



Misc(J) Case No. 6/2024 [TS(M) Case No. 145/2023]

Present: Smti. Mili Hussain, LLM, AJS,
Addl. District Judge(FTC), Sonitpur, Tezpur.

O R D E R

17-07-2026

Both sides are represented. As I have heard both the sides already, by this order this Misc(J) case would be disposed of.

The pleaded case of the petitioner shows that the petitioner and O.P. got married on 27-02-2015 in accordance to Hindu rites and rituals in presence of family members, relatives and of their well wishers. After marriage, the petitioner(wife) was taken to her matrimonial home and started conjugal life. The O.P. is a School teacher at [REDACTED] [REDACTED] earning Rs.35,000/- (Rupees thirty five thousand) only per month. Further, it is pleaded that the O.P. has landed properties and sufficient means to maintain the petitioner, but he did not pay even a single penny to the petitioner. The O.P. willfully and intentionally neglected and refused to maintain his wife (petitioner) inspite of having sufficient means. It is stated *inter alia* that one MR Case 33/2022 is still pending against the O.P. the petitioner has no independent source of income. Hence, this prayer u/s 24 Hindu Marriage Act for maintenance pendent lite to the tune of Rs.20,000/-(Rupees twenty thousand only) per month and Rs.150,000/-



Misc(J) Case No. 6/2024 [TS(M) Case No. 145/2023]

(Rupees one lakh fifty thousand only) as cost of proceeding.

The pleaded case vide written objection of O.P.(husband) shows that according to the O.P, divorce between the parties is only viable solution. That he used to send Rs.3000/- to 4000/- per month to the petitioner, but he has stopped the same when he received notice in MR Case No.33/2022, which is pending before learned JMFC, Tezpur. According to the O.P, the petitioner is a graduate in Arts and earns approximately Rs.15,000/- to Rs.20,000/- per month by providing tuition in all subjects, to students from Class-IV to Class-IX ,with each batch consisting of more than 15 to 20 students. That the petitioner has concealed the fact that her mother is a retired High School teacher receiving her pension and also receiving her late husband's pension which amounts to Rs.1 lakh per month in total. It is contended that the O.P. earns Rs.31,901/-(Rupees thirty one thousand nine hundred one only) per month as salary. That he pays Rs.15,332/- per month as EMI for the loan. The remaining Rs.16,159/- only is required to maintain the family members and to cover other necessary expenses. Additionally, he has to bear the salary of a maid to take care of his elderly parents. Thus, the O.P.



Misc(J) Case No. 6/2024 [TS(M) Case No. 145/2023]

prayed for dismissal.

In light of above pleadings it is apt to reiterate Section 24 of Hindu Marriage Act reproduced:

"24. Maintenance pendent lite and expenses of proceedings.- Where in any proceeding under this Act, it appears to the court that either the wife or he husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceedings, such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

Hon'ble Supreme Court, in the decision in **Rajnesh v. Neha (2021) 2 SCC 324**, laid down the law to enable the Court to make an objective and informed assessment of the financial capacities of the parties. Thus, the Hon'ble Supreme Court emphasized that maintenance cannot be granted in a vacuum, 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.

It appears from the pleaded case of the petitioner that she has no independent source of income of her own. The O.P has taken plea in his



Misc(J) Case No. 6/2024 [TS(M) Case No. 145/2023]

written objection that the petitioner earns for tuition classes.

It further appears from her affidavit of assets and liabilities that since 28.2.2020 she is residing at her parental house. She did not write any thing under the column whether any maintenance under the DV Act/BNSS/HMMA/HAMA has been awarded against the O.P but has reflected about the pendency of MR 33/22. However, vide order dated 02.7.26 in the Case Record, submission of the petitioner side reflected that in the MR 33/22 Rs. 8000/- maintenance awarded in her favour. It can be understood that after filing of her affidavit of assets and liabilities that order might have been passed. Vide her affidavit of assets and liabilities, the O.P is a Govt School teacher earning Rupees 50,000/- per month salary.

Vide her pleaded case and supportive affidavit of assets and liabilities submitted by the petitioner she has no income of her own. It appears that OP has disclosed his quantum of monthly income in his affidavit as Rs 38,424/- per month. He has shown Rs 5000/- as interim maintenance awarded against him already. Nevertheless, he is a a fit person (as appears from case Record) and is obliged to maintain his wife



Misc(J) Case No. 6/2024 [TS(M) Case No. 145/2023]

who is not having income of her own. It appears that vain effort made by him to avoid his obligation stating about his loan liabilities and also by stating that the petitioner is a B.A pass and is a home tutor taking tuition classes.

Hon'ble Apex Court in **SLP (CRL.) NO.15662 OF 2025 Deepa Joshi versus Gaurav Joshi** held "The obligation of the husband to maintain his spouse is a primary and continuing duty, which must be discharged in a manner that enables the wife to live with dignity and in a standard commensurate with that enjoyed during the subsistence of the marriage. Viewed thus, deductions on account of asset-generating repayments cannot be permitted to substantially dilute the respondent's real earning capacity for the purpose of determining maintenance."

Hon'ble Supreme Court ruled that a husband cannot escape his legal liability to pay maintenance simply because his wife holds professional degrees. The potential to earn cannot be treated as actual financial independence. No convincing proof could be placed by the O.P that the petitioner is an earning wife. [relied on **Rajnish Vrs Neha (2021) 2 SCC 324** and **Manish Jain Vrs Akansha Jain (2017) 15 SCC 801**]

The application for maintenance pendent lite is purely to prevent immediate financial distress of the claimant and ultimately it merges with the final order.



Misc(J) Case No. 6/2024 [TS(M) Case No. 145/2023]

It appears from the case record, tenure of leading conjugal life at matrimonial home by the petitioner is about five years where the petitioner has no income of her own and is now residing at her parental place. Standard of living during covertures, is also considered as reflected vide materials in the case record along with the fact that maintenance has been ordered in another proceeding against the O.P. Albeit this Court is of opinion that the O.P cannot shirk his responsibility to maintain his wife saying that she is a BA pass woman. Petitioners prayer comes under Article 16(3)/39 of our Constitution too. It is admitted position during hearing, that no certified copy of final maintenance order in any proceeding against the O.P., placed on record by any of the parties; although one certified copy of order showing direction to pay interim maintenance of Rs 5000/- is found tagged to C.R., in MR 33/22.

Section 24 of the Hindu Marriage Act, 1955, clothes the court to awards pendente lite maintenance to ensure that a spouse without sufficient independent income is not economically disadvantaged during legal proceedings. The provision is gender neutral and need-based provision designed to cover essential living expenses and litigation. Taking into consideration,



Misc(J) Case No. 6/2024 [TS(M) Case No. 145/2023]

the facts situation highlighted above, without touching merit in the case, as a temporary arrangement till decision in the case, the O.P (husband) is directed to pay the petitioner Rupees Four thousand only (Rs 4000/-) per month for her, effective from the date of filing of the maintenance prayer u/s 24 of the Act. Further, the O.P is directed to pay Rupees Twenty Thousand (Rs.20,000/-) only as expenses of the proceeding.

O.P is to clear the arrear with the expenses of proceeding within three months.

With above direction, this Misc case is disposed off.

Addl. District Judge (FTC),
Sonitpur, Tezpur