



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.1913 OF 2024

Mrs. Jeevanjyoti Kaur Bansal]
Aged about 44 years]
residing at Flat No.1003/A,]
Vasukamal, Opp. Hotel Gurukripa]
Saki-Vihar Road, Saki Naka,]
Andheri East, Mumbai – 72.] ...Petitioner.

Versus

1. Kulvinder Singh Bansal,]
Age:- 40 year,]
]]
2. Gurudev Singh Bansal,]
Age:- 84 year,]
]]
3. Spinder Kaur Bansal,]
Age:- 82 year,]
]]
- All R/a : Sophus Elevators Pvt Ltd,]
Bansal Estate, Gala No.1,]
682, Saki-Vihar, Opp. Chandivali Petrol]
Pump, Saki naka,]
Andheri (e), Mumbai – 72.]
]]
4. The State of Maharashtra.] ...Respondents.

WITH

WRIT PETITION (ST) NO.1884 OF 2024

Mrs. Jeevanjyoti Kaur Bansal]
Aged about 44 years]
residing at Flat No.1003/A,]
Vasukamal, Opp. Hotel Gurukripa]
Saki-Vihar Road, Saki Naka,]

Andheri East, Mumbai – 72.

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4. The State of Maharashtra.

] ...Respondents.

Mr. Ninad Muzumdar for the petitioner.

Ms. Shilpa Gajare, APP for the respondent-State.

Coram : Sharmila U. Deshmukh, J.

Reserved on : March 11, 2024.

Pronounced on : March 20, 2024.

JUDGMENT :

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of parties.

2. Challenge in the petitions is to the orders dated 8th December,

2023 passed by the Sessions Court allowing Miscellaneous Application below Exhibit-4 filed in Criminal Appeal No.16 of 2021 and Criminal Appeal No. 44 of 2021 and directing the parties to file their affidavits in compliance with the guidelines of the Apex Court in the case of ***Rajnish vs. Neha [(2021) 2 SCC 324]***.

3. Office noting indicates that the notices issued to respondent nos.1 to 4 is not received served or unserved. Learned counsel for the petitioner has tendered the affidavit of service and submits that the respondents have been served by private notice, The affidavit of service is taken on record.

4. Pivotal issue arising for consideration is whether the filing of Affidavit of Disclosure of assets and liabilities as per the directions of the Apex Court in the case of ***Rajnish v. Neha (supra)*** can be directed at the appellate stage challenging the final judgment of trial Court delivered under the Protection of Women from Domestic Violence Act [for short, "the DV Act"].

5. Facts are referred only to have a clarity of the background in context of the stage at which the affidavit of disclosures of assets and liabilities is directed to be filed. An application being CC No. 32/

DV/2018 was filed by the petitioner seeking various reliefs under the DV Act which came to be adjudicated by the trial Court and vide judgment dated 18th February, 2020 the Trial Court directed respondent no.1-husband to pay maintenance in the sum of Rs.1 lakh each towards the wife and the minor daughter and compensation of Rs.5 lakh to the respondent-wife. Being aggrieved by the judgment of Trial Court, the respondent-husband filed appeal under Section 29 of DV Act before the Special Judge, Borivali Division at Dindoshi being Criminal Appeal No. 44/2021. On 7th January, 2022 in the appellate proceedings, an application below Exhibit-4 came to be filed by the respondent-husband seeking a direction to the petitioner to file her affidavit of Disclosure of Assets and Liabilities as per the guidelines of Apex Court in the case of ***Rajnish v. Neha (supra)***.

6. The petitioner resisted the said application contending that the application is filed at the stage of appeal which has been expedited by the High Court, only to delay the proceedings. It was further contended that the affidavit of assets and liabilities is required to be filed only at the stage of grant of interim maintenance and not after the DV application has been finally adjudicated. The Sessions Court relying upon the decision of Apex

Court in the case of ***Rajnes h v. Neha (supra)*** which directed the filing of affidavit of assets and liabilities in all maintenance proceedings including pending proceedings held that the appeal being continuation of the proceedings, such a direction is applicable at the appellate stage also. The Sessions Court allowed the application and directed the parties to file their affidavit of assets and liabilities .

7. Heard Mr. Muzumdar, learned counsel for the petitioner and Ms. Shilpa Gajare, learned APP for the respondent State.

8. Learned counsel for the petitioner has taken this Court in detail through the decision in ***Rajnes h v. Neha (supra)*** pointing out the categorization of various issues which were then dealt at length by the Apex Court. He would submit that the direction for filing of the affidavit of assets and liabilities is contained in Clause-II of Part-B under the heading of payment of interim maintenance and is therefore referable only to interim maintenance. He submits that the entire discussion of the Apex Court would indicate that the discussion is in the context of interim maintenance. He would submit that in the present case, as the DV application has been finally adjudicated, at the appellate stage, the Sessions Court could not have directed compliance with the guidelines of Apex Court.

9. I have given thoughtful consideration to the submissions and perused the order of appellate Court.

10. The factual matrix is not in dispute that the filing of affidavit of assets and liabilities has been directed by the Sessions Court at the appellate stage after the final adjudication of DV application by the Metropolitan Magistrate. The judgment of Trial Court is not on record but it appears from the pleadings that by the judgment dated 18th February, 2020, the Trial Court has held that there was acts of domestic violence committed by respondent no.1-husband and has directed the payment of maintenance of Rs.1 lakh each towards the wife and the minor child and compensation of Rs.5 lakh. The decision in the case of ***Rajnish v. Neha (supra)*** was delivered on 4th November, 2020 post the passing of judgment of the Trial Court dated 18th February, 2020 in the instant case. Even though the decision of the Apex Court is rendered subsequent to the judgment of trial Court, the Apex Court has directed the filing of affidavits of the disclosures in all pending proceedings. The appellate Court is correct in saying that appeal is continuation of proceedings but has failed to consider whether “pending proceedings” includes the proceedings initiated challenging the final judgment of the trial Court or is applicable to proceedings challenging interim orders of

maintenance under section 23 of the DV Act. This is the crux of the matter which has not been dealt with by the appellate Court and the same is considered hereunder.

11. It will be necessary to refer in certain detail to the decision of Apex Court. In that case, appeal arose out of an application for interim maintenance filed in a petition under Section 125 of Code of Criminal Procedure, 1973 (Cr.P.C) by the respondent-wife and minor son therein. The order was challenged before the Nagpur Bench of this Court which was dismissed as against which the appeal was filed by the husband before the Apex Court. In the backdrop of facts of that case, the Apex Court considered it fit to frame guidelines on certain aspects pertaining to the payment of maintenance in matrimonial matters and to address various issues arising for consideration in application for grant of maintenance/ interim maintenance to ensure that there is uniformity and consistency in deciding the same. After dealing with the issues arising in the facts of that case in Part "A", the Apex Court proceeded to lay down general guidelines and directions in Part "B". Part "B" comprises of Clauses Nos. I to VI with headings as under :

- I. Issue of Overlapping Jurisdictions
- II. Payment of interim maintenance
- III. Criteria for determining quantum of maintenance

- IV. Date from which maintenance to be awarded
- V. Enforcement of orders of maintenance
- VI. Final directions.

12. Under the heading of payment of interim maintenance, Clause-II deals with the aspect of interim maintenance. The Apex Court has held in sub-clauses (ii), (iv), (v) and (ix) as under which is relevant for our purpose :

“(ii) At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.

It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

(iv) 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, alongwith an Affidavit of Disclosure of Assets and Liabilities before the concerned court, as a mandatory requirement.

- (v) 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.
- (ix) Keeping in mind the varied landscape of the country, and the recommendations made by the SLSAs, it was submitted that a simplified Affidavit of Disclosure may be framed to expedite the process of determining the quantum of maintenance.

We feel that the Affidavit to be filed by parties residing in urban areas, would require to be entirely different from the one applicable to rural areas, or triable areas.

For this purpose, a comprehensive Affidavit of disclosure of Assets and Liabilities is being attached as Enclosure I and II to this judgment.”

13. Thereafter in clause (xi), the Apex Court proceeded to frame the guidelines in exercise of the powers under Article 136 read with Article 142 of the Constitution of India which reads thus :

- (xi) 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:
 - (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 concerned Family Court / District Court/Magistrate's Court, as the case may be, throughout the country;

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

(c) The respondent must submit the reply alongwith 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 basis of the Affidavit filed by the applicant and the pleadings on record;

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

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

(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 XI of the CPC;

On filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C 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.

(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.

(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 u/S. 340 Cr.P.C., and for contempt of Court.

(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.

(j) The concerned Family Court / District Court/Magistrate's Court must make an endeavour to decide the I.A. 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.

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

14. Under a separate heading of “Permanent Alimony” under Clause-II, the Apex Court has held that the parties may lead oral and documentary evidence with respect to income, expenditure, standard of living etc before the concerned Court, for fixing the permanent alimony payable to the spouse. The Apex Court has categorized Clause II in two different sections, one dealing with payment of interim maintenance and second dealing with permanent alimony. The filing of affidavit of disclosures finds place in the first section dealing with payment of interim maintenance.

15. Perusal of the above guidelines would indicate that what was under consideration of the Apex Court was the issue of payment of interim maintenance 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. What weighed with the Apex Court was the factual scenario where parties usually have the tendency to conceal the vital information and thus the need was felt to lay down the procedure to streamline the proceedings. The reproduction above makes it evident that the filing of affidavit of assets and liabilities would place the Court in a better position to

make an assessment of the quantum of maintenance at the interim stage.

16. The guidelines laid down by the Apex court direct the filing of affidavit of assets and liabilities to be filed in all maintenance proceedings including the pending proceedings before the concerned Family Courts/District Courts/Magistrate Courts. Upon careful reading of the decision of Apex Court as discussed above, it is clear that mandate of the Apex Court is to direct filing of Affidavit of Disclosures at the stage of deciding the application for interim maintenance. Clause II of Part B of the said decision has to be read in its entirety which makes the position very clear, more particularly sub clause (xi) of Clause II which provides for the filing of a concise application by the applicant accompanied with the affidavit of disclosure of assets and liabilities to which the reply is required to be filed along with the affidavit of disclosure within a maximum period of four weeks and the direction to the Courts to decide the application for maintenance on the basis of affidavit filed by the applicant and pleadings on record. The stage at which such application is required to be filed is at the interim stage. The same is also evident from the guideline which provides that in case of any dispute the aggrieved party may seek permission of the Court to

serve interrogatories and seek production of relevant documents from the opposite party. All this makes it clear that the affidavit of assets and liabilities is required to be filed at the stage of grant of interim maintenance.

17. The filing of Affidavit of Disclosure in all pending proceedings cannot be recited as a mantra regardless of the stage of the proceedings. The effect of directing the filing of Affidavit of Disclosures in appellate proceedings challenging the final judgment in DV proceedings will have the detrimental impact of re-adjudicating the issues which are concluded by the Trial Court upon appreciation of evidence.

18. In the present case, there has been a final adjudication of dispute on merits by the Metropolitan Magistrate and presumably the parties must have led necessary evidence in support of their respective contentions and based on the evidence on record, the Metropolitan Magistrate has adjudicated the D.V. application. The decision of the Apex Court makes it amply clear that the filing of affidavit is for the purpose of assisting the Court to make a *prima facie* assessment of the quantum of maintenance at the interim stage which in the absence of any such requirement was required to be based on pleading involving certain amount of guess work. By

reducing the element of guess-work by having affidavits affirmed on oath setting out their respective assets and liabilities, fair assessment of the financial status of both the parties could be done by the Trial Court at the interim stage and appropriate orders for payment of interim maintenance could be passed. In addition thereto, when the parties make false statements or misrepresentations in their Affidavits on oath, they run the risk of consequential action.

19. The Sessions Court has mis-read the decision of the Apex Court in ***Rajnish v. Neha (supra)*** and has picked up the direction in isolation as regards the filing of affidavits in all maintenance proceedings including the pending proceedings and read the same out of context. No doubt, the appeal is a continuation of original proceedings, however, it needs to be noted that the filing of affidavit of assets and liabilities would amount to bringing in new material which will have to be tested on the touchstone of evidence which will not be permissible at the appellate stage after final adjudication. At the appellate stage, where challenge is to the final judgment, as opposed to an appeal against an order of interim maintenance, in my view, upon reading of the decision of ***Rajnish v. Neha (supra)***, the direction of filing of affidavit of disclosure cannot

be said to apply inasmuch as at the time of final determination, there is material available before the Trial Court supported by evidence on the basis of which rights of the parties have been determined.

20. In view of the above, Petitions succeed. Impugned orders dated 8th December, 2023 passed below Exhibit-“4” in Criminal Appeal No. 16 of 2021 and Criminal Appeal No. 44 of 2021 are hereby quashed and set aside. The Sessions Court is directed to decide the appeals on its own merits in accordance with law. Rule is made absolute in both the petitions.

21. In view of the disposal of petitions, interim application(s) taken out in these petitions, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]