

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08th DAY OF FEBRUARY, 2023

R

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.21852 OF 2022. (GM -- FC)

BETWEEN:

SMT. PRATIBHA SINGH

... PETITIONER

(BY SMT.JAYNA KOTHARI, SENIOR ADVOCATE FOR
SRI ROHAN KOTHARI, ADVOCATE)

AND:

MR. VINEET KUMAR

... RESPONDENT

(BY SRI UDAYA HOLLA, SENIOR ADVOCATE FOR
SRI VIVEK HOLLA, ADVOCATE (PHYSICAL HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE/MODIFYING THE IMPUGNED ORDER DTD 26.08.2022 PASSED IN M.C.NO.3726/2019 BY THE HONBLE I ADDITIONAL FAMILY JUDGE, FAMILY COURT, BENGALURU, PRODUCED HEREIN AS ANNEXURE-A AND WHICH GRANTS ONLY INTERIM MAINTENANCE OF RS.15,000/- PER MONTH AND ENHANCE IT TO MONTHLY MAINTENANCE OF RS.1,50,000/- (RUPEES ONE LAKHS FIFTY THOUSAND) AND MODIFY THE LITIGATION EXPENSES FROM RS.50,000/- TO RS.2,00,000/- (RUPEES TWO LAKHS ONLY).

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.01.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking modification of order dated 26-08-2022 passed by the I Additional Principal Judge, Family Court at Bangalore in M.C.No.3726 of 2019 granting interim maintenance to the petitioner/wife at ₹15,000/- and litigation expenses at ₹50,000/- for enhancement of the same to ₹1,50,000/- per month as interim maintenance and ₹2,00,000/- as one time litigation expenses.

2. Brief facts that leads the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner is the wife and the respondent, her husband. The two get married on 22-04-2016. On several allegations, it appears that after about six months of marriage the wife leaves the matrimonial house and begins to reside in her parental house. Long after the alleged separation, the respondent/husband registers a petition seeking annulment of marriage in M.C.No.3726 of 2019 under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955 ('the Act' for short). The petitioner, upto the month of May 2020 claims that she was working and earning a salary of ₹35,000/- and due to onset of Covid-19 she was laid off and had no avocation to maintain herself. Therefore, she files an application before the concerned Court invoking Section 24 of the Act seeking interim maintenance at ₹1,50,000/- per month and one time litigation expenses at ₹2,00,000/-. The concerned Court by its order dated 26-08-2022 passes an order directing payment of interim maintenance at ₹15,0000/- and one time litigation expenses at ₹50,000/-. It is this order that drives the wife to this Court seeking enhancement of

maintenance on the ground that it is too meager to maintain herself.

3. Heard Smt. Jayna Kothari, learned senior counsel appearing for the petitioner and Sri Udaya Holla, learned senior counsel appearing for the respondent.

4. The learned senior counsel for the petitioner would contend with vehemence that the concerned Court has grossly erred in granting a meager sum of ₹15,000/- per month as maintenance notwithstanding the fact that the husband files his assets and liability statement which clearly depicts that his monthly salary is ₹3,16,027/- apart from the income that derives from all other assets including fixed deposit that he has. Despite all this, the concerned Court grants the aforesaid maintenance on the ground that the wife is earning ₹1,35,000/- per month. The learned senior counsel would submit that nowhere in the record it is indicated that the wife earns ₹1,35,000/- per month. The petitioner/wife was earning ₹35,000/- per month up to May 2020 and is now without avocation.

5. The learned senior counsel for the respondent/husband would submit that the wife is qualified, she can maintain herself and she does not need in any amount of maintenance from the hands of the husband as the separation had happened in the 2016, and after the husband initiates proceedings for divorce, the wife files the application under Section 24 of the Act. Therefore, if the wife could maintain herself for all the three years without any maintenance it is clear that the wife did not need maintenance at all. It is only to harass the respondent/husband the application under Section 24 of the Act is filed by the wife. He would submit that a co-ordinate Bench of this Court held in the case of **Dr. E.SHANTHI v. Dr.H.K. VASUDEV**¹ which was filed by the wife being a Doctor could not claim interim maintenance as she was qualified and had to work and earn.

6. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

¹ ILR 2005 KAR 4981

7. The issue lies in a narrow compass, as to whether the petitioner/wife is entitled to enhancement / modification in maintenance from what is awarded by the concerned Court. The marriage between the petitioner and the respondent is not in dispute and the petitioner leaving the matrimonial house and residing in the parental house from 27-10-2016 is what is averred in the petition by the wife. The husband instituted proceedings on 08.07.2019 before the Court in M.C.No.3726 of 2019 seeking annulment of marriage is a matter of record. Once proceedings were instituted on 08-07-2019 by the husband, the petitioner/ wife files her objections to main petition and also files an application under Section 24 of the Act on 06-03-2020. By then the Apex Court had rendered its judgment in the case of **RAJNESH v. NEHA AND ANOTHER**² in which the Apex Court directed that if the wife is seeking maintenance at the hands of the husband under any provision of law i.e., Section 24 of the Act; Section 125 of the Cr.P.C.; Section 12 of the Protection of Women from Domestic Violence Act an affidavit and assets and liabilities statement were to be filed in futural cases and in cases pending adjudication of such

² (2021)2 SCC 324

applications seeking maintenance. The Apex Court has held as follows:

" "

65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.

66. The Delhi High Court in a series of judgments beginning with *Puneet Kaur v. Inderjit Singh Sawhney* [*Puneet Kaur v. Inderjit Singh Sawhney*, 2011 SCC OnLine Del 3841 : ILR (2012) 1 Del 73] and followed in *Kusum Sharma v. Mahinder Kumar Sharma* [*Kusum Sharma v. Mahinder Kumar Sharma*, 2014 SCC OnLine Del 7627 : (2014) 214 DLT 493] ("*Kusum Sharma 1*") directed that applications for maintenance under the HMA, HAMA, the DV Act, and the CrPC be accompanied with an affidavit of assets, income and expenditure as prescribed. In *Kusum Sharma 2* [*Kusum Sharma v. Mahinder Kumar Sharma*, 2015 SCC OnLine Del 6793 : (2015) 217 DLT 706], the Court framed a format of affidavit of assets, income and expenditure to be filed by both parties at the threshold of a matrimonial litigation. This procedure was extended to maintenance proceedings under the Special Marriage Act and the Divorce Act, 1869. In *Kusum Sharma 3* [*Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 11796 : (2017) 241 DLT 252] the Delhi High Court modified the format of the affidavit, and extended it to maintenance proceedings under the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956. In *Kusum Sharma 4* [*Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 12534 : (2018) 246 DLT 1] the Court took notice that the

filing of affidavits along with pleadings gave an unfair advantage to the party who files the affidavit subsequently. In this judgment, it was clarified that the affidavit must be filed simultaneously by both parties. In Kusum Sharma 5 [Kusum Sharma v. Mahinder Kumar Sharma, 2020 SCC OnLine Del 931] the Court consolidated the format of the affidavits in the previous judgments, and directed that the same be filed in maintenance proceedings."

(Emphasis supplied)

In the light of the judgment in the case of **RAJNESH** (*supra*), the wife files her assets and liability statement on 07.01.2021 and the husband files his assets and liabilities statement on 18-11-2021. The concerned Court after hearing the parties passes the order on 26-08-2022 directing payment of maintenance at ₹15,000/- per month and litigation expenses at ₹50,000/-. The reasons rendered by the concerned Court could be found from the following paragraphs:

"11. On the other hand, during the pendency of the petition, if the wife is receiving sufficient income, then she is entitled to get the maintenance from the husband. Otherwise, the respondent contended that the petitioner is the graduate working in a leading software company and earning ₹3,50,000/- per annum as salary. Apart from it, she is having assets. Of course, the petitioner has contended that the respondent fails to produce any material to prove his income. Therefore, her own statement could not be believable. Also, the respondent could not deny that he is having income of ₹3,50,000/-. Also in the Assets and Liabilities statement the petitioner has produced the salary details of her employment.

It does not containing the salary amount and since May 2020 the petitioner fails to draw any salary. Because of the impact of Covid-19, the respondent has admitted her employment as well as salary as contended by her. Therefore, even as admitted by the respondent, she is drawing the salary of ₹1,35,000/- per month. The said salary is totally sufficient to lead the happy life equal to the status of the petitioner?

12. The petitioner has produced several materials. among them, the salary particulars of Account, clearly disclosing that for the month of August, 2021 he was drawing net salary of ₹3,16,027/- Apart from it, he had also produced income tax returns for the year 2015-16 and 2016-17, extract o the saving Bank account 2019-20 apart from the statement of accounts. Therefore, if this materials are taken into consideration, the Court can feel that the petitioner is definitely having more than the salary amount what is disclosed by the respondent in her application.

13. On the other hand, according to the petitioner since she is not having any appointment, the salary of ₹1,35,000/- is derived by her itself is sufficient. On the other hand, the respondent out of that salary amount she has to meet the conveyance charges and that contention of the respondent could not be ignored. Because, she has to spend amount to her day to-day expenses like, food, clothing, shelter, conveyance etc. So far the relationship between the petitioner and the respondent is not severed, mere institution of petition for divorce is not amounting to severing of the relationship. Therefore, from the date of the application, the petitioner/husband has to pay the maintenance amount to his wife, thereby enable to lead the matrimonial life equal to the status of her husband. Therefore, on this background, this court also feels that definitely it made out prima facie case in her favour to get interim maintenance at ₹15,000/- per month apart from payment of ₹2,00,000/- towards litigation expenses. In fact this Court has also confers the assets and liability statement filed by the counsel for both parties. Hence, I come to conclusion as stated

above, and hence I answer point No.1 partly in the affirmative.

14. Point No.2: For the reasons discussed above, and the findings given to Point No.1, I proceed to pass the following:

ORDER

I.A.No.III filed by the respondent u/S. 24 of Hindu Marriage Act, is hereby allowed.

The respondent is hereby directed to pay maintenance of ₹15,000/- per month continuously from the date of application until further orders.

It is further directed to the respondent pay the litigation cost of ₹50,000/-."

(Emphasis added)

The reason rendered by the concerned Court for grant of maintenance at ₹15,000/- per month is that the wife has admitted that her salary is ₹1,35,000/- per month and the husband is drawing salary of ₹3,16,027/- per month. Therefore, the salary of ₹1,35,000/- drawn by the wife is self-sufficient. It is here the Court has fallen in error. The affidavit of the petitioner/wife appended to the application which was filed before the concerned Court clearly indicates that she was earning ₹35,000/- per month and not ₹1,35,000/- per month as indicated. Figure "1" is added at the beginning of her salary out of inadvertence which has led to

miscarriage of justice as the concerned Court holds that the wife is earning at ₹1,35,000/- which is self-sufficient. Nowhere in the records it is seen that the wife has ever stated that she is earning ₹1,35,000/-. The wife has produced documents from the Company where she was working earlier which laid her off during the period of Covid-19. What the wife indicates in the affidavit is as follows:

"Monthly income: Since May 2020 I have been out of work due to non-availability of technical editing job because of Covid-19 situation. So, I have not been receiving any salary from my employer/company since May 2020. I state that the letter from my employer/company for the same has been attached."

(Emphasis added)

The wife indicates that since May 2020, she has been out of work due to non-availability of technical editing job because of Covid-19 and is not receiving any salary from the employer. Therefore, there is an error on the face of it committed by the concerned Court *qua* the earning of the wife.

8. It is germane to notice the assets and liabilities statements filed by the husband. In the details of income, the husband

indicates that his monthly salary is ₹3,16,027/- and reads as follows:

"Monthly income: I state that my monthly income is ₹3,16,027/- (Rupees Three Lakhs Sixteen Thousand and Twenty-seven only)."

(Emphasis added)

He further states that he has fixed deposits which would earn ₹2,50,000/- per annum as interest on those deposits. The said statement reads as follows:

"I state that I receive ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand only) per annum from Fixed Deposit interest".

(Emphasis added)

He also states that he owes approximately ₹42,00,000/- to one Amit Kumar. No details of any transaction of the kind are put forth in the assets and liabilities statement. A bald statement of owing to Mr. Amit Kumar is projected stating that he is using his premises for 9 years and he has not paid any rent and as such the rent runs to ₹42,00,000/-. This statement does not and cannot inspire any confidence of the Court with regard to the liability of the

husband, as no document is produced. Therefore, the income of the husband can, on the face of the records, be taken at ₹3,16,027/- per month as salary, *inter alia*.

9. Now, what is to be noticed is whether the petitioner would be entitled to any enhancement of maintenance. The Apex Court in the case of **SHAMIMA FAROOQUI v. SHAHIDKHAN**³ has held as follows:

"14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs 17,654. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs 2000. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she

³ (2015) 5 SCC 705

would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

15. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun* [(1997) 7 SCC 7] has held as follows : (SCC p. 12, para 8)

"8. ... The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sita*

Bai [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] , it has been ruled that : (SCC p. 320, para 6)

"6. ... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70: 1978 SCC (Cri) 508] falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]."

17. *This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.*

18. *In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in: Chander Parkash Bodh Raj v. Shila Rani Chander Prakash [1968 SCC OnLine Del 52 : AIR 1968 Del 174] wherein it has been opined thus : (SCC OnLine Del para 7)*

7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his

income, the presumption will be easily permissible against him."

(Emphasis supplied)

The Apex Court holds that sustenance of a woman does not and cannot mean mere survival. A woman, who is constrained to leave the matrimonial house should not be allowed to feel that she has fallen from the grace and move hither and thither arranging for sustenance. The Apex Court holds that the quantum of maintenance should be *qua* she was leading with her husband. In a later judgment the Apex Court in the case of **REEMA SALKAN v. SUMER SINGH SALKAN**⁴, has held as follows:

*"13. Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able-bodied person. **Therefore, it was not open to the respondent to extricate from his liability to maintain his wife.** It would be apposite to advert to the relevant portion of the impugned judgment which reads thus : (Reema Salkan case [Reema Salkan v. Sumer Singh Salkan, 2018 SCC OnLine Del 9380 : (2018) 250 DLT 16] , SCC OnLine Del paras 80-84)*

"80. The respondent during the cross-examination has admitted that he too is BCom, MA (Eco) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net annual salary. However, he has claimed that he has resigned from Sprint Canada on 23-11-2010 and the same has been accepted on 27-11-2010 and the respondent since

⁴ (2019) 12 SCC 303

then is unemployed and has got no source of income to maintain himself and his family.

81. In the instant case, the petitioner has filed the case under Section 125 CrPC, 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in Para 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able-bodied person nor he is able to prove sufficient earning or income of the petitioner.

82. It is an admitted fact emerging on record that both the parties got married as per Hindu rites and customs on 24-3-2002 and since then the petitioner was living with her parents from 10-8-2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. **The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able-bodied person having good health and physique and he can earn enough on the basis of him being able-bodied to meet the expenses of his wife. In this context, the observation made in Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] by this Court is relevant and reproduced as under : (SCC OnLine Del para 7).**

'7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to

discharge his legal obligation of maintaining his wife and child.'

83. *The husband being an able-bodied person is duty-bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court 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 : AIR 2014 SC 2875] , is relevant : (SCC p. 357, para 2)*

'2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he

is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.'

84. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife in presence of good physique along with educational qualification."

(emphasis in original)

14. *The view so taken by the High Court is unassailable. Indeed, the respondent has raised a plea to question the correctness of the said view, in the reply-affidavit filed in this appeal, but in our opinion, the finding recorded by the High Court is unexceptionable.*

15. *The only question is : whether the quantum of maintenance amount determined by the High Court is just and proper. The discussion in respect of this question can be traced only to para 85 of the impugned judgment which reads thus : (Reema Salkan case [Reema Salkan v. Sumer Singh Salkan, 2018 SCC OnLine Del 9380 : (2018) 250 DLT 16] , SCC OnLine Del)*

"85. *So far the quantum of maintenance is concerned, nothing consistent is emerging on record to show the specific amount which is being earned by the respondent after 2010, however, the husband is legally bound to maintain his wife as per the status of a respectable family to which he belongs. The husband being able-bodied along with high qualification BCom, MA (Eco) and MBA from Kentucky University, USA could earn at least minimum of Rs 18,332 as per the current minimum wage in Delhi. Therefore, the petitioner being wife is entitled to Rs 9000 per month from 9-12-2010 onwards till further orders."*

16. *The principle invoked by the High Court for determination of monthly maintenance amount payable*

to the appellant on the basis of notional minimum income of the respondent as per the current minimum wages in Delhi, in our opinion, is untenable. We are of the considered opinion that regard must be had to the living standard of the respondent and his family, his past conduct in successfully protracting the disposal of the maintenance petition filed in the year 2003, until 2015; coupled with the fact that a specious and unsubstantiated plea has been taken by him that he is unemployed from 2010, despite the fact that he is highly qualified and an able-bodied person; his monthly income while working in Canada in the year 2010 was over Rs 1,77,364; and that this Court in *Reema Salkan v. Sumer Singh Salkan* [*Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 312] has prima facie found that the cause of justice would be subserved if the appellant is granted an interim maintenance of Rs 20,000 per month commencing from 1-11-2014. At this distance of time, keeping in mind the spiraling inflation rate and high cost of living index today, to do complete justice between the parties, we are inclined to direct that the respondent shall pay a sum of Rs 20,000 per month to the appellant towards the maintenance amount with effect from January 2010 and at the rate of Rs 25,000 per month with effect from 1-6-2018 until further orders. We order accordingly.

17. We, therefore, direct the respondent to pay the enhanced maintenance amount, as determined in terms of this order, to the appellant within a period of eight weeks from today after duly adjusting the amount already deposited in Court/paid to the appellant till date. The appellant will be entitled to forthwith withdraw the maintenance amount deposited by the respondent in Court, if any. The impugned judgment of the High Court is accordingly modified in the aforementioned terms."

(Emphasis supplied)

Here again, the Apex Court directs that the quantum of maintenance should be determined on the basis of manifold factors

more particularly the spiraling inflation rate and high cost of living index of the day as also the husband being able-bodied man and his earning being enough and more to take care of the wife and child as the case would be. On the bedrock of the aforesaid principles that are laid down by the Apex Court, if the case at hand is considered *qua* the assets and liabilities statement of both the husband and the wife, it would become a case for enhancement of maintenance; not to the extent that the wife seeks in the petition, but to a certain extent, as the qualification of the petitioner/wife cannot be brushed aside. Her plea that she has no avocation would not mean that she is incapable of getting an avocation and added to that she has sustained herself all along. Therefore, I deem it appropriate to grant enhancement of maintenance owing to the aforesaid facts, assets and liabilities statements of parties *qua* their qualification from ₹15,000/- to ₹50,000/- per month and one time litigation expenses at ₹1,00,000/- from ₹50,000/- from the date of filing the application before the concerned Court.

10. Insofar as the judgment relied on by the learned senior counsel for the respondent in the case of **DR. E.SHANTHI** (*supra*),

it would become distinguishable on the facts obtaining in the case at hand without much ado. This Court had indicated that there was no difficulty for the petitioner therein to work as a Doctor, as she was, in fact, running a clinic. The facts in that case are not akin to what is in the case at hand. Even otherwise, much water has flown, in the concept of maintenance to be paid by the husband since 2005, by judgments rendered by the Apex Court from time to time, a few of which have been quoted hereinabove.

11. It may not be inapt to notice that this Court is flooded with cases where maintenance is ordered, not ordered; maintenance is ordered which according to the wife is inadequate and seeks enhancement of maintenance; petitions are filed by the husband contending that maintenance directed to be paid from the date of the application which suddenly amounts to a large extent of money and would seek reduction or deferring of payment of money to the wife and so on. All these are put forth both by the husband and the wife for the reason that the concerned Courts have been liberal in granting time either to file objections; affidavits of assets and liabilities or adjournments whenever sought. The case at hand

is not the only case of the kind, it is an illustration of the kind of pleas that is put forth before this Court in plethora of cases day in and day out.

12. Maintenance *pendente lite* is sought under Section 24 of the Hindu Marriage Act, 1955. Section 24 reads as follows:

"24. Maintenance pendente lite and expenses of proceedings.—Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

(Emphasis supplied)

Proviso to Section 24 directs that an application filed under Section 24 seeking maintenance should be disposed as far as possible within 60 days. The term "*as far as possible*" is being interpreted that the Court can pass orders even after six months in some cases, two years, three years or even four years after filing

the application. This delay in considering those applications for maintenance would defeat the very soul of the provision which is to give succor to the wife who leaves or made to leave the matrimonial house on myriad circumstances. Merely, because the provision directs disposal of the application, as far as possible within 60 days, it cannot be stretched to an extent by the Courts to an extent that the wife would not see the amount of maintenance for ages.

13. It, therefore, becomes necessary for the concerned Court to adhere to a timeline for disposal of the applications seeking maintenance at the hands of the husband when sought by the wife, so that the right to claim maintenance is not rendered illusory. In the case at hand also, the husband institutes proceedings under Section 13 of the Act seeking divorce. The wife files an application on 06-02-2020 under Section 24 of the Act. The husband files his objections along with the assets and liabilities statement more than 19 months after the application is filed *i.e.*, on 28.11.2021. The Court decides the application on 26-08-2022 and directs payment to be made from the date of the application. Therefore, the Court

has decided the issue in the case at hand after 30 months of filing of the application.

14. It thus becomes imperative for this Court to issue directions to the concerned courts to adhere to a timeline, in all cases, where applications are filed for maintenance under section 24 of the Act. The concerned Courts shall adhere to the following timeline:

- a. Notice on the application be issued immediately. Service through E-mail / What's App, shall also be valid service in the eye of law.
- b. The concerned Court shall grant two months to the husband to file his objections to the application filed by the wife seeking interim maintenance under section 24 of the Act.
- c. The wife also should be given the same two months to file statement of assets and liabilities.
- d. On the assets and liabilities so filed by the wife, the concerned Court shall consider the contentions of

the parties, hear them and pass appropriate orders, within four months thereafter, if not earlier.

- e. Therefore, the outer limit to decide any application seeking interim maintenance is six months from the date of its filing.
- f. To achieve this timeline, the concerned Court should refrain itself from granting unnecessary adjournments to both the husband and the wife.
- g. If the husband or the wife would not co-operate with the closure of the proceedings *qua* the application for interim maintenance the Court would be free to pass appropriate orders in accordance with law.
- h. Any delay beyond six months should be only on reasons recorded in writing in the order that would be passed.

It is made clear that the concerned Courts shall adhere to the aforesaid timeline, as the wife should not be made to wait for years together, to get certain amount of maintenance from the hands of

the husband. In many a case, the wife would be driven to penury, the moment she walks out of the matrimonial house on manifold reasons. To avoid the wife being driven to such impecuniosities, the aforesaid timeline should be strictly followed.

15. For aforesaid reasons, I pass the following:

ORDER

- (i) The Writ Petition is allowed in part.
- (ii) A maintenance granted to the petitioner/wife is enhanced from ₹15,000/- to ₹50,000/- and litigation expenses from ₹50,000/- to ₹1,00,000/-.
- (iii) The concerned Court shall endeavour to conclude the proceedings in M.C.No.3726 of 2019 within nine months from the date of receipt of a copy of this order, if not, earlier. It is needless to observe that the parties to the *lis* shall cooperate for conclusion of the proceedings as directed.

- (iv) The Registry is directed to circulate this order to all the judicial officers deciding applications of any kind *qua* maintenance for its strict compliance.

Sd/-
JUDGE

nvj
CT:MJ