



2025:DHC:5114



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 01.07.2025*+ **CRL.REV.P.(MAT.) 172/2024, CRL.M.A. 38506/2024 & CRL.M.A. 38508/2024**

NAVEEN KUMAR .....Petitioner

Through: Ms. Puja Jakhar, Mr. Harshit  
Prakash, Mr. Krishan  
Chauhan, Advocates.

versus

KAVITA .....Respondent

Through: Mr. DK Sharma, Advocate.

**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****J U D G M E N T****Index to the Judgment**

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**DR. SWARANA KANTA SHARMA, J**

1. By way of instant petition, the petitioner is seeking setting aside of the orders dated 24.05.2024 and 26.09.2024 [hereafter also referred to as '*impugned orders*'], passed by the learned Principal Judge, Family Court-01, South-West District, Dwarka Courts, Delhi [hereafter '*Family Court*'] in MT No. 435 of 2022, whereby the learned Family Court was pleased to direct the petitioner herein to pay *ad-interim* maintenance to the tune of Rs. 6,000/- per month, to the respondent, from the date of filing of application.

**FACTUAL BACKGROUND**

2. Brief facts of the case are that the parties had got married on 18.04.2016 at Jhajjar, Haryana; though no child was born out of their wedlock. The petitioner herein is working as a medical representative in a private sector, while the respondent has studied up to 12<sup>th</sup> standard.

3. It is the petitioner's case that the respondent also runs a beauty parlour at her home along with her sister. Due to temperamental differences, the respondent had left her matrimonial home on 10.05.2021 along with her entire belongings. He alleges that she had also on earlier occasions, such as on 10.01.2020, left the matrimonial home and stayed at her parental home about one year. He states that no maintenance was claimed by the respondent during the said period. The petitioner states that after he had filed a petition for restitution of the conjugal rights, the respondent had, as a



counterblast, filed several complaints and multiple criminal and civil proceedings against him and his family members.

4. The respondent's case is that the petitioner used to act as if he had forced into this marriage; and his family members i.e. father, mother and sister used to torture and mentally as well as physically harass the respondent, including for the purpose of bringing less dowry and stridhan. She also alleges that she had to leave her matrimonial home for one year in 2020 but on the insistence of petitioner and his family members that they shall treat her with respect now onwards, she had returned to her matrimonial home. She however states that the acts of cruelty continued even thereafter, and eventually, she was thrown out of her matrimonial home in May, 2021, after which she came to Delhi to reside with her parents.

5. The respondent, in the above background, had filed an application for grant of maintenance under Section 125 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] in July, 2022. During the pendency of the interim maintenance application, the learned Family Court, *vide* impugned order dated 24.05.2024, was pleased to grant *ad-interim* maintenance in the sum of ₹6,000/- per month to the respondent. The petitioner was also directed to clear the arrears of maintenance from the date of filing of application. The said order is extracted hereunder:

“Heard on the point of grant of ad-interim maintenance.

File perused.

Ld. counsel for petitioner submits that petitioner does not have



any source of income and it is very difficult for her to maintain herself and he prays that respondent may be directed to pay ad-interim maintenance to the petitioner.

Ld. counsel for the respondent submits that the respondent is a Medical Representative in a private company and getting salary of Rs.17,907/- p.m. Ld. Counsel for respondent further submits that respondent has other liabilities also

In these circumstances and in view of the material on record, I take the income of the respondent as Rs. 17,907/- per month.

In view of the above and having regard to the fact and circumstances of the present case and without prejudice to the respective rights and contentions of the petitioner and respondent, it is directed that the respondent shall pay a sum of Rs. 6,000/- p.m as ad-interim maintenance to the petitioner from the date of filing of the application, till further orders. The respondent is further directed to clear the arrears of maintenance within three months from today and shall continue to pay the ad-interim maintenance at the above-said rate from the date of order by 10th of each calendar month.

Ld. counsel for the petitioner submits that he will file the evidence by way of affidavit of the concerned PW i.e. petitioner within four weeks from today and will supply copy thereof to ld. Counsel for respondent.

In view of the above, put up for PE as well as arguments on application for grant of interim maintenance alongwith connected case on 26.9.2024, as requested.”

6. However, the petitioner chose not to pay the aforesaid amount, since he was aggrieved by the passing of said order. In impugned order dated 26.09.2024, the learned Family Court took note of the objections raised by the petitioner, such as petitioner being not entitled to grant of maintenance as she had been denied similar relief in proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [hereafter ‘*PWDV Act*’], there being no provision for grant of ad-interim maintenance under Section 125 of



Cr.P.C., that too from date of filing of application, etc. The learned Family Court however rejected these arguments and passed the following order:

“It is stated by Ld. counsel for petitioner that despite order 24.05.2024, arrears of maintenance as well as the regular maintenance on account of ad-interim maintenance has not been paid by the respondent. Respondent has also admitted the nonpayment of the maintenance.

To justify the non-payment of maintenance, Ld. counsel for respondent argued that vide order dated 26.07.2024, Ld. Magistrate has declined to grant maintenance to the present petitioner in the case of Domestic Violence, therefore, petitioner is not entitled for maintenance and matter may be heard on merits. The argument is neither tenable nor have any force of law. The provisions of Domestic Violence Act and provision of 125 Cr.P.C before this Court works in different spheres and no further discussion is required in support of this proposition as everyone in the field of law knows that the water is wet.

Ld. counsel for respondent further justified the nonpayment of maintenance on the ground that under Section 125 (2) Cr.P.C there is no provision to grant ad-interim maintenance from the date of filing of application. This argument is also not tenable as it is crystal clear from plethora of judgments including the guidelines under the most celebrated judgment of Hon'ble Supreme Court in the case of "Rajnees Vs. Neha" that ad-interim maintenance may be granted by the court and it is within the discretion of the court to grant it from the date of order or from the date of filing of application.

Ld. counsel for respondent further argued that in view of section 125 (2) Cr.P.C, order of this court dated 24.05.2024 has become infructuous. The argument is misconceived and incorrect interpretation of the provision.

Respondent is directed to clear the arrear of maintenance within one month and to regularly pay the ad-interim maintenance failing which legal consequences will follow including striking off his defense.”



### SUBMISSIONS BEFORE THE COURT

7. The learned counsel appearing for the petitioner contends that the impugned orders passed by the learned Family Court suffer from multiple legal infirmities. It is submitted that the respondent had earlier approached the Mahila Court, Dwarka in Case No. MC/520/2022 under the PWDV Act, seeking interim maintenance, but her application was dismissed by a detailed order dated 26.07.2024. It is argued that the learned Family Court failed to take into account the said dismissal order and proceeded to award *ad-interim* maintenance without applying judicial mind. It is further submitted that the learned Family Court erred in directing payment of ad-interim maintenance from the date of filing of the application, despite clear objections raised by the petitioner during the hearing on 26.09.2024. It is argued that the learned Family Court has misapplied the law laid down in ***Rajnish v. Neha: (2021) 2 SCC 324***, by equating ad-interim maintenance with interim maintenance and mechanically applying the principles stated therein. The learned counsel emphasizes that the said judgment only deals with interim maintenance to be granted upon the completion of pleadings and submission of affidavits of income, and not with ad-interim maintenance, which is a temporary arrangement made in the meantime. It is further contended that the rationale and threshold for granting ad-interim maintenance are distinct from interim or final maintenance, and the learned Family Court failed to limit itself to a *prima facie* determination, as required while awarding ad-interim



maintenance, and instead passed a detailed order granting maintenance from the date of application, more so when no such relief of ad-interim maintenance was prayed by the respondent and no application in this regard had been filed by the respondent. Reliance is placed on decision of this Court in *Manish Divedi v. Jyotsana: 2019 SCC OnLine Del 10492*, to argue that ad-interim maintenance is only tentative and must be based on a preliminary assessment of material such as status of parties. The learned counsel also places reliance on *Bharat Hegde v. Saroj Hegde: 140 (2007) DLT 16*, to argue that proper parameters for assessing quantum of maintenance were not followed. It is thus urged that the impugned orders be set aside.

8. On the other hand, the learned counsel for the respondent refutes these arguments and submits that the learned Family Court has rightly interpreted the judgment in *Rajnish v. Neha (supra)*. He contends that the expression ‘interim maintenance’ as used by the Hon’ble Supreme Court necessarily includes ad-interim maintenance, especially in view of the direction that interim maintenance applications must ordinarily be decided within four to six months. In case of delay, it is argued, the Court is empowered to grant temporary relief by way of ad-interim maintenance. In this regard, he also relies on *Manish Divedi v. Jyotsana (supra)* to point out that even in that case, ad-interim maintenance was granted from the date of application, and the Court only formed a prima facie view based on available material such as the status and background of the parties.



The learned counsel further submits that the dismissal of an application under the PWDV Act does not bar grant of maintenance under Section 125 of Cr.P.C., as the two proceedings are distinct and operate independently. He argues that the learned Family Court is not bound by the order of the Mahila Court, which is of a lower jurisdiction, and that Section 21(d) of the PWDV Act itself contemplates that maintenance under DV Act shall be in addition to any maintenance granted under Section 125 of Cr.P.C. He submits that the petitioner's conduct and non-payment despite direction by the learned Family Court demonstrates his intent to avoid responsibility, and that no illegality or perversity exists in the impugned orders. It is therefore prayed that the petition be dismissed as devoid of merit.

9. This Court has **heard** arguments addressed by the learned counsel appearing for either side, and has perused the material placed on record.

#### **ANALYSIS & FINDINGS**

10. In the present case, upon hearing the rival contentions and considering the material on record, the following issues emerge for determination:

1. Whether ad-interim maintenance can be equated with interim maintenance, and if not, what is the distinction between the two?
2. Whether the judgment of the Hon'ble Supreme Court in



*Rajnish v. Neha* (*supra*) covers the grant of ad-interim maintenance?

3. Whether ad-interim maintenance can be granted even in the absence of a specific application made to that effect?
4. Whether ad-interim maintenance is to be made payable from the date of filing of the application or from the date of the order?

### **Distinction between Interim Relief/Maintenance and Ad-Interim Relief/Maintenance**

11. In law, interim relief is a temporary relief granted by the Court after hearing both parties, pending final adjudication of the dispute. It is typically granted upon consideration of pleadings, replies, and after evaluating *prima facie* rights and urgency. In contrast, ad-interim relief is a provisional relief granted ex-parte or at the initial stage, often before the opposite party is served or has filed a reply. It is essentially an urgent measure granted to prevent irreparable harm, subject to further hearing and confirmation.

12. As far as maintenance is concerned, interim maintenance is an allowance granted to the aggrieved party during the pendency of proceedings and till final adjudication, such as under Section 125 of Cr.P.C. or the Domestic Violence Act, generally after considering pleadings and material placed by both parties. Ad-interim maintenance, on the other hand, is a provisional maintenance granted at the preliminary stage, i.e. prior to adjudicating even the interim



maintenance, to alleviate urgent hardship being faced by a dependent spouse or child, pending a more detailed consideration of the case. Thus, while both are temporary in nature, the key difference lies in the stage of grant, extent of hearing accorded before the relief is granted, and the *prima facie* opinion formed by the Court.

13. In *Manish Divedi v. Jyotsana: 2019 SCC OnLine Del 10492*, a Coordinate Bench of this Court also drew a clear distinction between ad-interim maintenance and interim or final maintenance. It was observed that ad-interim maintenance is a tentative arrangement, granted at a preliminary stage, and is subject to final determination of interim or permanent maintenance. At the stage of granting ad-interim maintenance, the Court is only required to form a *prima facie* opinion, based on the material available on record.

### **The Scope and Objective of Section 125 of Cr.P.C**

14. Since the present petition arises out of proceedings under Section 125 of the Cr.P.C., it becomes essential to first understand the scope, purpose, and underlying intent of this provision. This would also be relevant to appreciate the context in which ad-interim maintenance is being claimed and granted, and to examine how the provision aims to protect the rights of dependents through swift and effective remedies.

15. Chapter IX of the Cr.P.C. lays down a summary procedure for granting maintenance to wives, children, and parents who are unable to maintain themselves. Importantly, the right to seek maintenance



under Section 125 of Cr.P.C. is available to all persons regardless of their religious background, making it a secular and inclusive remedy. The primary aim of this provision is to offer prompt financial support to those in need, ensuring they are not left destitute or neglected.

16. In *Bhuvan Mohan Singh v. Meena & Ors.*: (2015) 6 SCC 353, the Hon'ble Supreme Court had highlighted that Section 125 of Cr.P.C. was enacted to alleviate the agony, hardship, and financial distress of a woman who has been compelled to leave her matrimonial home. It ensures that some immediate and suitable arrangement is made to help her sustain herself and any children dependent on her care.

17. Prior thereto, in *Chaturbhuj v. Sitabai*: (2008) 2 SCC 316, the Hon'ble Supreme Court had held that the object of Section 125 was not to punish a person for past neglect, but to prevent vagrancy and destitution by ensuring basic necessities such as food, clothing, and shelter for a deserted wife.

18. Further, as far as Section 125 of Cr.P.C. is concerned, initially there was no provision for grant of interim maintenance. However, the provision was amended in the year 2001, pursuant to which specific provision for grant of 'interim maintenance' was introduced.

19. Clearly, Section 125 of Cr.P.C., as it reads today, has no provision with respect to grant of 'ad-interim' maintenance. However, the law *qua* the same has been developed by way of judicial pronouncements.



## Grant of Ad-Interim Maintenance: Judicial Precedents

20. In *Rajesh Chaudhary v. Nirmala Chaudhary*: (2006) 86 DRJ 61, this Court had observed that where the adjudication of an application for maintenance is likely to be delayed, ad-interim maintenance may be granted based on the respondent's admitted income. The relevant portion of the said judgment is reproduced hereunder:

“14....in order to expedite the disposal of maintenance applications which early disposal is eventually in the interest of both the spouses and the children, the matrimonial courts should follow the following procedure:—

(i) When a notice for maintenance is issued the respondent should be directed to file a self-assessment of his income and what according to him is the admitted liability of maintenance payable by the said respondent.

(ii) Document such as (a) Income-tax returns for last 3 years in cases where returns are filed (b) details of credit cards and club memberships (c) details of phones, cell phone (d) details of bank accounts, fixed deposits, shares, bonds etc (e) details of immovable properties including family properties where the respondent has a share and self owned properties (f) details of vehicles and (f) last pay certificate should also be directed to be filed when available.

**(iii) When the case comes after notice and a self-assessment of income and the admitted liability of maintenance has been stated by the respondent, then without prejudice to the claimant's plea of a higher amount payable, the said admitted amount and the arrears of the said admitted amount should be ordered on that very date or on any other date not later than 4 weeks from the returnable date while awaiting the determination of the claims made by the rival parties.”**

21. The aforesaid decision was taken note of by this Court in



***Kusum Sharma v. Mahinder Kumar Sharma: 2014 SCC OnLine Del 7627.*** In this case, detailed directions were issued for disposal of applications seeking maintenance filed before the learned Family Courts. It was directed that if the disposal of maintenance application takes time, and such delay is resulting in hardship to the aggrieved person, some ad-interim maintenance should be granted to the claimant on the basis of admitted income of the respondent. The directions which were issued by this Court are extracted hereunder:

**“Directions**

58. In order to implement Sections 21-B, 23-A and Sections 24 to 27 of the Hindu Marriage Act in their true letter and spirit, the Courts below dealing with the matrimonial cases shall consider implementing the following suggestions:—

59. Matrimonial jurisdiction is of a special nature and deserves a special attention. Lengthy trial in matrimonial proceedings is uncalled for and contrary to the spirit of Hindu Marriage Act.

60. The affidavit of assets, income and expenditure of both the parties are necessary to determine the rights of the parties under Sections 24 to 27 of the Hindu Marriage Act and, therefore, should be filed with the pleadings in order to curb the delay and expedite the trial in terms of Section 21-B of the Hindu Marriage Act.

61. All petitions including petitions under Sections 9 to 13 of the Hindu Marriage Act shall be accompanied with an affidavit of assets, income and expenditure of the petitioner. The affidavit shall contain all the particulars mentioned in para 7 and shall be accompanied by the documents mentioned in para 8 of *Puneet Kaur* (supra). The affidavit shall also contain the particulars of the properties mentioned in Section 27 of the Hindu Marriage Act.

62. At the time of issuing notice, the Court shall consider directing the petitioner to deposit such sum, as the Court may consider appropriate, on the basis of petitioner's affidavit, for payment to the respondent towards litigation/part litigation expenses.



63. If the petitioner claims maintenance, application under Section 24 be filed along with the petition. However, if respondent claims maintenance, the application under Section 24 along with the affidavit of assets, income and expenditure (as mentioned in para 33.3 above) be filed within 30 days of the service of the notice along with the response to the petitioner's affidavit.

64. The response to the respondent's affidavit of assets, income and expenditure be filed by the petitioner within two weeks thereafter and the case be listed for disposal of the application under Section 24 of the Hindu Marriage Act.

65. The Court may decline to take the petition, written statement, application for maintenance and its reply on record unless they are accompanied by the aforesaid affidavit or affidavit is already on record.

66. The Court shall ensure that the filing of the affidavits by the parties is not reduced to a mere ritual or formality. The Court shall scrutinize the affidavit threadbare and may decline to take the same on record unless it contains all the particulars mentioned in para 7 of *Puneet Kaur* (supra) and Section 27 of the Hindu Marriage Act and is accompanied by the documents mentioned in para 8 of *Puneet Kaur* (supra).

67. If a party has made concealment or false statement in his/her affidavit, the opposite party shall disclose the same in his/her response on affidavit along with the material to show concealment or false statement.

68. Whenever the opposite party discloses sufficient material to show concealment or false statement in the affidavit, the Court may consider examining the deponent of the affidavit under Section 165 of the Evidence Act to elicit the truth. The principles relating to the scope and powers of the Court under Section 165 of the Evidence Act have been summarized in *Ved Prakash Kharbanda v. Vimal Bindal*, (2013) 198 DLT 555 which may be referred to.

69. The application under Section 24 should be decided as expeditiously as possible otherwise the very object of the proviso to Section 24 would be defeated.

**70. If the disposal of maintenance application is taking time, and the delay is causing hardship, some ad-interim maintenance should be granted to the claimant spouse on the basis of admitted income of the respondent.**



71. There may be cases where one of the spouse has sufficient means of sustenance and therefore, the application under Section 24 is not warranted at the initial stage. In such cases, the concerned spouse need not file the application under Section 24 of the Hindu Marriage Act but shall specifically mention this fact in the pleadings i.e. petition/written statement as the case may be. In such cases, the written statement be filed by the respondent within 30 days of the service of summons. However, this would not preclude the filing of the application under Section 24 at a later stage if the circumstances so warrant.

72. The aforesaid procedure shall be followed in all cases relating to maintenance under Hindu Marriage Act, Protection of Women from Domestic Violence Act, Hindu Adoption and Maintenance Act as well as Section 125 Cr. P.C.

73. With respect to Sections 25 and 27 of the Hindu Marriage Act, the Court shall consider the well settled principles laid down in the relevant judicial pronouncements.”

(Emphasis added)

22. These directions were modified in ***Kusum Sharma v. Mahinder Kumar Sharma: 2015 SCC OnLine Del 6793***, but the direction with respect to ad-interim maintenance remained the same. The same was again retained and reiterated in modified directions issued in ***Kusum Sharma v. Mahinder Kumar Sharma: 2017 SCC OnLine Del 12534***.

23. Finally, in ***Kusum Sharma v. Mahinder Kumar Sharma: 2020 SCC OnLine Del 931***, this Court had consolidated all the directions issued in previous decisions, and a comprehensive format of the affidavit of assets, income and expenditure had been formulated. The relevant portion of the decision is set out below:

“40. In ***Kusum Sharma I*** (judgment dated 18th September, 2014), this Court directed that the petitions/applications



relating to maintenance under Hindu Marriage Act; Protection of Women from Domestic Violence Act; Hindu Adoption and Maintenance Act as well as Section 125 Cr. P.C. shall be accompanied with an affidavit of assets, income and expenditure of the parties, which shall contain all the particulars mentioned in para 7 and shall be accompanied by the documents mentioned in para 8 of *Puneet Kaur (supra)*. The affidavit shall also contain the particulars of the properties mentioned in Section 27 of the Hindu Marriage Act. This Court further directed that if the disposal of maintenance application takes time, and the delay causes hardship, ad-interim maintenance should be granted to the claimant spouse on the basis of admitted income of the respondent.

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43. In *Kusum Sharma IV* (judgment dated 06th December, 2017) this Court noticed that the filing of the affidavit of assets, income and expenditure by the parties along with pleadings was giving unfair advantage to the party who files the affidavit later. This Court, therefore, modified the directions by directing the affidavits to be filed simultaneously by both the parties. It was clarified that the affidavit of assets, income and expenditure shall not be filed along with the petition and the written statement, as directed earlier. This Court further improved the format of affidavit of assets, income and expenditure.

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#### *Conclusion*

64. The Court has to ascertain the financial capacity/status of the parties for determining the maintenance and permanent alimony. A comprehensive affidavit of assets, income and expenditure of both the parties is necessary to determine their financial capacity/status.

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67. Upon completion of the pleadings in the maintenance application, the Court shall fix the date for reconciliation and direct the parties to simultaneously file the affidavits of their assets, income and expenditure. The Court shall also direct the party seeking maintenance to produce the passbook of his/her savings bank account in which maintenance can be directly deposited/transferred by the opposite party.

68. The Court shall simultaneously take on record the affidavit



of assets, income and expenditure of both the parties. The simultaneous filing of the affidavit by the parties is very important and should be strictly adhered to. The simultaneous filing of the affidavit by the parties would avoid any undue advantage to the party who files his/her affidavit later. It is clarified that the affidavit of assets, income and expenditure is not to be filed along with the petition/application/or written statement/reply.

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**77. If the admitted income of the parties is on record, such as, in the case of a salaried employee whose salary slip is on record, the Court may fix ad-interim maintenance on the basis of the admitted documents pending filing of the affidavit of the assets, income and expenditure by both the parties. The Court may record the statement of the parties, if considered necessary for fixing the ad-interim maintenance.**

**78. If any party delays in filing of the affidavit of assets, income and expenditure or the affidavit filed by a party is not in terms of these directions or a party delays the disclosure of further information/documents and the delay is causing hardship, the Court is at liberty to fix ad-interim maintenance after hearing the parties.”**

(Emphasis added)

24. Thus, in the above decision, the importance of filing comprehensive affidavits of assets, income, and expenditure by both parties for a fair determination of maintenance was emphasized, and it was directed that such affidavits must be filed simultaneously after completion of pleadings, to prevent either party from gaining an undue advantage. Significantly, in paragraphs 77 and 78, the Court clarified that if the admitted income of the respondent is available on record, such as through salary slips or other documents, the Court may fix ad-interim maintenance even before the affidavits are filed,



to mitigate hardship. Further, in cases where there is delay or non-compliance in filing the requisite affidavits, and such delay results in hardship to the claimant, the Court is empowered to grant ad-interim maintenance after hearing the parties, thereby ensuring timely and need-based relief.

### **Law of Grant of Ad-Interim Maintenance: Summarised and Clarified**

25. In view of the above discussion, the legal position regarding grant of ad-interim maintenance, as per the *Kusum Sharma v. Mahinder Kumar Sharma* (*supra*) series of decisions, can be summarized as follows:

#### *Granting Ad-Interim Maintenance on the basis of admitted income of the respondent:*

- The Court is empowered to grant ad-interim maintenance based on the admitted financial capacity of the respondent, with the objective of avoiding undue hardship to the claimant pending final determination.
  - Where such admitted income is already available on record, for instance, through a salary slip or similar documentary evidence filed alongwith the pleadings, the Court may proceed to fix ad-interim maintenance immediately, even before affidavits of income and expenditure are filed.
  - In the absence of such documents, once the affidavit of



income, assets and expenditure is filed by the respondent, the Court may fix ad-interim maintenance based on the admitted income of the maintenance, without awaiting the final outcome of the application for interim maintenance.

*Grant of ad-interim maintenance in case of delay, non-compliance or defective affidavit:*

- If either party delays the filing of the required affidavit, submits an affidavit that is deficient or non-compliant, or withholds relevant information/documents, and such delay causes hardship to the claimant, the Court is not precluded from granting ad-interim maintenance. In such a situation, the Court may proceed to fix an appropriate ad-interim amount after hearing both parties, thereby ensuring that interim relief is not denied merely due to procedural lapses or delay in compliance.

26. Thus, in *Kusum Sharma v. Mahinder Kumar Sharma* (*supra*), it was directed that upon the filing of a maintenance petition, notice shall be issued to the respondent, who shall file a reply, and the pleadings shall be completed. Thereafter, both parties were required to simultaneously file affidavits of income, assets, and expenditure, to facilitate an informed and fair assessment of the claim. It was in this context that the Court permitted the grant of ad-interim maintenance, either on the basis of an admitted document,



such as a salary slip already available on record by way of pleadings, or on the basis of admissions contained in the respondent's income affidavit. In the absence of any such material, the Court was required to hear both parties before determining any ad-interim amount. Thus, the clear mandate was that an ex-parte ad-interim maintenance order, without hearing the respondent or without there being any material indicating his admitted income, was not to be passed by a court of law.

27. At this juncture, it is relevant to note that in *Rajnish v. Neha*: (2021) 2 SCC 324, the Hon'ble Supreme Court directed that Affidavit of Disclosure of Assets and Liabilities would be filed by the claimant alongwith the maintenance petition/interim maintenance application. Similarly, the respondent would file his Affidavit of Disclosure of Assets and Liabilities alongwith the reply. Thus, the directions issued in *Kusum Sharma v. Mahinder Kumar Sharma* (*supra*) stood, in effect, overruled to this extent.

28. **Therefore**, it can be safely held that once the Affidavit of Disclosure of Assets and Liabilities has been filed by both the parties, or even if the respondent has not filed the same along with his reply to the maintenance petition, but there are documents on record showing some admitted income of the respondent, the Court can grant ad-interim maintenance to alleviate the hardship of the claimant, pending its decision on the grant of interim maintenance and determination of its quantum.



29. However, **it must be clarified that ad-interim maintenance is not to be granted as a matter of routine in every case.** It is a discretionary relief, to be exercised judiciously by the Court only where the facts and circumstances so warrant. The very premise of ad-interim maintenance is to address urgent and immediate financial hardship faced by the claimant, particularly when the decision on the main application for interim maintenance is likely to take time. If there is sufficient material on record indicating the respondent's admitted income, or there is an unreasonable delay in the respondent filing the affidavit of assets and liabilities, and the claimant is left without any means of sustenance, the Court may justifiably step in to grant ad-interim relief after hearing both the parties. However, where no such urgency is demonstrated, nor there is anything on record that non-grant of immediate maintenance of sustenance will cause grave hardship to the petitioner, the Court must expedite disposing of application for interim maintenance, as per the directions in decision of *Rajnish v. Neha (supra)*, instead of granting ad-interim maintenance as a matter of routine.

**Whether ad-interim maintenance can be granted even in the absence of a specific application made to that effect?**

30. Firstly, this Court notes that the issue of whether filing a separate application is necessary for the grant of 'interim maintenance' was considered by a Coordinate Bench of this Court in *Inder Singh v. Sumitra: 2019 SCC OnLine Del 9485*. It was held



that the second proviso to Section 125(1) of Cr.P.C., which provides for the grant of interim maintenance, does not stipulate that a separate application is a pre-condition for such relief. The Court clarified that the third proviso, which prescribes a time-bound disposal of an interim maintenance application, must also be interpreted in light of the overall objective of the provision, i.e. to ensure that dependents who are unable to maintain themselves are not left without subsistence due to procedural delays. It was thus held that even in the absence of a specific application, the Court is empowered to assess and grant interim maintenance based on the facts of the case; insistence on a specific application for this purpose would defeat the beneficial and protective purpose of Section 125 of Cr.P.C., particularly where delay causes hardship to a dependent spouse or child. The observations in this regard are as under:

“12. Second proviso to sub section (1) to Section 125 Cr.P.C. stipulates grant of interim maintenance. Reading of second proviso does not in any manner indicate that making of an application seeking interim maintenance is a pre-condition for grant of interim maintenance.

13. The Third proviso to sub section (1) to Section 125 Cr.P.C. stipulates disposal of an application for grant of interim maintenance within a time bound manner.

14. If the second and third proviso to sub section (1) to Section 125 Cr.P.C are read keeping in view the very object of the statute, it shows that there is no requirement stipulated by the statute for making an application for grant of interim maintenance pending consideration of the petition under section 125 Cr.P.C. and the Court would be empowered to pass an order assessing interim maintenance even in a case where no such application has been filed by the person claiming maintenance. However, where such an application is made, the same would have to be disposed of by the Trial Court within



the time stipulated therein.

15. If a narrower interpretation were to be given to the provision i.e. that an application is a pre-condition for grant of interim maintenance, the same would militate against the very object of the scheme of providing maintenance to a dependant, who is unable to maintain himself/herself, where the person who has sufficient means has refused or neglected to maintain the dependant.

16. Keeping in view the beneficial object of the statute, it is held that the filing of an application seeking interim maintenance would not be a precondition for grant of interim maintenance pending consideration of the petition seeking maintenance under section 125 Cr.P.C.. It would be open to the trial court to grant interim maintenance, in the facts and circumstances of the case, pending consideration of the application for grant of maintenance under section 125 Cr.P.C.

17. I find no merit in the contention of the learned counsel for the petitioner that since respondent had withdrawn her application, she had forgone her right to claim maintenance. Said application was withdrawn for expeditious disposal but expeditious disposal has not happened. Two and a half years have passed since the withdrawal and the wife is without any maintenance.”

31. However, the Hon’ble Supreme Court, in the decision in *Rajnish v. Neha (supra)*, observed that a party claiming maintenance, whether as a spouse, partner in a civil union, live-in relationship, or common-law marriage, should file a concise application for interim maintenance, along with an Affidavit of Disclosure of Assets and Liabilities, as a mandatory requirement. The rationale was to enable the Court to make an objective and informed assessment of the financial capacities of the parties at the interim stage. Thus, the Hon’ble Supreme Court emphasized that interim maintenance cannot be granted in a vacuum and solely on the basis of



guess-work, and must be primarily based on the material placed before the Court through pleadings and affidavits from both sides.

32. Therefore, in view of the directions issued in ***Rajnish v. Neha*** (*supra*), it has now been mandated by the Hon'ble Supreme Court that a concise and specific application seeking interim maintenance should ordinarily be filed by the claimant, accompanied by the requisite affidavit of assets and liabilities.

33. At the same time, it is important to note that the decision of the Hon'ble Supreme Court in ***Rajnish v. Neha*** (*supra*) is primarily concerned with the grant of maintenance and interim maintenance, and nowhere in the judgment is there any specific reference to *ad-interim maintenance* – that is, maintenance granted during the pendency of an application for interim maintenance, often as a temporary arrangement to mitigate immediate hardship.

34. An argument has been raised before this Court that since ***Rajnish v. Neha*** (*supra*) mandates the filing of a formal application for interim maintenance, this requirement must be read as encompassing *ad-interim maintenance* as well. However, this Court finds itself unable to agree with such a proposition. The terms 'interim' and 'ad-interim' are not interchangeable, either in purpose or in their procedural context. While interim maintenance is granted after considering the pleadings and income affidavits of both parties, and hearing the rival contentions and appreciating the same, *ad-interim maintenance* serves as an immediate relief, which can be



awarded at an earlier stage, i.e. even before deciding the application for interim maintenance – which can take some months or at times years – purely to prevent immediate financial distress of the claimant, before the Court is in a position to adjudicate the interim maintenance application on its merits.

35. Indeed, the distinction between interim and ad-interim maintenance lies in the delay – and that distinction is vital. In *Rajnish v. Neha (supra)*, the Supreme Court itself noted that applications for interim maintenance should ideally be decided within a period of 4 to 6 months. It is within this interim period before the adjudication of interim maintenance application that the grant of ad-interim maintenance assumes its true significance.

36. Just as interim maintenance is granted as a temporary measure pending adjudication of the main petition for maintenance, ad-interim maintenance, as recognized in judicial precedents, serves as a temporary measure pending adjudication of the application for interim maintenance

37. Thus, where the record already contains some admitted income documents such as salary slips, or where there is unreasonable delay in filing of income affidavits by the respondent, the Court may, in the interest of equity, step in and grant ad-interim maintenance – **without there being any specific application for grant of ad-interim maintenance filed by the concerned party.** Accordingly, for determining ad-interim maintenance, the procedure laid down in



*Kusum Sharma v. Mahinder Kumar Sharma* (*supra*) would continue to govern the field, since till date, the observation regarding the same has neither been interfered nor set-aside by the Hon'ble Supreme Court.

### **Whether Ad-Interim Maintenance Is Payable from the Date of Filing of the Application or the Date of the Order?**

38. The next question requiring consideration is whether ad-interim maintenance is to be granted from the date of filing of the maintenance application/petition, or from the date of the order granting ad-interim maintenance itself. At the outset, it must be noted that the decision of the Hon'ble Supreme Court in *Rajnish v. Neha* (*supra*), while laying down comprehensive guidelines for maintenance proceedings, primarily deals with interim and final maintenance, and not ad-interim maintenance, which occupies a different procedural and factual context. The Hon'ble Supreme Court in the said decision noted that though Section 125 of Cr.P.C. gives discretion to the Court to either grant maintenance from the date of filing of application or from the date of order, it was directed that Courts should grant interim and final maintenance from the date of filing of the application/petition, thereby ensuring that the claimant is not prejudiced due to procedural delays. However, the directions in the said decision were premised upon a situation where pleadings have been exchanged, affidavits of assets and liabilities filed, and the matter is ripe for consideration, either at the stage of interim



maintenance, or after recording of evidence at the stage of final maintenance.

39. In contrast, as discussed above, ad-interim maintenance is granted much earlier in time, often at the initial stages of the proceedings, and is aimed at providing immediate financial assistance pending a further consideration of the claim for interim maintenance. It is by its very nature tentative, discretionary, and based on a *prima facie* assessment. Such assessment is based on a preliminary material placed before the Court. In such circumstances, to direct payment of ad-interim maintenance from the date of filing of the application – even when the matter has not yet been heard fully on merits, not even for the purpose of deciding interim maintenance – would result in imposing a financial burden for a past period without the benefit of adequate judicial examination or supporting material on record.

40. Further, the very aim behind granting ad-interim maintenance is to provide immediate financial help to the claimant until proper adjudication of the claim for interim maintenance, and not to retrospectively compensate the claimant. To grant such maintenance from the date of filing would, in effect, equate even ad-interim maintenance with interim maintenance, thereby erasing the distinction in both the process and purpose. This is neither the intent nor the function of ad-interim relief. Ad-interim maintenance, therefore, ought to be made operative from the date of the order, when the Court, after applying its mind *prima facie* at the initial stage itself, comes to the conclusion that immediate relief is warranted to



avoid hardship or destitution.

41. It is to be kept in mind that an order of ad-interim maintenance is passed by a Court, being unable to pass an order of interim maintenance either pending pleadings, delay caused by the parties, or due to heavy pendency etc. The applications moved by the petitioner are necessarily for grant of interim maintenance till the final petition for grant of maintenance is decided, which as per judgment of the Supreme Court in case of *Rajnish v. Neha (supra)* has to be granted from the date of filing of the petition/application. Therefore, necessarily since an order of ad-interim maintenance is being passed by the Court itself exercising its jurisdiction in view of the peculiar circumstances of a case and in absence of proper pleadings, it will have to be passed from the date of its order i.e. the date the Court exercises its jurisdiction.

42. Accordingly, this Court is of the opinion that ad-interim maintenance may be granted with effect from the date of the order passed by the Court.

### **The Decision**

43. In view of the factual matrix of the case and the discussion undertaken hereinabove, this Court is of the considered opinion that the learned Family Court committed no error in granting ad-interim maintenance to the respondent during the pendency of her interim maintenance application under Section 125 of Cr.P.C. The quantum of ₹6,000/- per month, assessed in light of the respondent's admitted



income of ₹17,907/- per month as a medical representative in a private company, is reasonable and cannot be said to be excessive or arbitrary.

44. Further, even in the absence of a formal application specifically praying for ad-interim maintenance, the grant of such relief cannot be faulted. As already held, ad-interim maintenance is a discretionary relief that may be awarded by the Court on a *prima facie* consideration of the material placed on record and the urgent financial needs of the claimant. As held above, there is no requirement in law mandating a separate written application for the same, and the learned Family Court acted within its jurisdiction in granting such relief.

45. However, the direction to make such payment from the date of filing of the application, rather than the date of the order, is not sustainable. Since ad-interim maintenance is a tentative relief granted at an early stage without full adjudication, directing its payment retrospectively, prior to the order, would not be justified. To that extent, the impugned order dated 24.05.2024 is required to be modified.

46. Accordingly, the impugned orders dated 24.05.2024 and 26.09.2024 are upheld to the extent they grant ad-interim maintenance of ₹6,000/- per month to the respondent, but are modified to the extent that such maintenance shall be payable from the date of the said order, i.e., 24.05.2024, and not from the date of



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filing of the application.

47. In above terms, the present petition is disposed of alongwith pending applications, if any.

48. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**JULY 01, 2025/vc**