

Reserved on : 18.01.2024
Pronounced on : 05.04.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.48615 OF 2013 (GM - FC)

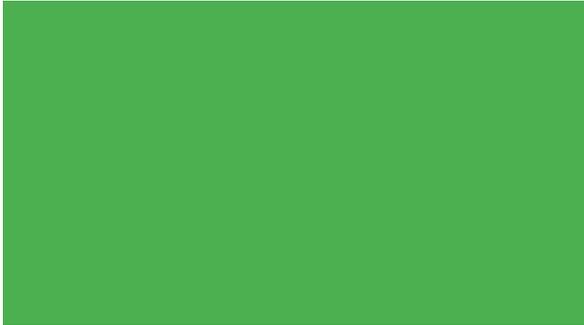
C/W

WRIT PETITION No.41607 OF 2017 (GM - FC)

WRIT PETITION No.41608 OF 2017 (GM - FC)

IN WRIT PETITION No.48615 OF 2013

BETWEEN:



(BY SMT.RADHIKA M., ADVOCATE)

... PETITIONER

AND:





... RESPONDENT

(BY SRI B.V.KRISHNA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 20.9.2013 PASSED ON THE MEMO FILED BY THE PETITIONER ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGLAORE IN M.C. NO.3014/2012 VIDE ANN-G; MODIFY THE ORDER DATED 30.11.2012 AND ENHANCE THE MAINTENANCE AMOUNT FROM RS.15,000/- TO RS.70,000/- PER MONTH BY ALLOWING I.A. NO.3 IN M.C. NO.3014/2012 ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGALORE VIDE ANN-D.

IN WRIT PETITION No.41607 OF 2017

BETWEEN:





... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:



... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN M.C.3014/2012 ON THE FILE OF THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DATED 10.08.2017 ON I.A.8 IN M.C.3014/2012 PASSED BY THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A BY ISSUING A WRIT IN THE NATURE OF CERTIORARI AND ALLOW THE SAID APPLICATION I.A.8.

IN WRIT PETITION No.41608 OF 2017

BETWEEN:



... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:



... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN EX.C.NO.152/2015 ON THE FILE OF THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DTD.10.8.2017 IN EX.C.NO.152/2015 PASSED BY THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

These cases arise out of M.C.No.3014 of 2012 pending before the Principal Family Court, Bangalore and parties to the lis in all these cases are common; they are husband and wife. Therefore, they are taken up together and considered by this common order. For the sake of convenience, the parties are referred to as per their ranking in the matrimonial case i.e., husband is referred to as the petitioner and wife as the respondent. Writ Petition No.48615 of 2013 is preferred by the wife.

2. The facts, in brief, germane are as follows:-

The petitioner and the respondent got married on 16-05-2011 and have a daughter born from the wedlock. The marriage between the two appears to have floundered and on the floundering of the said relationship, the husband prefers M.C.No.3014 of 2012 seeking annulment of marriage that had taken place between the two. The allegation of the husband was that the wife had left the matrimonial house on her own volition. The issue in the lis does not concern merit of the claim of the husband seeking annulment of marriage or defence of the wife. In the said petition, the wife files an application seeking interim maintenance under Section 24 of the Hindu Marriage Act, 1955. The concerned Court, after hearing the parties on the application, grants the wife interim maintenance of ₹15,000/- per month in terms of its order dated 30-11-2012. The wife then files a memo of calculation before the concerned Court on 08-07-2013 claiming arrears to be paid by the husband towards the maintenance so awarded. The concerned Court rejects the memo. The rejection of the memo forms the subject matter of challenge in Writ Petition No.48615 of 2013 coupled with a prayer to enhance

interim maintenance. During the pendency of the said petition, the husband/petitioner suffers a stroke resulting in 75% disability, due to which, he had resigned from his work and on the ground that the husband has not paid maintenance, to recover arrears of maintenance, the wife/respondent initiates execution petition seeking execution of the order of maintenance. The concerned Court, in terms of its order dated 05-02-2016, directs the father of the husband to pay arrears of maintenance. When that is not adhered to, a fine levy warrant and arrest warrant are issued against the husband on 12-07-2017 and 10-08-2017. This forms the subject in Writ Petition No.41608 of 2017. The other writ petition in W.P.No.41607 of 2017 is again preferred by the husband calling in question the order passed on 10-08-2017 on I.A.No.8 in M.C.No.3014 of 2012 whereby the application filed by the husband to recall the order of maintenance comes to be rejected. Therefore, Writ Petition No.41607 of 2017 is preferred by the husband challenging the rejection of I.A.No.8 seeking recall of the order granting maintenance and Writ Petition No.41608 of 2017 challenges the order of issuing fine levy warrant and arrest against the husband.

3. Heard Sri B.V.Krishna, learned counsel appearing for the husband/petitioner and Smt M. Radhika, learned counsel appearing for the wife/respondent.

4. The learned counsel appearing for the wife/respondent would vehemently contend that the husband/petitioner has abandoned the wife at the time when she was carrying the child. She has maintained herself all along and the husband has refused to maintain either the wife or the child, and therefore, seeks appropriate order enhancing grant of maintenance.

5. Per-contra, the learned counsel appearing for the husband/petitioner would contend that maintenance today is a dream to be paid by the husband as he has suffered disability of 75% which does not get him any job. He is no longer an able bodied person to search for job and maintain the wife and the child.

6. In reply the counsel for the wife/respondent would submit that the father of the petitioner has several properties. Therefore, the father could maintain the wife and the child of the petitioner

and they cannot be left in the lurch. Both the petitioner and the respondent have placed reliance upon certain judgments which would bear consideration in the course of the order.

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

8. The afore-narrated facts are not in dispute. The relationship between the two and the birth of girl child from the wedlock are all a matter of record. The genesis of the issue is on the husband filing a petition seeking annulment of marriage in M.C.No.3014 of 2012 in which the wife/respondent files an application seeking interim maintenance. The Court considering the application and submissions of both the parties, grants interim maintenance by the following order:

"....

4. **Point No.1** & 2:- *Main petition is of the husband seeking divorce from the respondent on the ground of cruelty (U/sec. 13 (1) (1a) of the Hindu Marriage Act). On service of notice of this petition, the respondent appeared before this Court personally on 10/10/2012 and later filed application U/sec. 13 of the Family Courts Act on the adjourned date and*

she is represented by advocate. On the same date, this IA has been filed by the respondent. The matter came to be posted for objections to IA No.3 as well as for the parties to go to the Bangalore Mediation Centre for the purpose of mediation. However, it is submitted by the advocate for the respondent that there is urgency for the respondent for disposal of IA No.3 as she is in advanced stage of pregnancy. Advocate for the applicant/respondent has addressed oral arguments. Advocate for the opponent/petitioner apart from addressing oral arguments has filed written arguments also on this IA No.3. Opponent/petitioner has produced some documents along with the memo. The applicant/respondent admits her relationship with the opponent/petitioner as his wife. (For the sake of convenience, the petitioner is referred to as the husband and the respondent is referred to as the wife). The husband admits that the wife is in advanced stage of pregnancy. The documents and other records produced by the husband go to show that the wife has filed police complaints against the husband etc... Some of the records have been produced by the husband to show that he has concern about the health of the wife and he has spent substantial amount for her medical expenses etc., **The husband has stated that his monthly salary as per the Salary Slip is Rs.76, 371/-.** As per the husband, he has the other liabilities to look after his aged parents and has to make payment of rent amount in respect of independent residences for the wife as well as his parents. Now it will suffice, for the sake of arriving at conclusion as to what amount the wife is entitled to interim maintenance, to take into consideration the salary income of the husband. Looking to the status of the husband and the status of the wife that was enjoyed by her during her stay with the husband, I am of the opinion that Rs.15,000/- per month will be the reasonable amount for maintenance of the wife pending final disposal of the main petition Rs. 10,000/- appears to be the reasonable amount towards litigation expenses. For the foregoing reasons, I proceed to pass the following:-

ORDER

IA No. 3 of the respondent is partly allowed.

The petitioner/husband is hereby directed to pay to the respondent/wife Rs.15,000/-per month towards interim maintenance pending final disposal of the main petition. The petitioner/husband is further directed to pay the Rs.10,000/- towards litigation expenses."

(Emphasis added)

The Court grants the wife ₹15,000/- per month as interim maintenance and ₹10,000/- towards one time litigation expenses. This is not paid by the husband. The wife/respondent files a memo of calculation before the concerned Court seeking huge arrears from the hands of the respondent. This comes to be rejected by the concerned Court in terms of the order dated 20-09-2013. This has driven the wife/respondent to this Court in Writ Petition No.48615 of 2013. The issue now would be, whether the husband should be directed to pay maintenance to the wife and the child, to which certain facts need to be noticed.

9. The husband was employed in a company by name Textron India Private Limited. During his employment, the petitioner suffers a stroke and the disability is identified as Chronic Neurological Condition and is assessed at 75%. The assessment is by NIMHANS, Bangalore and the husband is also issued a disability certificate

based upon the assessment by NIMHANS. The disability certificate reads as follows:

*"Department of Empowerment of Persons with Disabilities,
Ministry of Social Justice and Empowerment, Government of India*

**Disability Certificate
Issuing Medical Authority, Bengaluru Urban,
Karnataka**

PHOTO

Certificate No.: KA1891219770276312 Date: 20/01/2023

*This is to certify that I/we have carefully examined Shri **Pankaj Singh Sengar**, Son of Shri **Rajendra Singh Sengar**, Date of Birth **24/09/1977**, Age **45**, Male, Registration No. **2918/00000/2207/1531923**, resident of House No. **Flat No. L1-116, Sowparnika Phase 1. Sarjapura - Attibele Road, Bidarguppe - 562107**, Sub District **Anekal**, District **Bengaluru Urban**. State / UT **Karnataka**, whose photograph is affixed above, and I am/we are satisfied that:*

(A) *He is a case of **Chronic Neurological Conditions***

(B) *The diagnosis in his case is **Right Hemiparesis with cognitive disfunction and Aphasia***

(C) *He has **75%**(in figure) **Seventy Five** percent(in words) Permanent Disability in relation to his RIGHT UPPER LIMB, RIGHT LOWER LIMB as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPWD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018).*

The applicant has submitted the following document(s) as proof of residence:

Nature of Document(s): Registered Sale/Lease Agreement

Signature/Thumb Impression of the Person with Disability

Sd/-

Signatory of notified Medical Authority Member(s)"

The condition of the husband is a Chronic Neurological disability with cognitive disfunction and is said that he is unable to walk even. After suffering the said disability the petitioner submits his resignation to his employment. The letter of resignation reads as follows:

***"Name: Pankaj Sengar
Employee ID: 1000840188***

Sub: Resignation acceptance Letter

This refers to the email dated 22 May 2015, sent by Priyanka Sengar (your sister) on your behalf, resigning from the services of the company and the subsequent discussions we had over phone.

We hereby inform you that your resignation, under reference, has been accepted by the management with regret and you will be relieved from the services of the company with effect from 31 May 2015.

We draw your attention to your continuing obligation of confidentiality with respect to any proprietary and confidential information of Textron that you may have had access to during the course of your employment. As a part of the separation process, we are attaching the exit

documents. Please sign on these documents and send it back to the undersigned as soon as possible to expedite the full & final and relieving process.

We thank you for your valuable contributions and wish you a speedy recovery. Do contact us in future to explore the job opportunities. Get well soon.

Wish you all the very best.

Thanking You,

*Yours sincerely, For **Textron India Private Limited***

(Emphasis added)

The petitioner is relieved from service of the Company with effect from 31-05-2015. Prior to that on account of continuous absence of the husband, he was placed on loss of pay from 16-12-2013 till 09-07-2014. This communication reads as follows:

"To Whom It May Concern

Dear Sir/Madam,

This is to certify that Pankaj Singh Sengar is an employee at Textron India Private Limited.

*Date of Joining : 14th March 2011
Designation : Technical Specialist
Employee ID : 1000840188*

Employee is on loss of pay from 16th December 2013 till date and the letter has been issued for insurance purpose.

Yours sincerely.

For **Textron India Private Limited**

Sd/-

Reshma B S

Sr.Executive – HR Ops”

(Emphasis added)

Therefore, on and from the husband suffering disability he has remained outside employment. The State Government has issued a disability certificate as is required in law. Government of India has also issued such certificate which is quoted *supra*. Therefore, it is an admitted fact that the husband suffers from a disability which is to the tune of 75% and takes away all the badge of the husband to be an “**able bodied man**” as disability is admitted.

10. The husband files an application seeking recall of the order granting interim maintenance. This is rejected on the plea of the wife/respondent that the husband/petitioner has recovered from illness and now he is an able bodied person. This is the challenge in Writ Petition No.41607 of 2017. The wife does not stop at that. She initiated execution petition against the husband contending that the father of the husband had to pay her the maintenance and to the child. The husband is projected to be represented by the father and accordingly execution is preferred.

In the execution petition, the Court issues fine levy warrant against the husband for non-payment of maintenance. Therefore, all these petitions are before this Court.

11. The only issue that false for consideration is,

"Whether the husband is to be directed to pay maintenance and the order passed by the concerned Court directing issuance of arrest warrant or fine levy warrant should be sustained?"

12. What is the status of the wife/respondent is also necessary to be noticed. The admitted qualification of the wife is that she has Masters in Computer Application and Pre-MCA completion. The wife is working as a teacher in several schools. The resume of the wife insofar as it is relevant reads as follows:

"... .."

Project Work

Completed Six months project on "**Personal Information Management system**"

Role: Initial role was for initial understanding of the project along with coding of the project for complete behavior and integrating it with "**BAAN ERP**".

Technology Used: Project coding specification:

Front End: Oracle Developer.
Backend server: DB2
Intermediate Development: JSP

Education Qualification

- **Masters of Computer Application with 67.18%.**
- Certificate in computing i.e.: **CIC** with 60%.

Technical Proficiency:

Languages	:	C++/JAVA/Oracle
Web Technologies	:	JSP/HTML
Operating Systems	:	Windows 98/2000/XP
Databases	:	SQL Server
Middleware	:	Apache/Tomcat

Employment History

- Official training of six month from **INDIAN TELEPHONE INDUSTRY (I.T.I MANKAPUR)**
- **Pre MCA Completion:**
- Teaching Experience as a **Computer Instructor** from **KENDRIYAVIDYALAYA I.T.I Mankapur.**
- Teaching as a **Computer Teacher** in **Fatima Convent School Mankapur.**
- Teaching as a **Computer Teacher** in **Fatima Convent School GONDA.**

.... .."

The situation now is, the wife is qualified and is even working and earning certain amount of money. Whether that would be enough or not is a different circumstance. The issue is whether the husband can be directed to pay maintenance.

13. On a few occasions, this Court directed the parties to appear before the mediation centre and settle the issue. Every time it was only the father of the husband appears and the husband did not. Therefore, the husband also was directed to be present. Photographs of the husband are produced before Court. The husband walks with the help of crutches. Therefore, in the considered view of the Court, no direction can be issued to the husband to pay maintenance to the wife/respondent as he is no longer an **able bodied man** to search for employment and pay maintenance to maintain the wife and the child.

14. The learned counsel for the wife/respondent projects several grievances against the husband. It is the submission of the wife/respondent that the husband is a fraud and he has fraudulently projected himself to be a disabled man *inter alia*. These would all

be in the realm of evidence. This Court, for the present, would go by the disability certificate issued by both Government of India and State Government which is based upon the assessment of disability by NIMHANS. If the husband is incapable of earning due to disability, it is highly understandable as to why and how the wife is insisting on payment of maintenance looking at the admitted disability of the husband.

15. It becomes germane to notice the judgment of the Apex Court in the case of **RAJNESH v. NEHA**¹ which dealt with the grant of maintenance and its forms and hues. The Apex Court at paragraph 93 has held as follows:

"(e) Serious Disability and ill health:

93. Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance."

(Emphasis supplied)

The Apex Court observes that serious disability or ill-health of a spouse who would require constant care and recurring expenditure

¹ (2021) 2 SCC 324

would also be a relevant consideration while quantifying maintenance. The High Court of Calcutta in a similar circumstance in a judgment rendered in **INDRANIL ADHIKARI v. ARUNIMA ADHIKARY**² has held as follows:

“

12. *That both the Courts failed to appreciate the fact that the petitioner is not an able bodied person and has no earning capacity.*

13. *The Ld. Appellate Court should have considered the disability/handicap certificate and on that basis, should have set aside the said order dated 25.04.2018 without putting any condition of payment of 25% arrears of maintenance but failed to do so.*

14. *The impugned order dated 25th April, 2018 passed by the Trial Court/Executing Court is illegal, bad in the eye of law, perverse and without jurisdiction and as such is liable to be set aside unconditionally.*

15. *The impugned order dated 25.04.2018 is also liable to be set aside and the entire proceeding of the Misc. Execution Case No. 281/2015 pending before the Court of Ld. 5th Judicial Magistrate at Howrah is liable to be quashed.*

16. *In spite of the opposite party being represented on earlier occasions, they have failed to appear at the time of hearing.*

17. *The Contention of the petitioner is that he has met with an accident and has in support filed a copy of the disability certificate dated 27.10.2018, wherein it appears **that the petitioner/husband has been diagnosed with 60%***

² 2023 SCC OnLine Cal 3318

permanent disability (left foot) and he cannot travel with assistance of escort.

18. *But the present revision is against the order of the appellate court in an appeal against an order passed by the Magistrate in a Misc Execution Case in a proceeding under the Protection of Women from Domestic Violence Act.*

19. *An execution is filed to execute the order in a principle case. The court while taking steps to execute an order of a court only proceeds to execute the order and does not decide the validity of the order.*

20. *The order which was being executed is dated 25.04.2018 in an execution proceedings being Misc Execution Case No. 281/2015.*

21. *The disability certificate has been issued on 27.10.2018.*

22. *Admittedly there is no dispute regarding the disability of the petitioner. It is also noted that till his accident, the petitioner had been paying maintenance diligently.*

23. *But any prayer for modification etc. in such proceedings due to subsequent developments and change in circumstances is to made by a separate proceedings (herein Misc 127 of 2018 filed by the petitioner praying for revocation and cancellation of the maintenance order is pending before the learned Judicial Magistrate, 5th Court, Howrah) as per the relevant provisions of law, which the court is to consider in accordance with the guidelines of the Supreme Court in such proceedings (Rajnish v. Neha, (2021) 2 SCC 324).*

24. *The order under revision is thus modified to the extent that the direction for payment of 25% of the arrear maintenance is set aside."*

(Emphasis supplied)

The Calcutta High Court was considering the disability of a husband at 60%. What was challenged by the husband was a condition to pay 25% of the arrears in the execution case. The said condition was set aside on the ground that the husband is no longer an able bodied man.

16. It is trite that while considering grant of maintenance all the factors will have to be taken note of. Maintenance cannot spring in thin air. The primary factor is whether the husband is an able bodied man to maintain the wife or the child. In the teeth of the disability of the petitioner who also suffers from cognitive dysfunction, the trial Court ought to have allowed the application seeking recall of the order of maintenance and restricted the recall up to the date on which the husband became disabled. As the disability happens in the month of December, 2013, by then there was already arrears to be paid by the husband. The Court ought to have taken at least that date into consideration. Today the husband/petitioner is wanting maintenance to himself and not in a position to pay maintenance to the wife/respondent.

17. The learned counsel for the wife/respondent has placed on record a memo of calculation. The memo depicts that as on today, the maintenance that is to be paid by the husband is a whopping sum of Rs.19,04,000/-. The duration of maintenance covers the period of disability of the husband right from its beginning till today, except for a few months prior to the husband getting disabled. If this would be directed to be paid, at the behest of the wife, it would undoubtedly leave the husband/petitioner bleeding, apart from the agony that he is living with of suffering 75% disability. By no means he can be depicted to be an able bodied man to direct that he should search for such avocation that would enable him to maintain the wife and the child. The wife is earning, even if not earning is completely qualified and is capable of earning. Therefore, the orders that are now sought to be passed by the wife cannot even be considered to be passed.

18. It is projected that the father of the husband/petitioner has several properties and is able to pay the wife and the child maintenance. This submission cannot be accepted at this juncture. As the wife is said to be earning and maintaining herself to-day and

for the last 10 years there is no maintenance paid; obviously the wife who is qualified is working and earning. Insofar as grant of maintenance to the child is concerned, I deem it appropriate to observe that the father of the husband/petitioner should take care of the grandchild's necessities including her education and other necessities of her career and all walks of life of the grandchild. This is the only relief that the wife/respondent is entitled to, in the case at hand. The claim of the wife for enhancement of maintenance to 70% is, on the face of it, untenable and is rejected. The fine levy arrest warrant issued by the executing Court/Trial Court requires to be set aside. Likewise the application filed for recalling the order dated 30-11-2012 is to be allowed in part, up to the date when the husband/petitioner suffered disability i.e., December, 2013. Therefore, till the said date the wife/respondent is entitled to such maintenance, which the father of the husband/petitioner can pay, not to the wife but to the child.

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition No.48615 of 2013 stands rejected however, observing that arrears of maintenance till the date of disability, shall be fulfilled by the father of the husband/petitioner.
- (ii) Writ Petition No.41607 of 2017 is allowed in part, again restricting the order of maintenance to the date on which the husband/petitioner suffers disability.
- (iii) Writ Petition No.41608 of 2017 is allowed. The order passed in Execution Petition No.152 of 2015 in terms of its order dated 10-08-2017 stands quashed.

Consequently, pending applications, if any, also stand disposed.

**Sd/-
JUDGE**

bkp
CT:MJ