distinction between maintenance under HAMA, 1956 and HMA, 1955 is that the right under Section 18 of the HAMA is also available during the subsistence of a marriage, without any matrimonial proceeding pending between the parties. However, once the divorce is granted, the wife can seek permanent alimony only under Section 25 of HMA, 1955. Additionally, the relief of permanent alimony under Section 25 of HMA, 1955 is available to both spouses irrespective of their gender, however, only the wife can seek maintenance from her husband under Section 18 of HAMA, 1956.

33. The Supreme Court in the case of *Chand Dhawan vs. Jawaharlal Dhawan* (1993) 3 SCC 406 discussed the interplay between the provisions of maintenance in HMA, 1955 and HAMA, 1956 by observing that while



the marriage is subsisting and the marital status is preserved, the wife can still claim maintenance from the husband under the HAMA, 1956. However, the HMA, 1955 can be invoked for interim maintenance during the pendency of any litigation undertaken under the Act and permanent alimony can be sought under Section 25 of HMA, 1955 only on the conclusion of the litigation undertaken under the HMA, 1955. The Court retains the jurisdiction at subsequent stages to fulfil its incidental or ancillary obligations when an application is moved by either party for the relief. Not only this, the power is retained to alter the order in view of the changed circumstances. It is only when the marital status is affected or disrupted by the Court under HMA, 1955 that the claim for permanent alimony can be made under Section 25 of HMA, 1955 and if there is no disruption of the status, then the wife has to necessarily claim maintenance under HAMA, 1956.

Overlapping Jurisdiction To Grant Maintenance under the Acts

34. From the above discussion, it emerges that the enabling Section for grant of interim maintenance/permanent alimony has been provided in the various statutes and the nature, objective and purpose of each remedy is distinct from the other. However, due to parallel operation of these provisions there is an apparent overlapping of jurisdiction which leads to conflicting judgments/orders at different stages between the parties.

35. This is evident in the present case as well in as much as the interim maintenance was denied to the respondent/wife by the learned Metropolitan Magistrate by observing that she was qualified and there were averments of her doing her independent business and having source of income.

36. Interestingly, while interim maintenance was denied to the



respondent/wife and only granted to the son under the DV Act, 2005, the same was allowed under Section 24 of the HMA, 1955, on the same facts and circumstances.

37. Such conflicting Orders, in the similar facts and without any change in circumstances, under overlapping jurisdiction of different Acts, creates a sense of judicial impropriety and forum shopping, which may not be conducive to the majesty of the Courts. To avoid conflicting orders and overcome this issue of overlapping jurisdiction, the Apex Court in *Rajnish* (supra) laid down certain guidelines which are reproduced herein below: -

“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.”

38. The Apex Court has, therefore, clarified in aforementioned Judgment that each of the statutes has their own independent jurisdiction and scope to adjudicate the maintenance application, the invocation/grant of remedy under one statute does not oust the jurisdiction to entertain the claim for maintenance under the other Acts. However, once an order of maintenance has been made under one Act, essentially the amount granted under one enactment must be considered and set-off or adjusted when making an order of maintenance, subsequently under another enactment. However, this



aspect has been qualified by a rider that once an Order has been made by one Court, the subsequent modification/variation of the said Order shall also be pursued before the same Court.

39. Essentially, a natural corollary to the above is that, so long as the facts in hand are identical, the maintenance granted by one Court essentially must be adopted by the other Court. However, if there are additional factors or varying circumstances, especially under the DV Act, 2005 which encompasses many more heads for granting monetary relief as compared to the interim maintenance under other statutes, the Court may grant additional amount of maintenance in view of the different heads, but not without considering the maintenance already granted in the earlier proceedings by another Court of competent jurisdiction.

40. In so far as the permanent alimony is concerned, whether under HMA, 1955 or HAMA, 1956, once the permanent alimony has been granted, the same cannot be and should not be varied or modified by subsequent interim maintenance orders, and the party should approach the same Court which has granted permanent alimony, to seek modification or variation in the light of the subsequent circumstances.

41. **We may now consider the facts in hand.** Essentially, what has transpired is that though learned Metropolitan Magistrate had declined interim maintenance to the respondent/wife by holding that she has the capacity to earn, but the same had been allowed by the Family Court, on the similar facts and circumstances. The saving grace in the case was that the Order of the learned Metropolitan Magistrate was set aside in Appeal, and it was asked to reconsider the grant of maintenance in terms of various judgments, namely, Sunita Kachwaha & Ors. vs. Anil Kachwaha AIR 2015



SC 554, Kripa Narayan vs. Mamta Pathak 2016 (3) JCC 2026, Gaurav Mantrao vs. Lilly Khullar CR No. 346/2016 dated 20.01.2016 passed by the Punjab and Haryana High Court, Minakshi Gaur vs. Chitranjan Gaur & Anr. AIR 2009 SC 1377 and Manish Jain vs. Akanksha Jain Civil Appeal No. 4615/2017 dated 30.03.2017 passed by the Apex Court along with the submissions of the parties as recorded in the impugned order of the Family Court.

42. Since the interim maintenance was allowed to the respondent/wife by the impugned Order dated 30.07.2019 under Section 24 of HMA, 1955, the Metropolitan Magistrate adopted the same interim maintenance, as reflected in the order dated 25.11.2020, in the subsequent proceedings under the DV Act, 2005.

43. **The question which now arises is whether the grant of interim maintenance to the respondent/wife is justified, though the grant of interim maintenance to the minor child is not under question?**

44. It has emerged from the Income affidavit and from the submissions that the respondent/wife is a qualified lady holding the Post-graduate degree in Hindi. It is also brought on record that the respondent/wife had started a restaurant in the name of “*Goverdhan Catering*” in association with her brother and the rent of Rs. 9,000/- per month was being paid. In addition, it was claimed that the respondent/wife was doing the catering services and supplying the fast food thereby earning handsome money.

45. It is the case where the lady is not only educated and has a capacity to earn, but where she, in fact, was also having an independent income and has been earning by doing business. The respondent/wife has definitely some source of income which can be inferred from the fact that her monthly



expenditure is Rs.40,000/- per month which is being incurred by her; there has to be some source of money disclosed from where she is meeting her monthly expenses. The judgments relied upon observe that merely because a woman is qualified and capable, she is not disentitled from claiming maintenance, if she has not been working and has no independent source of income. However, these judgments are distinguishable inasmuch as here is the case, where there is some evidence of the respondent/wife doing independent work and having some source of income. It is a known fact that in the matters of interim maintenance, neither party discloses truthfully their actual source of income, leaving the Court to do some guess work.

46. In these circumstances, since it is only a case of interim maintenance, we find that the respondent/wife had been earning, though intermittently and, therefore, it is held that she is not entitled to interim maintenance. However, it cannot be overlooked that she is maintaining the child exclusively who is now about 9 years old and is studying in Delhi Public School.

47. Therefore, we find merit in the present Appeal and hereby modify the impugned Order dated 30.07.2019 of interim maintenance and grant Rs. 20,000/- per month towards the maintenance of the child.

48. Accordingly, the present Appeal is partly allowed and disposed of along with pending application.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

DECEMBER 12, 2023/S.Sharma