



IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 20<sup>th</sup> OF NOVEMBER, 2024

MISC. PETITION No. 6789 of 2023

*SMT. ALKA CHAUHAN*

*Versus*

*GAYANENDRA SINGH SISODIYA*

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Appearance:

Shri Hardayesh Kumar Shukla - Advocate for the petitioner.

Shri M P S Raghuwanshi - Senior Advocate with Shri Divakar Vyas-  
Advocate for the respondent [R-1].

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MISC. PETITION No. 4160 of 2023

*GYANENDRA SINGH SISODIA*

*Versus*

*SMT ALKA CHAUHAN*

.....  
Appearance:

Shri M P S Raghuwanshi- Senior Advocate with Shri Divakar Vyas-  
Advocate and Shri Shri Anil Kumar Gupta - Advocate for the petitioner.

Shri Hardayesh Kumar Shukla, learned counsel for the respondent [R-  
1].

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ORDER

M.P. No.4160/2023 has been filed by the husband against the order  
dated 22.06.2023 passed in case No.196-A/2022 by learned Additional



Principal Judge, Family Court, Gwalior whereby learned Family Court had awarded Rs.30,000/- per month to wife and Rs.5,000/- per month to daughter as interim maintenance from the date of filing of the application, i.e.12.10.2022.

2. M.P. 46789/2023 has been filed by the wife against the order dated 22.06.2023 passed in case No.196-A/2022 by learned Additional Principal Judge, Family Court, Gwalior seeking an enhancement of the interim maintenance that was awarded.

3. Since both the petitions are arising from a common order, they are heard and decided analogously.

4. The facts, in brief, leading up to the filing of both the petitions are as follows:

a) It is stated that marriage between Gayanendra Singh (hereinafter, "the husband") and Smt. Alka Chauhan (hereinafter, "the wife") was solemnized on 24.02.2011 as per Hindu rites and customs, and out of the wedlock, a girl child was born. Due to differences that cropped up between the husband and wife, the wife has been residing separately from the husband since 05.01.2020, along with their minor child.

b) On 21.01.2022, the husband filed a divorce petition before the Family Court. During pendency of divorce petition, an application under Section 24 of Hindu Marriage Act was filed by the wife against the husband seeking pendente lite maintenance. Vide order dated 22.06.2023, the learned



Family Court granted interim maintenance of Rs.30,000/- per month to wife and Rs.5,000/- per month to daughter.

d) Aggrieved by the Order dated 22.06.2023, the husband and wife have approached this Court by way of present miscellaneous petitions.

5. Learned Senior Counsel for the husband, at the outset, submits that learned Family Court has failed to consider the reply and documents submitted by the petitioner with respect to the income of petitioner and had awarded the maintenance amount of Rs.30,000/- per month to the wife which is very high. He states that the reply and income affidavit that had been filed by the husband were not taken into consideration by the learned Family Court while passing the impugned Order dated 22.06.2023.

6. Learned Senior Counsel further submits that learned trial Court had failed to take into account the fact that the wife is specialized Neuro Therapist and also practicing as Neuro Therapist and is earning Rs. 1.50 Lacs per month. Furthermore, not only was the impugned Order erroneous on facts but, as per the learned Senior Counsel, it was also erroneous on law because it disregarded the criteria for deciding the quantum of interim maintenance that had been laid down by the Supreme Court in **Rajesh Vs. Neha (2021) 2 SCC 324**.

7. *Per contra*, learned Counsel appearing for the wife, submits that the impugned order dated 22.06.2023 is bad in law as well as facts as it fails to take into account the true earning of the husband and has only calculated the interim maintenance of Rs. 30,000/- per month based on the lower level of



the income of the husband. He submits that the assessment is significantly on the lower side and does not consider the fact that, salary of the husband is Rs. 2,50,000/- per month.

8. Learned counsel for the wife submits that the calculation for interim maintenance must take into account the prospective increase of the husband's income as well the yearly inflation. He submits that the impugned Order renders the wife and minor child with a fixed sum which may not be sufficient considering the future costs of living. As per law laid down by Hon'ble Apex Court in the case of **Kalyan Dey Chowdhary Vs. Rita Dey Choudhary Need Nandy (AIR 2017 SC 2383)**, it is well settled position of law that law, a wife can get 25% from her husband's salary as maintenance. In the case at hand, the husband is earning Rs.2,50,000/- per month, so the wife is entitled to get maintenance 25% of that amount. That means, she can get as maintenance atleast of Rs.50,000/- per month. Hence, the maintenance amount be enhanced from Rs. 30,000/- to Rs.50,000/.

9. Heard learned counsel for the parties and perused the material on record.

10. The Supreme Court in case of **Rajnish Vs. Neha (2021) 2 SCC 324** considering the issues relating to grant of interim-maintenance, had observed that the maintenance should be decided on the basis of pleadings of the parties and some amount of guess work. Both the parties in such cases submit scanty material and do not disclose correct details. Keeping that in view, the Supreme Court laid down the procedure to streamline grant of



maintenance. These guidelines were laid down in exercise of power under Article 136 read with Article 142 of Constitution of India prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in every proceeding relating to maintenance. The aforementioned directions 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. 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 340 CrPC, and for contempt of court. The Supreme Court also prescribed standard formats of Affidavit of Disclosure of Assets and Liabilities for non-agrarian deponents and the affidavit for agrarian deponents.*

*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.”*

The Supreme Court further in case of **Aditi alias Mithi versus Jitesh Sharma 2023 SCC Online SC 1451** expressing anguish over non-compliance/improper compliance of the directions laid down in case of Rajnesh (supra) had directed re-circulation of the judgment for compliance thereof.

11. The copy of Affidavits of Disclosure of Assets and Liabilities submitted by Gyanendra Singh Sisodia and Smt. Alka Chauhan show that most of the entries are filled cursorily without providing requisite particulars. Consequently, learned Learned Additional Principal Judge, Family Court, Gwalior could not consider availability of source of income with the parties and their standard of living before the matrimonial discord, nor it had made any effort to do so. Non-compliance with the guidelines in its true spirit and substance is not acceptable.

12. In view of the above, the impugned order dated 22.06.2023 is set aside with the direction that both the parties shall submit fresh Affidavits of Disclosure of Assets and Liabilities with complete particulars in compliance with the directions of the Supreme Court laid down in case of Rajnesh (supra). Learned Additional Principal Judge, Family Court, Gwalior shall ensure strict compliance with the guidelines. If any of the affidavit is



lacking in requisite particulars, learned Judge shall demand relevant particulars from the concerned party. This exercise shall be completed within 15 days from the date of receiving of certified copy of this order. If any of the parties fails to comply with the directions, appropriate action with regard to non-compliance may be taken against such party. Concerned Family Court on consideration of the affidavits and material on record, shall pass an order afresh on application for interim-maintenance.

13. It is made clear that till the application for interim maintenance is decided afresh by the learned Family Court, the husband shall pay Rs. 30,000/- per month to the wife and Rs.5000/- per month to the daughter as interim maintenance as has been held by learned Additional Principal Judge, Family Court, Gwalior vide impugned order dated 22.06.2023.

14. Accordingly, both the petitions stand disposed of with aforementioned directions.

**(MILIND RAMESH PHADKE)**  
**JUDGE**