

GAHC010003152024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./120/2024

VERSUS

Advocate for the Petitioner : MR H BETALA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 07.02.2024

Heard Mr. H. Betala, learned counsel for the petitioner.

2. In this petition, under Section 482 Cr.P.C., read with Section 19(4) of the Family Courts Act, 1984, the petitioner, namely, _____ has put to challenge the order dated 31.08.2023 passed by the learned Principal Judge, Family Court No. 2, Kamrup(M) at Guwahati in F.C.(Cri.) Case No. 113/2023.

3. It is to be mentioned here that vide impugned order dated 31.08.2023, the learned Court below has directed the petitioner to pay interim maintenance to the respondent @ Rs. 5,000/- per month.

4. Mr. Betala, learned counsel for the petitioner submits that the learned Court below has decided the quantum of interim maintenance on the basis of a petition filed by the respondent and though the petitioner had prayed for adjournment of hearing on the petition so as to enable him to file objection to the said petition, the learned Court below without granting adjournment, heard the matter and passed the impugned order dated 31.08.2023.

5. Referring to a decision of the Hon'ble Supreme Court in the case of *Rajnish Vs. Neha & Anr.*, reported in (2021) 2 SCC 324, specially to paragraphs 64 and 65, Mr. Betala submits that while passing the impugned order, the learned Court below has to obtain the affidavit disclosing the assets and liabilities of both the parties to the proceeding. But, the mandate in the said judgment has not been followed by the learned Principal Judge, Family Court No. 2, Kamrup(M) at Guwahati, while granting interim maintenance vide impugned order and on such count, the impugned order dated 31.08.2023,

suffers from manifest illegality and impropriety, and therefore, Mr. Betala has contended that the impugned order may be set aside and the matter may be remanded back to the learned Court below for affording the parties an opportunity to file affidavits disclosing their assets and liabilities and to decide the matter afresh.

6. Referring to a decision of the Hon'ble Supreme Court in the case of *Aditi Alias Mithi Vs. Jitesh Sharma*, reported in *2023 SCC OnLine SC 1451*, Mr. Betala submits that the guidelines laid in *Rajnish (supra)* has to be followed mandatorily by all the Courts, while deciding the case of maintenance.

7. Having heard the submission of learned counsel for the petitioner, I have gone through the petition and the documents placed on record and also perused the judgments of the Hon'ble Supreme Court in *Rajnish (supra)* and *Aditi Alias Mithi (supra)*.

8. It is to be mentioned here that while dealing with the issue of payment of interim maintenance, Hon'ble Supreme Court in paragraphs 64 and 65 of *Rajnish (supra)* had stated as under:

“64. In the first instance, the Family Court in compliance with the mandate of Section 9 of the Family Courts Act, 1984 must make an endeavour for settlement of the disputes. For this, Section 6 provides that the State Government shall, in consultation with the High Court, make provision for counsellors to assist a Family Court in the discharge of its functions. Given the large and growing percentage of matrimonial litigation, it has become necessary that the provisions of Sections 5 and 6 of the Family Courts Act are given effect to, by providing for the appointment of marriage counsellors in every Family Court, which would help in the process of settlement. If the proceedings for settlement are unsuccessful, the Family Court would proceed with the matter on merits.

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."

9. Further, in the case of *Aditi Alias Mithi (supra)*, the Hon'ble Supreme Court in paragraphs 14, 15 and 16, had observed as under:

14. *A perusal of the order passed by the High Court shows that the amount of maintenance awarded to the appellant was reduced from Rs. 20,000/- to Rs. 7,500/- per month, merely noticing that earlier, the respondent was in business. However, at that point in time he was in debt and in financial distress, hence, not able to pay huge amount of maintenance to the minor daughter. The respondent is not represented before this Court to justify the stand taken by him before the High Court. The Family Court had passed a detailed order giving reasons.*

15. *Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in Rajnesh's case (supra), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr. P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.*

16. *As in the case in hand, the impugned order passed by the High Court is cryptic and is bereft of reasons. In our opinion, the same deserves to be set aside and the matter is liable to be remitted to the High Court for consideration afresh. Ordered accordingly. As the respondent remained*

unrepresented, the High Court may issue notice for his appearance on the date so fixed by it."

10. Here in this case, having gone through the impugned order dated 31.08.2023, I find that the petitioner and also the respondent have not submitted their affidavits, disclosing the assets and liabilities in the aforementioned proceeding before the learned Court below before deciding the issue of interim maintenance as mandated by the Hon'ble Supreme Court in paragraphs 64 and 65 in the case of *Rajnish (supra)* and also in the case of *Aditi Alias Mithi (supra)*. Though the petitioner has sought time to file objection, the same was refused by the learned Court below. That being so, the impugned order cannot withstand the legal scrutiny, having been passed ignoring the law down by Hon'ble Supreme Court.

11. In the result, I find sufficient force in this petition and accordingly, the same stands allowed. The impugned order dated 31.08.2023, stands set aside and quashed and the matter is remanded back to the learned Court below to afford opportunity to both the parties to file their affidavits disclosing the assets and liabilities and thereafter, to hear the matter afresh and to pass necessary order.

12. The aforesaid exercise has to be carried out within a period of 1(one) month from today. If any payment is made by the petitioner, in view of the impugned order, the same has to be adjusted against the order to be passed on interim maintenance.

13. In terms of the above, this petition stands disposed of at the motion stage itself.

JUDGE

Comparing Assistant