



FAO-3251-2021, FAO-1446-2023 &
TA-184-2023

VIKAS SURI, J.

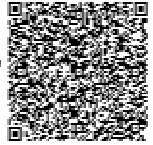
1. Through this common judgment, we propose to dispose of FAO-3251-2021 titled as “*Rishi Kumar Sharma vs. Smt. Lata @ Hem Lata*”; FAO-1446-2023 titled as “*Hem Lata Sharma vs. Rishi Kumar Sharma and others*”; and TA-184-2023 titled as “*Hem Lata Sharma vs. Rishi Kumar Sharma and others*”. All the three cases are arising from matrimonial discord between the appellant-husband and respondent-wife and with the consent of the parties are being heard together and decided by a common judgment.

2. The facts in brief, for convenience, have been marshalled from all the three cases but each case is being discussed individually.

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3. This appeal has been preferred under Section 19 of the Family Courts Act, 1984 (for short, the ‘Act of 1984’) by the husband, aggrieved by the order dated 17.09.2021 passed by the learned Principal Judge, Family Court, Sirsa whereby an application filed by the appellant-husband seeking permission to withdraw his statement suffered before the National Lok Adalat on 10.04.2021, has been dismissed.

4. Briefly stated, sans unnecessary details, marriage of the appellant and respondent was solemnized on 08.12.2010 and no child has been born from the said wedlock. The appellant-husband filed a petition under Section 13 of the Hindu Marriage Act seeking dissolution of the marriage by a decree of divorce, on 23.12.2011. In the said petition, an *ex-parte* decree of divorce was passed by the learned Additional District Judge,



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Sirsa, vide judgment and decree dated 08.01.2013 (Annexure P-1). The respondent-wife moved an application under Order 9 Rule 13 CPC for setting aside the *ex-parte* proceeding order dated 12.11.2012 and the final *ex-parte* judgment and decree dated 08.01.2013.

4.1 During the pendency of the said proceedings, a compromise was effected between the appellant and the respondent, which was taken on record as Ex.C-1. Owing to the compromise, the respondent moved another application seeking to withdraw her application for setting aside the *ex-parte* proceedings/judgment and decree. A copy of the supra compromise Ex.C-1 has not been placed on record before this Court by either of the parties. In view of the statement suffered by the applicant-wife and the compromise Ex.C-1 arrived at between the parties, the former application dated 08.10.2013 was ordered to be dismissed as withdrawn vide order dated 10.04.2018 (Annexure P-4).

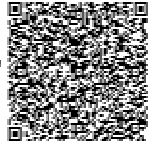
4.2 Earlier thereto, the respondent-wife had filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the 'Act of 2005') on 19.09.2013, along with an application under Section 23 of the *ibid* Act, for interim relief. The said application for interim relief was allowed vide order dated 04.10.2017 passed by the learned Judicial Magistrate First Class, Bathinda, and the husband (appellant herein) was directed to pay Rs.20,000/- per month to the wife for her maintenance from the date of the application. It was further ordered that the entire arrears of maintenance be paid by 15.11.2017, i.e., the then next date of hearing in the aforesaid case.



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4.3 The respondent-wife had filed an application under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C) on 04.01.2016, wherein the learned Chief Judicial Magistrate, Bathinda, vide order dated 09.09.2016, awarded interim maintenance at the rate of Rs.20,000/- per month from the date of filing of the said application. Aggrieved by the said order, the appellant-husband preferred a criminal revision before the Court of Session, bearing No.28 of 24.05.2017, which on being registered was assigned CRN No. CRR-138/2017. After due contest by the respondent-wife, the supra criminal revision was dismissed vide order dated 24.05.2017 passed by the learned Sessions Judge, Bathinda.

4.4 Thereafter, on 17.04.2018, the respondent-wife moved an application for restoration of the earlier application referred to above under Order 9 Rule 13 CPC for setting aside the order dated 12.11.2012, whereby she was proceeded against *ex-parte* and the *ex-parte* judgment and decree dated 08.01.2013 passed by the learned Additional District Judge, Sirsa. It is averred in the said application that the appellant-husband, after passing of the order dated 10.04.2018, has refused to keep and maintain the respondent-wife and has proclaimed of having played fraud upon her for reconciliation, to get her main application withdrawn. The latter application was allowed vide order dated 03.06.2019 (Annexure P-5) passed by the learned Principal Judge, Family Court, Sirsa, and the matter was kept for arguments, post lunch break, on the same day. The said order was challenged before this Court, by the appellant-husband, by way of CR-4695-2019 titled as "*Rishi Kumar Sharma vs. Hemlata Sharma*", and vide order dated 16.08.2019



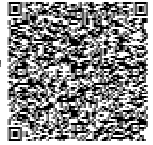
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(Annexure P-6), notice of motion was issued while directing the trial Court to adjourn the case beyond the date fixed in the said revision petition. The supra petition, at the asking of the appellant-husband (petitioner therein), was permitted be to withdrawn and vide order dated 23.02.2023, CR-4695-2019 was dismissed as withdrawn.

4.5 The appellant-husband had also filed a petition under Section 482 Cr.P.C. for quashing the complaint under Section 12 of the Act of 2005 as well as the order dated 04.10.2017 passed by the learned Judicial Magistrate First Class, Bathinda, and subsequent proceedings thereto, whereby the appellant was directed to pay interim maintenance of Rs.20,000/- per month to the respondent-wife under the provisions of Section 23 of the Act of 2005, which came to be registered as CRM-M-40708-2018.

4.6 On 23.02.2023, the said petition was also dismissed as withdrawn. The application under Section 125 Cr.P.C. for maintenance, at the instance of the respondent-wife, culminated into the wife being awarded a sum of Rs.20,000/- per month vide order dated 07.09.2018, i.e., the same amount that was awarded as interim maintenance and was upheld by this Court. The parties have not pleaded or placed any material on record to show that the final order dated 07.09.2018, passed on the supra application, was modified or interfered with, by any superior Court.

4.7 On account of the maintenance granted under Section 125 Cr.P.C. and under Section 23 of the Act of 2005, not having been paid in full to the respondent-wife, the appellant-husband is in arrears of maintenance.



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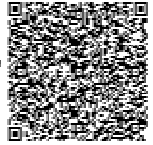
The respondent-wife through her affidavit submitted on 10.04.2021 before the learned Family Court has averred that a sum of Rs.10,49,642/- is outstanding towards maintenance allowance, besides Rs.8,23,000/- on account of arrears of rent.

4.8 It is noteworthy that since the institution of the application dated 08.10.2013 seeking setting aside the *ex-parte* judgment and decree, more than 80 hearings had taken place till 10.04.2021. The respondent-wife pleaded that she had a legitimate expectation of reimbursement of huge expenditure incurred by her for the numerous visits and, thus, made an application for compensation to that effect. In order to look into the said aspect, the matter was deferred but after recording the voluntary univocal statement of the appellant-husband, on oath, thereby recording his prayer to withdraw his main petition under Section 13 of the Hindu Marriage Act.

4.9 The application filed by the appellant-husband for withdrawing his statement suffered before the National Lok Adalat on 10.04.2021, was emphatically contested by the respondent-wife. After considering the submissions made by the parties and perusing the record, the supra application was dismissed vide order dated 17.09.2021 passed by the learned Principal Judge, Family Court, Sirsa. Accordingly, the matter was disposed of as settled in the National Lok Adalat on 10.04.2021 and the main petition stood dismissed as withdrawn as per the statement of the appellant-husband.

5. Aggrieved by the aforesaid order dated 17.09.2021, the appellant-husband has assailed the same through the instant appeal.

6. Learned counsel for the appellant submitted that as the award



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by the National Lok Adalat was not passed on 10.04.2021, the appellant-husband ought to have been permitted to withdraw the statement suffered by him. Result of not passing the award on the day of recording the statement would be that the matter was no longer before the National Lok Adalat. It is further argued that the appellant had suffered the aforesaid statement, regarding withdrawal of the main divorce petition, in haste and without fully understanding the consequences arising therefrom. It is further submitted that the appellant-husband is a chronic patient of hypertension for the last many years and is on medication for the said disease and remains disturbed owing to numerous litigations between the parties in various courts.

7. The respondent-wife has emphatically opposed the appeal and defended the impugned order and submits that the appellant-husband cannot be permitted in law to resile from the statement made on oath, of his own volition, before the National Lok Adalat. The grounds urged in her reply dated 09.07.2021 to the application seeking withdrawal of the statement suffered before the National Lok Adalat, have been reiterated.

8. We have heard the learned counsel for the appellant as well as the respondent-wife in person and perused the record.

9. It is not disputed that marriage of the parties was solemnized on 08.12.2010 and no child has been born from the said wedlock. The parties have been in litigation since December, 2011, that is, just one year after the marriage. A perusal of the record would show that some compromise came to be effected between the parties in the proceedings pertaining to the application filed by the respondent-wife under Order 9 Rule 13 CPC for



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setting aside the *ex-parte* judgment and decree dated 08.01.2013. It is evident that the parties had been contemplating of amicably settling the *lis*. However, as alleged by the respondent-wife, the appellant-husband resiled from his commitment and hence, she filed an application for restoring her earlier application under Order 9 Rule 13 CPC. Till said point in time, nearly five years had elapsed since the *ex parte* divorce had been granted and by then multiple litigations were pending before different Forums, at different stages, between the parties. A perusal of the record would show that the appellant-husband suffered the hereinafter extracted statement (as translated by the Translation Branch of this Court from Hindi to English) before the National Lok Adalat, being presided over by the learned Principal Judge, Family Court, Sirsa, which came to be recorded on 10.04.2021. The record further reveals that the said statement was made on oath and the appellant after having read the same, accepted it to be correct, which was in the presence of his counsel, who identified the appellant-husband.

“Statement of Rishi Kumar s/o late Piare Lal, aged 57 years, r/o #624, Gali No.10, Aggarsain Clony, Sirsa.

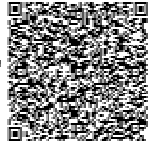
On S.A.

It is stated that I have made decision through the National Lok Adalat that I withdraw my main petition under Section 13 of the HMA. After withdrawal, it may be filed.

RO&AC
Sd/- Rishi Kumar
(In English)

Sd/-
(Jasbir Singh Kundu)
Principal Judge, Family Court
Sirsa

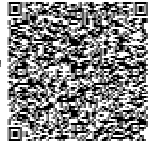
Identified by
Sd/-
(in English)
10/4/21”



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10. That on 18.09.2020, the respondent-wife moved the civil Court to sue the appellant-husband, as *forma pauperis*, for her claim under Section 18 of the Hindu Adoption and Maintenance Act for recovery of maintenance allowance/permanent alimony at the rate of Rs.30,000/- per month for a period of ten years and for creating the charge of the aforesaid amount in the sum of Rs.36,00,000/- along with the amount of arrears of maintenance of Rs.8,69,512/- on the service benefits of the appellant-husband working as Excise and Taxation Officer, Rampura Phul, District Bathinda, since promoted as Commissioner and due to retire from service within a few months. The relief of permanent injunction was also sought restraining the official respondents, i.e., the employer and department of the respondent-husband, from releasing the service benefits/retiral benefits of the husband before payment of the aforesaid claimed amount and arrears of maintenance, which were claimed to be in the sum of Rs.44,69,512/-. The appellant-husband was represented in the supra suit through counsel.

11. It is evident from the record that the appellant-husband suffered a statement before the National Lok Adalat on 10.04.2021, whereas the application seeking to withdraw from the said statement was instituted on 07.06.2021. It is notable that in the meanwhile, the respondent-wife had on 23.04.2021 also instituted a suit for declaration *inter alia* challenging the adoption deed. In the earlier suit for maintenance, instituted on 18.09.2020, an *ex parte* ad-interim injunction from releasing the service benefits was granted vide order dated 05.05.2021 passed by the learned Principal Judge, Family Court, Bathinda. Thus, it is apparent that the pleas set up by the



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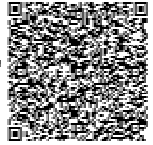
appellant-husband seeking to withdraw his statement suffered of his own volition before the National Lok Adalat, on 10.04.2021, is an afterthought. The appellant-husband challenged the said order dated 05.05.2021 before this Court by way of CR-1433-2021 and in the said proceedings, vide order dated 29.07.2022, the official respondents were directed to release an amount of Rs.8,00,000/- in favour of respondent-wife by transferring the said sum in her bank account. Upon the said amount having been transferred to the respondent-wife, the supra revision petition (CR-1433-2021) was withdrawn by the appellant-husband on 09.09.2022.

12. The question that arises for consideration before this Court in the present appeal is whether an award not having been passed by the National Lok Adalat on the date of recording statements would oust the jurisdiction of the said Lok Adalat to subsequently record an order/award and the parties could be permitted to unilaterally withdraw their statement(s) before passing of such order/award.

13. We have profoundly considered the aforesaid issue, keeping in mind the peculiar facts and circumstances of the present case. Before we delve into the core issue for discussion, it would be apposite to refer to the statutory scheme of Lok Adalats, provided under Chapter VI of the Legal Services Authorities Act, 1987 (for short, the “Act of 1987”), the relevant provisions whereof are extracted hereinafter for ready reference.

CHAPTER VI LOK ADALATS

19. Organisation of Lok Adalats.—(1) Every State Authority or District Authority or the Supreme Court Legal



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Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee may organize Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of—

(a) serving or retired judicial officers; and

(b) other persons,

of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.

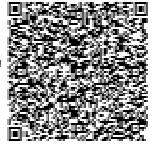
(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

20. Cognizance of cases by Lok Adalats.—(1) Where



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in any case referred to in clause (i) of sub-section (5) of section 19,—

- (i) (a) the parties thereof agree; or
- (b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or
- (ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat,

the Court shall refer the case to the Lok Adalat:

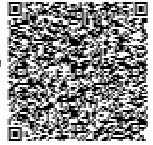
Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any either law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and



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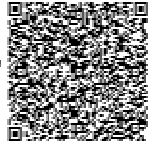
other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.

(7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).”

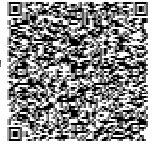
14. The organisation of Lok Adalats is provided under Section 19 and cognizance of cases by Lok Adalats, is governed by the provisions enshrined under Section 20 of the Act (*ibid*). A perusal of the aforesaid provisions would reveal that once the Lok Adalat takes cognizance of a case, it stays with the said Lok Adalat until the same is returned to the Court, from which the reference has been received under sub-section (1), for disposal in accordance with law. In the case at hand, the National Lok Adalat had taken cognizance of the case on 10.04.2021, when the statement of the appellant-husband had been recorded but for minutely examining the record for assessment regarding the claim for compensation raised by the respondent-wife, the matter was deferred to 30.10.2021. The presiding officer then being on home quarantine, having tested Corona positive, the matter was posted for 07.06.2021. There is no material on record to suggest that the matter had



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been returned to the referral Court, as unsettled. In the absence of the same and the procedural hearings noticed above, the matter remained with the National Lok Adalat, which ultimately passed the impugned order dated 17.09.2021. Thus, the National Lok Adalat having taken cognizance of the case and not having returned it to the Court that had referred the same, the matter remained with the Lok Adalat and it had jurisdiction to pass the impugned order.

15. A perusal of the impugned order would further show that in the circumstances arising in the instant case, there was no legal necessity to defer the proceedings to examine the record. It is not disputed that the petition under Section 13 of the Hindu Marriage Act for a decree of divorce had been filed by the appellant-husband. As such, he was the *dominus litis* and it was his prerogative to withdraw his petition unilaterally, in terms of the statement suffered on 10.04.2021, before the National Lok Adalat. Having voluntarily made the statement (supra), there was no illegality in accepting it and passing the impugned order. Rather the litigation that had commenced on 23.12.2011 was being given a quietus and the same is within the laudable objective of the Act of 1987. The respondent-wife could not have legitimately objected to the simpliciter withdrawal, as no prejudice is likely to be caused to her. Moreover, withdrawal of the main petition for divorce would not also have any adverse effect upon the maintenance orders passed in her favour under Section 125 Cr.P.C. and Section 23 of the Act of 2005, respectively. In fact, such a prayer can also be granted by the Family Court and not just by the Lok Adalat. Thus, in the considered view of this

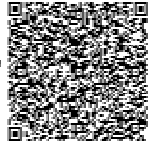


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Court, the National Lok Adalat should have passed the award on 10.04.2021 itself, after the appellant-husband had suffered a voluntary univocal statement to withdraw his main petition under Section 13 of the Hindu Marriage Act.

16. The matter may be viewed from yet another angle. It is settled proposition that a statement made before the Lok Adalat cannot be unilaterally recalled. For doing so, explicit consent of the other party is necessary, which is not forthcoming in the present case. Exception to the rule would be qua a statement, which is the result of deceit or fraud. Any other interpretation would be in violation of the statutory provisions and prejudicial to the laudable objective of the Act of 1987. If such a view, as presented by the appellant, is permitted to prevail, all settlements before the Lok Adalat would face the peril of uncertainty and the legislative intent would fail to be achieved. One cannot lose sight of the fact that the appellant-husband was accompanied and assisted by his counsel, when he of his own volition suffered the statement before the National Lok Adalat on 10.04.2021. No cogent material has been placed on record to demonstrate that the appellant-husband was under any handicap when he got his statement recorded, which would render it to fall under any exception to the rule. The statement was recorded on 10.04.2021 whereas the application for withdrawing the same was filed on 07.06.2021, i.e., after about two months. The delay caused in moving the application for recalling of the statement, also remains unexplained.

17. At the cost of repetition, it is writ large that the application for

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withdrawal of the statement suffered on 10.04.2021 is an afterthought and a calculated move. Moreover, the record shows that the appellant-husband is habitual of affecting a compromise before the Court and thereafter, back tracking therefrom. The same is evident from the order dated 10.04.2018 (Annexure P-4), whereby the appellant-husband had effected a compromise Ex.C-1 with the respondent-wife but subsequently resiled therefrom, thereby he failed to honour his commitment. No litigant can be allowed to take judicial proceedings in a casual manner, as has been done by the appellant-husband. A party having taking a conscious stand before the Court, remains bound by his decision and cannot resile therefrom unless specifically permitted by the statutory provisions.

18. A corollary of the above discussion is that the impugned order dated 17.09.2021 does not suffer from any illegality or perversity warranting interference in appeal. Resultantly, the instant appeal being bereft of merit, is dismissed.

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19. This appeal has been preferred by the wife under Section 19 of the Act of 1984, aggrieved by the order dated 13.03.2023 passed by the learned Principal Judge, Family Court, Bhatinda, whereby her application under Order 39 Rules 1 and 2 CPC, has not been allowed in toto, as prayed.

20. The plaintiff-Hem Lata Sharma filed a suit against her husband and his employer department, on 23.09.2020, seeking the hereinafter extracted reliefs.



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“Application under Order 33 Rule 1 read with section 151 of CPC in forma pauperis as indigent persons to sue the defendant under section 18 of Hindu Adoption & Maintenance Act for recovery of maintenance allowance/permanent alimony @ Rs.30,000/- per month to the plaintiff for the period of ten years which comes out to Rs. 36,00,000/- and for creating the charge of the said amount alongwith amount of arrears of maintenance allowance of Rs. 8,69,512/- on the service benefits of the defendant who is working as Excise & Taxation Officer, Rampura Phul, Distt: Bathinda and has now been promoted as Commissioner and is going to retire from the service within a few months.

AND

Suit for Permanent Injunction for restraining the defendants no.2to5 from releasing the service benefits/retirement benefits of the defendant before payment of the aforesaid amount of permanent alimony of Rs. 36,00,000/- and the outstanding dues/arrears of maintenance, allowance of Rs. 8,69,512/- approx., totalling Rs. 44,69,512/- illegally, arbitrarily and detrimental to the rights and interest of the plaintiff.”

21. In the supra suit the plaintiff filed an application under Order 39 rules 1 and 2 CPC, on 23.09.2020, seeking the hereinafter extracted interim relief.

“Application under order 39 rules 1 & 2 read with section 151 of CPC for grant of ad-interim injunction for restraining the respondents No.2 to 5 from releasing the service benefits/retirement benefits of the respondent before payment of the aforesaid amount of permanent alimony of Rs.36 Lac and the outstanding dues/ arrears of maintenance allowance of Rs.8,69,512/- approximately, totaling Rs.44,69,512/-illegally, arbitrarily and detrimental to the rights and interest of the



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applicant, till final disposal of the suit.”

22. That vide order dated 05.05.2021, an *ex parte* injunction order was passed by the Family Court, which came to be impugned before this Court by the defendant-husband by way of CR-1433-2021. In the said revision petition, this Court vide order dated 29.07.2022 directed the official respondents to release an amount of Rs.8,00,000/- in favour of the plaintiff-wife. Upon the said amount having been transferred to the wife in her bank account, CR-1433-2021 was withdrawn by the husband on 09.09.2022.

23. The application for ad-interim injunction was contested by the husband by filing reply and upon consideration of rival submissions, the same was partly allowed vide impugned order dated 13.03.2023, operative part whereof is extracted hereinafter. The learned Family Court, after noticing that maintenance stands awarded to the plaintiff-wife at the rate of Rs.20,000/- per month, vide order dated 04.10.2017 under the Act of 2005 and order dated 07.09.2018 under Section 125 Cr.P.C., and relying upon husband's willingness and readiness to pay the maintenance amount, passed orders for release of the said amount to the wife. The part of the impugned order regarding the maintenance amount is thus, consensual in nature. The husband is not aggrieved by the same and neither has he preferred any appeal before this Court thereagainst nor filed cross-objections in the present appeal by the wife.

“During the course of arguments, the respondent did not dispute the claim of applicant with regard to amount of maintenance at the rate of Rs.20,000/- per month awarded in

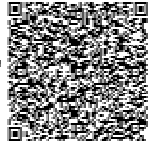


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the petition under section 125 Cr.PC vide order dated 07.09.2018 and also in the petition under D.V.. Act vide order dated 04.10.2017, and he is ready to pay maintenance amount to respondent accordingly. As such, the remaining due amount payable @ Rs.20,000/- per month is ordered to be released in favour of the applicant out of the service/ retirement benefits of respondent No.1 and after deducting the said amount, respondent No.2 to 5 are directed to release the remaining amount of service/ retirement benefits of respondent No.1 in his favour. Application, in hand, stands disposed of accordingly.”

24. The appellant in this case, viz. Hema Lata (plaintiff), has urged that despite the orders for maintenance having been passed in her favour by the competent courts, the husband has avoided payment of any amount to her and she had to take recourse to proceedings for recovering the arrears of maintenance. It is her pleaded case that the husband is trying to take voluntary retirement before his due date of superannuation and is also trying to flee from the jurisdiction of the Family Court concerned after withdrawing the entire amount of his terminal benefits. Seeking to protect her claim, she has prayed for creating a charge upon the service benefits of the husband.

25. Learned counsel for the husband has defended the impugned order and submits that the husband had expressed his readiness to pay the maintenance amount to the wife, which has since been ordered to be released to her and she has no right over the balance amount of his service/retiral benefits. Moreover, the claim under Section 18 of the Hindu Adoption and

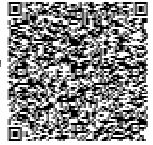


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Maintenance Act is yet to be adjudicated upon. It is further urged that the suit for creating charge upon the property of the husband for maintenance awarded under the Act of 2005 as well as Cr.P.C., is misconceived and not sustainable in law. The plaintiff-wife has already invoked the competent jurisdiction, seeking recovery of arrears of maintenance and even otherwise she cannot simultaneously seek two remedies. It is further submitted that the husband had since retired on 31.10.2021 and his service benefits have not been released due to the impugned order having been stayed by this Court vide order dated 27.03.2023.

26. Having heard both the sides and given our anxious consideration upon the respective submissions advanced, we find that there is substance in the submissions of the husband. A perusal of the reliefs claimed in the suit would show that they are in two parts. Firstly, the claim of the plaintiff-wife for maintenance under Section 18 of the Hindu Adoption and Maintenance Act; and secondly, for permanent injunction from releasing the service benefits/retirement benefits of the husband before payment of permanent alimony and arrears of maintenance. The relief sought as ad-interim injunction is the same as prayed through the second part of the relief in the main suit. It is trite law that interim relief should not be in the nature of the main relief sought in the case. However, there is another aspect that needs to be examined. The claimed amounts sought to be secured are (i) that are yet to be determined in the present suit and (ii) those which were awarded under the Act of 2005 and Cr.P.C., respectively.

27. It is not disputed that amount of maintenance at the rate of



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Rs.20,000/- has been awarded to the wife both under Section 125 Cr.P.C. and the Act of 2005. The husband has claimed that the aforesaid amount is being regularly paid and he has further expressly stated in his affidavit filed on 01.12.2022, before the court below, that he is also ready to clear the arrears of maintenance but he is unable to do so, as his service benefits have been withheld. Pursuant to the making of the aforesaid orders, the plaintiff-wife (appellant in this appeal) has already instituted proceedings for enforcing the same and for recovery of arrears of maintenance. The relevant provisions for the said purpose, both under the Act of 2005 and Cr.P.C., are extracted hereinafter for reference.

Protection of Women from Domestic Violence Act, 2005

20. Monetary reliefs.—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,—

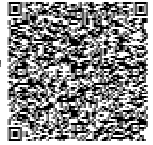
(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.



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(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

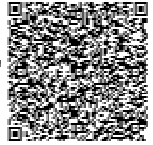
Code of Criminal Procedure, 1973

125. Order for maintenance of wives, children and parents.—(1) xxx xxx xxx

(2) xxx xxx xxx

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one



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year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

xxxx xxxx

421. Warrant for levy of fine.—(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

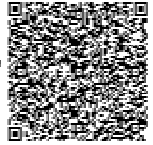
Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

422. Effect of such warrant.—A warrant issued under clause (a) of sub-section (1) of section 421 by any Court may

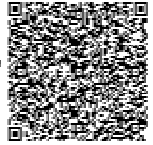


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be executed within the local jurisdiction of such Court, and it shall authorise the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local jurisdiction such property is found.

423. Warrant for levy of fine issued by a Court in any territory to which this Code does not extend.—Notwithstanding anything contained in this Code or in any other law for the time being in force, when an offender has been sentenced to pay a fine by a Criminal Court in any territory to which this Code does not extend and the Court passing the sentence issues a warrant to the Collector of a district in the territories to which this Code extends, authorising him to realise the amount as if it were an arrear of land revenue, such warrant shall be deemed to be a warrant issued under clause (b) of sub-section (1) of section 421 by a Court in the territories to which this Code extends, and the provisions of sub-section (3) of the said section as to the execution of such warrant shall apply accordingly.

28. A perusal of the supra statutory provisions would show that the orders awarding maintenance amount under the Act of 2005 or Cr.P.C., could only be enforced in the manner prescribed herein above and thus, the plea of the plaintiff-wife seeking to simultaneously create a charge over service/ retirement benefits of the husband, is misconceived. However, keeping in view the categoric stand taken by the husband in his reply to the ad interim injunction application and also having expressed his readiness to pay the arrears of maintenance amount of his own volition, before the court below, we deem it appropriate not to interfere in that aspect of the impugned order, in exercise of appellate jurisdiction. Moreover, taking recourse to the provisions of Order 39 Rules 1 and 2 CPC, to secure the sums claimed by the plaintiff-wife as permanent alimony/maintenance, which are yet to be determined in the suit, is also ill-conceived. The provisions for grant of ad interim injunction cannot be equated with those enshrined under Order 38



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Civil Procedure Code, pertaining to attachment before judgment.

29. In the light of the above discussion, in summa, the instant appeal fails and is resultantly, dismissed.

30. No order as to costs.

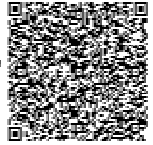
31. It is, however, clarified that the dismissal of the instant appeal would not prejudice the right of the wife to seek her appropriate remedy, if so advised, be it for enforcement of the orders granting maintenance or for attachment before judgment, regarding her claims that are yet to be adjudicated in the suit, in accordance with law.

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32. This transfer application has been preferred by Hem Lata Sharma seeking transfer of civil suit titled as '*Hem Lata vs. Rishi Kumar and others*' from the Court of Sh. Himanshu Singh, Additional Civil Judge (Senior Division), Sirsa, to some other Court of competent jurisdiction at Bathinda.

33. The applicant herein filed the above captioned civil suit in April 2021, seeking the hereinafter extracted reliefs:-

“Suit for declaration to the effect that the alleged adoption deed no. 284 dated 25.1.2016 executed between the defendant no.1 and the defendants no.2&3 regarding the adoption of the defendant no. 4 by the defendant no.1 from the defendants no.3&4 is totally wrong, illegal null and void, without any competence, without adopting proper procedure as per law, result of fraud committed by the defendants with the plaintiff and the same has been brought into existence by the defendants in collusion and connivance with each other to cause wrongful loss to the



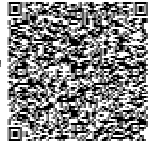
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plaintiff and to deprive the plaintiff from the properties of the defendant no. 1 as well as service benefits of the defendant no.1 who is working as Excise and Taxation Officer and as such the alleged adoption deed is ineffective and inoperative as against the rights of the plaintiff and the same is liable to be set aside and further declaration to the effect that the defendant no.4, who is a biological son of the defendants no. 2 & 3, has absolutely no concern with the defendant no.1 and the movable/ immovable properties of the defendant no.1 on the basis of the alleged adoption deed no.284 dated 25.1.2016.

AND

Suit for permanent injunction for restraining the defendant no.1 from transferring his movable or immovable properties, standing in the name of the defendant no. 1, and also service benefits of the defendant no. 1, in favour of the defendant no. 4 illegally, arbitrarily and detrimental to the rights and interest of the plaintiff who is a legally wedded wife of the defendant no. 1.”

34. It is pleaded in the transfer application that the applicant is presently residing at Bathinda for the last about 10 years and has matrimonial dispute with her husband (respondent No.1 herein). It is further averred that other litigation is already pending between the applicant and her husband at Bathinda. Respondent No.1, after superannuating from service is residing at Sirsa, which is his home town. The applicant apprehends danger to her life at the hands of respondent No.1 and his family members having been openly threatened with dire consequences, thus, she is unable to pursue the above captioned suit. The applicant has appeared in person and urged that it is very inconvenient for her to travel from Bathinda to Sirsa to pursue

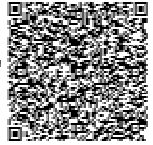


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the matter and, thus prays that the present application be allowed and the above captioned suit be transferred to a Court of competent jurisdiction at Bathinda.

35. Perusal of the record shows that the applicant has been pursuing other litigation as well before this Court, two of which are being disposed of by this common judgment. In an appeal preferred by the applicant being No.FAO-1446-2023, a coordinate bench vide order dated 24.07.2023 had directed the registry of this Court to attach the present transfer application with the said appeal. Learned counsel for respondent No.1, who are appearing in the connected appeals, have submitted that the pleas raised by the applicant are incorrect and not sustainable in law. It has been pointed out that the above captioned suit was instituted on 23.04.2021 and the issues were framed vide order dated 05.09.2022. Thereafter, the trial is pending for plaintiff's evidence. It is further submitted that since the institution of the suit as many as 24 hearings had taken place upto 30.10.2023, whereafter, the proceedings were adjourned in deference to the order dated 12.10.2023, passed by the learned single Judge in the instant transfer application. Moreover, as per the own pleadings of the applicant, the entire cause of action has accrued to the applicant at Sirsa and all the defendants are also residing at Sirsa. The necessary corollary is that all the material evidence relevant to the *lis* is also at Sirsa.

36. We have heard the applicant and the counsel for the husband-respondent No.1, who have entered appearance in the connected appeals and perused the record.

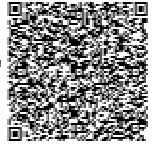


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37. No doubt, in a plethora of judgments, it has been held that in matters relating to transfer of litigation, the convenience of a woman, ought to be considered. In *Anindita Das vs. Srijit Das*, reported in (2006) 9 SCC 197, the Apex Court observed that number of transfer petitions are filed by women taking advantage of the leniency shown by the said Court. It is further observed therein that it was clear that leniency of the Supreme Court was being misused by women and held, that the Court is now required to consider each petition on its merit. The said view has since been followed in a number of cases. A similar view has been taken by a single Bench of this Court in TA-1023-2023 titled as *Manpreet Kaur and another vs. Davinder Singh*, decided on 07.08.2024, since reported in 2024 NCPHC 101765. Thus, there is no dispute to the proposition that the convenience of a woman, ought to be considered, but the same is not a thumb rule and each case has to be decided, keeping in view its factual matrix.

38. In the present case, it would be noteworthy that the applicant has been pursuing her litigation before this Court in person. She has been regularly commuting from Bathinda to Chandigarh to contest her cases, and has never raised any grouse on that count. The distance of the Courts between Sirsa and Bathinda is 98 kms, whereas the distance from Bathinda to Chandigarh is 230 kms. Thus, the distance of the Courts from the residence of the applicant would not be a valid consideration in the present case, while deciding the present transfer application.

39. Moreover, the applicant has not placed on record any material to reflect upon the events that have caused her to apprehend threat from

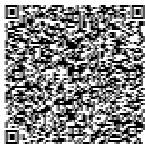


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respondent No.1, except for the bald statement made in the instant transfer application. There is no material on record to substantiate the aforesaid plea. The applicant has also not referred to any instance of misadventure or threat accosted by her husband (respondent No.1 herein), so as to even remotely substantiate the aforesaid ground on which transfer has been sought.

40. It may also be noticed that post COVID-19 pandemic, the manner in which litigation is being conducted has undergone a sea change. A conscious effort has been made by all concerned with administration of justice to ensure that access to Courts is made available to every citizen, at their door step through video conferencing. The Apex Court in ***Santhini vs. Vijaya Venketesh***, reported in (2018) 1 SCC 1, has given sufficient guidance as far as appearance of the parties through video conferencing is concerned. Even this Court in exercise of powers under Articles 225 and 227 of the Constitution of India has framed rules titled as 'Rules for Video Conferencing for Courts', which have been notified on 10.12.2021. Accordingly, the same have been incorporated in Part H of Chapter 1 of the Rules and Orders of Punjab and Haryana High Court, Volume V. Vide correction slip No.82, Rules/II.D4 dated 10.12.2021, the said Rules have also been incorporated for subordinate Courts in the States of Punjab, Haryana and U.T. Chandigarh. Thus, in view of the same, the applicant is not required to physically be present before the Courts at Sirsa on each and every date and she can cause her appearance and conveniently proceed with the case through video conferencing.

41. We have given thoughtful consideration to the various judicial



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pronouncements regarding transfer of litigation and the factual matrix of the present case and are not inclined to accept the present transfer application.

42. In the light of the aforesaid observations, no case is made out for transfer the civil suit instituted by the applicant herein. Accordingly, the transfer application being bereft of merit and is hereby dismissed.

43. The cumulative result of the aforesaid is that both the appeals and the transfer application stand dismissed.

44. Pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

May 16, 2025
sumit.k

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No