



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-4423-2023 (O&M)

Date of Decision : 25.02.2025

Ambrish Raja Garg ... Petitioner(s)

Versus

Kritika Garg ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ankush Singla, Advocate for the petitioner.

Mr. Pradeep Virk, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 19.07.2023 (Annexure P1) whereby an application dated 25.03.2022 filed by the respondent-wife in divorce proceedings has been allowed.

2. Brief facts relevant to the present *lis* are that the petitioner herein filed a divorce petition under Section 13 of the of the Hindu Marriage Act, 1955 on the ground of cruelty. During the evidence of the petitioner, an application was filed by the respondent for depositing diet money of witnesses to produce the records for putting the same to the witnesses of the petitioner. Vide the said application, the respondent sought to summon the following witnesses alongwith the records :

“i. Clerk concerned, State Bank of India, Partap Nagar, Bathinda, alongwith original records, documents for opening account no 32286134029 in the name of Mr. Ambrish Raja son of Sh. Shyam Murari Garg and also

duly attested/certified copy of statement of account from the date of opening of account till date.

ii. Clerk concerned, State Bank of India, Sector 68, SAS Nagar, Mohali, alongwith original records, documents for opening account no.30768912466 in the name of Mr. Ambrish Raja son of Sh. Shyam Murari Garg and also duly attested/certified copy of statement of account from the date of opening of account till date.

iii. Clerk concerned, Federal Bank, Goyal Complex, Building no.3029, G.T.Road, Bathinda, alongwith original records, documents for opening account no.213300100019336, 21330100008644 in the name of Mr. Ambrish Raja son of Sh. Shyam Murari Garg, Bathinda and also duly attested/certified copy of statement of account from the date of opening of account till date, also attested copies of complete statement of accounts of all auto-sweep accounts prepared out of this account from the date of beginning of this account and also copies of all account statements of all FDRs in the name of Mr. Ambrish Raja in your bank AND also all original vouchers of all credit and debit entries of these accounts.

iv. Incharge/Partner of M/s Star Imaging Hospital (Dr. Raja's Vein Clinic), Near H.P. Petrol Pump, Bhatti Road, Bathinda, along with all Original Account books of firm i.e. ledger, cash book, journal, bills books, receipt books, patients register, all complete audit reports and other records maintained for preparing income tax returns, for the period from beginning of firm till date, All Original partnership deeds, dissolution deeds, change of constitution deeds, records of employees, register regarding different tests of all kinds of M/s Star Imaging Hospital (Dr. Raja's Vein Clinic) for the period from

beginning to till date, all bills of purchase of machinery/all medical equipment's of M/s Star Imaging purchased or taken on lease till date.

v. *Shyam Murari Garg son of Sh. Ved Parkash Garg, r/o H.No. 402, Ganpati Enclave, Dabwali Road, Bathinda along with his all bank account passbooks, statements of account for the period 2018 to till date, last pay drawn records, all sale deeds and title deeds regarding the properties purchased by him in his name or in the name of his wife Parveen Lata.*

vi. *Parveen Lata wife of Sh. Shyam Murari Garg son of Sh.Ved Parkash Garg, r/o H.No.402, Ganpati Enclave, Dabwali Road, Bathinda along with her all bank account passbooks/statements of account for the period 2018 to till date, all sale deeds and title deeds regarding the properties purchased by her, partnership deeds, dissolution deeds, change of constitution deeds of all concerns in which she is partner and also all lease deeds of properties which have been rented out by her, including property situated on Bhatti Road, Bathinda in which Star Imaging hospital is being run.*

vii. *Records Keeper, Judicial Records Room, SAS Nagar, alongwith original file of Civil Suit No.4 of 12.01.2018, titled as Dr. Ambrish Raja Garg Vs. Kritika Garg, Sat Pal Bansal, Sidharth Bansal, for mandatory injunction decided by Hon'ble Court of Smt. Ruchi Swapan Sharma PCS, Addi. Civil Judge (SD) S.A.S. Nagar, vide judgment and decree dated 30.11.2019.”*

The said application was allowed vide the impugned order dated 19.07.2023.

Aggrieved by the same, the present revision petition has been filed by the petitioner.

3. Learned counsel for the petitioner would contend that during the evidence of the petitioner the present application for summoning witnesses by the respondent could not have been filed as there is no such provision in law. It is further the contention that in case the respondent intended to lead her own evidence prior to the petitioner leading his evidence, resort had to be made to Order 18 Rule 1 of the Code of Civil Procedure, 1908 which is not the case in the present petition.

4. *Per contra* the learned counsel for the respondent would contend that certain documents were required to be put to the petitioner and therefore the necessity of summoning the witnesses alongwith the record. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Rajnish Vs. Neha & Anr. [2021 (2) SCC 324]** to contend that the parties can serve interrogatories and seek relevant documents from the opposite party under Order 11 CPC incase the information contained in the Affidavits of Disclosure are wanting in any manner.

5. I have heard the learned counsel for the parties.

6. In the present case, at the time of the evidence when the evidence of the petitioner was going on, the present application was filed by the respondent for depositing of diet money to produce the aforementioned witnesses. A perusal of the application reveals that the application itself is totally bereft as to why the said witnesses were required to be summoned at that stage. Except for stating that diet money was being deposited and the record of each of those witnesses were to be brought, nothing else has been mentioned in the application. Strangely though, in the order it has been

mentioned that the record intended to be summoned would make it clear that the parents of the petitioner were having their regular income worth Lakhs. It was further held that the record goes to the root of the case. It was further observed that in order to get admission of facts and allegations made in the case, in the pleadings by the petitioner and to remind his memory by showing the said original record, it was necessary to summon the record. It is not clear as to from where on what basis the said observations have been made when the same are woefully missing in the application itself.

7. Reliance by the learned counsel for the respondent on the case **Rajnesh** (supra) is also totally misplaced. The said judgment by the Hon'ble Supreme Court pertains to grant of interim maintenance under Section 125 of the Code of Criminal Procedure, 1973. Their Lordships in the said case while dealing with the situation on the failure to file an affidavit within the prescribed time held as under :

“81. 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 11 of the CPC; On filing of the Affidavit, the Court may invoke the provisions of Order 10 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 under Section 340 Cr.P.C., 1973 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.”

In para 81, it was observed that if apart from the information contained in the Affidavits of Disclosure, any further information is required, the Court may pass appropriate orders or interrogatories could be served.

8. The present is not an application under Section 125 CrPC. Rather, the evidence was going on in the main divorce petition wherein the present application was filed. It is not the case of the respondent that she had made a prayer under Order 18 Rule 1 CPC to lead her evidence at the first instance which was denied. Rather the only the case set up in the application (Annexure P2) is that certain witnesses were required to be summoned. No reason nor any explanation is forthcoming from the said application. The learned counsel for the respondent is unable to point to any provisions of law under which the said application would be maintainable.

9. Learned counsel at this stage states that his application for summoning the said witness during his evidence was dismissed vide order dated 09.09.2024 due to the stay granted by this Court. It is however admitted that the order 09.09.2024 has not been challenged. The learned counsel states that the said order dated 09.09.2024 be also set aside. In the absence of any challenge to the said order this Court cannot set aside the order dated 09.09.2024. Needless to say the respondent is always at liberty to challenge the order dated 09.09.2024 in accordance with law.

10. In view of the above, the impugned order dated 19.07.2023 is not sustainable in law and the same is accordingly set aside. The present

revision petition is allowed. Pending applications, if any, also stand disposed off.

11. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

25.02.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO