IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No. 133 of 2025

... ... **Petitioner/Appellant**

Versus

... ... **Respondent/Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant	: Mr. Pankaj Sirvastava, Advocate Mr. Ashish Gautam, Advocate
For the Respondent	: Mr. Hemant Kr. Shikarwar, Advocate Mr. Abhishek Kumar, Advocate

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CAV on 06.07.2026 ***Pronounced on 06/08/2026***

Per Sujit Narayan Prasad, J.

1. The instant appeal, under Section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 19.02.2025 and decree signed on 07.03.2025 passed by the learned Principal Judge, Family Court, Garhwa in Original Suit No.78 of 2020, whereby and whereunder, the suit filed by the petitioner-husband (appellant herein) for dissolution of marriage by decree of divorce under Section 13(1)(i-a) of

Hindu Marriage Act, 1955 against respondent/wife, has been dismissed on contest.

2. It appears from the order/judgment impugned that the learned Principal Judge, Family Court, after appreciating the evidence adduced on behalf of parties, came to the conclusion that the petitioner-husband, the appellant herein, could not prove the ingredients of cruelty against the respondent-wife, as such, it was held that the petitioner-husband is not entitled to get a decree of divorce, against which, the instant appeal has been preferred.

3. This Court, vide order dated 7th November, 2025, has issued notice to the respondent-wife and the respondent has appeared and contested the appeal.

4. However, learned counsel for the parties, has submitted that both the parties are willing to live as husband and wife, as such, the matter may be referred before the Mediator for mediation.

5. This Court, considering the aforesaid submission, has referred the matter before the JHALSA for mediation, as would appear from order dated 28.01.2026, for ready reference, order dated 28.01.2026 is quoted as under:

> *"1. The matter has been listed under the heading* ***"Mediation for the Nation Drive 2.0"*** *so as to send it before the mediation.*
>
> *2. Learned counsel appearing for the respondent-wife has submitted that she resides in Sasaram and that there is already a direction by this Court, vide order dated 26th August, 2025, that upon her appearance a sum of Rs. 25,000/- shall be paid*

towards travelling expenses. He has further submitted that the same may be directed to be paid in pursuance to the aforesaid order.

3. Learned counsel appearing for the appellant-husband submitted that there is no difficulty in paying the amount, as has been taken note of in the order dated 25th August, 2025, upon her appearance before the mediation process.

*4. With the consent of the parties, let this matter be referred to JHALSA, Ranchi, for mediation by appointing a mediator, as both the parties have agreed to appear before the mediator on **16th February, 2026 at 10:30 A.M**.*

*5. Let this matter be listed on **26rd February, 2026** along with the mediation report.*

6. Let a copy of this order be sent forthwith to the learned Member Secretary, JHALSA, Ranchi for the needful."

6. Pursuant to order dated 28.01.2026, the matter was referred for mediation but it appears from the order dated 10.03.2026, as has been submitted by the learned counsel for the appellant that the respondent-wife is not turning up regularly for the mediation proceeding.

7. However, learned counsel for the respondent-wife has submitted that on one occasion, due to examination of the child, she could not be able to participate in the mediation proceeding, for ready reference, the said order dated 10.03.2026 is being quoted as under: -

__1.__ Perused the letter dated 24.02.2026 issued under the signature of the learned Member Secretary, JHALSA seeking therein the further time, since, the mediation is still going on.

__2.__ Learned counsel for the appellant has submitted that the respondent-wife is not turning up regularly for the mediation proceeding.

__3.__ Mr. H.K. Shikarwar, learned counsel for the respondent-wife has submitted that on one occasion, due to examination of the child, respondent-wife could *not be able to participate in the mediation proceeding.*

4. *However, both the parties have jointly submitted that the period may be extended, since, there is chance of settlement.*

5. *Considering the aforesaid fact as also considering the letter received as under Flag-"X", further six weeks' time is allowed awaiting for the mediation report.*

6. *List this case on 04.05.2026.*

8. Thereafter, the matter was posted on 5th May, 2026 and on that date, after some argument, learned counsel for the appellant-husband has submitted that the appellant is ready to make payment of Rs.40,00,000/- as one time settlement and also all sorts of expenditure likely to be incurred in the education etc. of both the children till the placement of the son as also with respect to marriage of the daughter.

9. The said amount has not been agreed upon by the learned counsel for the respondent-wife. In view of the above, this Court reckons that this matter needs to be considered on the point of alimony. This Court has further directed both the parties, i.e., the appellant-husband and the respondent-wife to file affidavits in view of the judgment passed by the Hon'ble Apex Court in the case of ***Rajesh Versus Neha & Anr.*** reported in ***(2021) 2 SCC 324***, for ready reference, the said order dated 05.05.2026 is being quoted hereinbelow: -

"Heard learned counsel for the parties.

2. *Learned counsel for the appellant- husband has submitted that the appellant-husband is ready to make payment of Rs.40,00,000/- as one time settlement and also all sorts of expenditure likely to be incurred in the education etc. of both the children till the* *placement of the son as also with respect to marriage of the daughter.*

3. *The said amount has not been agreed upon by learned counsel for the respondent-wife.*

4. *In view of the above, this Court reckons that this matter needs to be considered on the point of alimony.*

5. *Let the Trial Court Record be called for from the learned Court below.*

6. *Let this matter be listed on 11.06.2026 and in the meantime, affidavits must be filed by both the parties in view of the judgment passed by the Hon'ble Apex Court in the case of **Rajnesh Versus Neha & Anr.** reported in **(2021) 2 SCC 324.**"*

10. Both the parties have filed the affidavits in terms of the order dated 05.05.2026 passed by this Court and thereafter, the case has been listed along with the affidavit on 6th July, 2026.

11. On 06.07.2026, both the parties have argued the case at length on the issue of alimony and on the said date, the arguments concluded on behalf of both the parties and the order was reserved. The order dated 06.07.2026 is being referred hereinbelow:-

"It is evident from the order dated 05.05.2026 that the case is to be decided on the issue of alimony.

2. The affidavit in terms of the order dated 05.05.2026 has been filed on behalf of both the parties.

3. Learned counsel appearing for both the parties have argued the case at length on the issue of alimony.

4. Argument concluded.

5. Order is reserved."

12. The question is that when both the parties are not at all interested to live together then this Court cannot compel them to live together.

13. However, since the appellant is interested in settling the dispute in terms of money [permanent alimony], which has been agreed by learned counsel for the respondent-wife, therefore, this Court is taking the plea in this regard. But the amount which has been offered, i.e., Rs.40,00,000/- is not acceptable to the respondent-wife stating that it is not sufficient for sustenance of the respondent-wife, son and a daughter.

Submission of the learned counsel for the appellant:

14. Learned counsel for the petitioner-appellant has submitted that he is a Contractual Doctor employed at Sadar Hospital, Garhwa.

15. It has further been contended that his gross monthly salary is Rs.1,61,260/- and net monthly take-home salary is Rs.33,008/- after deduction of monthly loan obligations, i.e., Rs.1,28,252/-.

16. It has further been contended that the assertions made by the respondent-wife regarding the appellant who is running a highly profitable private clinic and pathology lab, are completely false, fabricated and fake. No independent hospital or pathology unit is operational in the name of the appellant.

17. It has also been contended that the Maa Parwati Hospital is owned by (examined as P.W.3). The appellant only occasionally attends the facility as an on-call doctor after completing his statutory government duty.

18. So far immovable property is concerned, submission has been made that a tract of land was purchased in the year 2005 by the appellant's father. The property remains undivided joint-family property.

19. It has been submitted that the appellant had purchased a land at Garhwa with financial assistance from friends and relatives, valued at Rs.22,00,000/-. The said land was acquired specifically for the construction of a hospital under a charitable Trust, which is currently still under construction.

<u>Submission of the learned counsel for the respondent</u>:

20. *Per contra*, learned counsel appearing for the respondent-wife on the offer being made by learned counsel for the appellant for final settlement by way of permanent alimony, has submitted that she has no source of income to survive with her growing two children, namely, , aged about 14 years and ., aged about 12 years respectively.

21. Further, submission has been made that both the children are entirely dependent upon the appellant for their day-to-day needs, education, food, clothing, medical treatment and overall upbringing.

22. Submission has been made that due to marital discord and neglect on the part of the appellant-husband, the respondent has been compelled to live separately along with her minor children.

23. It has been submitted that the respondent-wife is a housewife having no independent source of income whatsoever. She is unemployed having no business or agricultural income or other financial resources from which she can maintain herself and her children.

24. Learned counsel for the respondent has also drawn attention that the appellant is working as a contractual Government Doctor in Garhwa District and receives regular remuneration from the Government. From his government engagement, he is also operating and managing a private pathology laboratory and diagnostic centre, from which, he earns substantial additional income. He is also running a private medical clinic where patients regularly visit for consultation and treatment.

25. Therefore, submission has been made that considerable amount of maintenance be directed to be paid to the son, daughter as also the respondent-wife so that they can live in reasonable comfort considering the status and mode of life.

Analysis:

26. This Court has heard the learned counsel for the parties and gone through the finding recorded by the learned Family

Judge in the impugned judgment, as also, the affidavits filed on behalf of both the parties.

27. It is evident from material available on record that the present appeal under Section 19(1) of the Family Courts Act, 1984, arises from the judgment dated 19.02.2025 and decree signed on 07.03.2025 by the learned Principal Judge, Family Court, Garhwa in O.S. No.78 of 2020, whereby the petition filed by the appellant-husband seeking dissolution of marriage under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 was dismissed.

28. The learned Family Court, upon appreciation of evidence, held that the appellant failed to establish cruelty on the part of the respondent-wife, thereby declining the relief of divorce.

29. This Court, vide order dated 07.11.2025, issued notice to the respondent-wife, who entered appearance and contested the appeal.

30. Subsequently, both parties expressed willingness to explore reconciliation, and accordingly, vide order dated 28.01.2026, the matter was referred to JHALSA, Ranchi, for mediation. Directions were also issued regarding payment of travelling expenses to the respondent-wife.

31. Mediation proceedings, however, did not progress smoothly, as the respondent-wife failed to attend regularly, though, she attributed her absence on one occasion to the child's examination. Considering the possibility of settlement, this

Court extended time for mediation, vide order dated 10.03.2026.

32. On 05.05.2026, the appellant-husband offered a one-time settlement of ₹40,00,000/- along with bearing future educational expenses of the children and marriage expenses of the daughter. The respondent-wife did not accept the said proposal, contending insufficiency of the amount.

33. In view of the divergence, this Court directed both parties to file affidavits in terms of the law laid down by the Hon'ble Apex Court in ***Rajnesh v. Neha & Anr.*****, (2021) 2 SCC 324**, and called for the trial court records.

34. Affidavits having been filed, the matter was heard at length on 06.07.2026 on the issue of permanent alimony and on that date, the arguments concluded and order was reserved.

35. It is manifest that both parties are unwilling to cohabit, and hence, this Court cannot compel them to live together. The controversy now revolves around the quantum of permanent alimony. While the appellant has offered ₹40,00,000/- with additional commitments, the respondent-wife disputes adequacy of the said amount for her sustenance and that of the children.

36. This Court in the aforesaid backdrop facts and submission requires to consider as to;

> "*what would be the quantum of permanent alimony to meet the needs of son, daughter and the wife on the basis of pleadings available on record and as per the standard of life they*

would have enjoyed had they been living with the appellant?

37. This Court, before considering the aforesaid issue, needs to refer herein the provision of law as contained under Section 25 of the Hindu Marriage Act, 1955, wherein, it has been provided that any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent. For ready reference, Section 25 of the Act, 1955 is quoted as under:

> *"**25. Permanent alimony and maintenance**.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant 1 [the conduct of the parties and*

other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, 2 [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].”

38. It is evident from the aforesaid provision that concept of permanent alimony as provided under Section 25 have been enacted with the object of removing the hardship of the wife or the husband with no independent income sufficient for living or meeting litigant expenses; such a leave can be granted as well who may also be deprived of the same on proof of having sexual intercourse outside the wedlock. It is also settled position of law that the Court may grant permanent alimony to the party while disposing of the main application even if application has been moved; meaning thereby the intent of the Act is to remove the handicap/hardship of a wife of husband by passing an appropriate order at the appropriate stage either under Section 24 or 25 of the Hindu Marriage Act, 1955. The basic behind this is to sustain the live of husband or wife, if having no sufficient source of income.

39. The Hon'ble Apex Court has also considered the intent of Section 25 of Hindu Marriage Act in catena of Judgments wherein it has been observed that Section 25 of Act 1955 is an enabling provision. It empowers the court in a matrimonial case to consider facts and circumstances of the spouse applying and deciding whether or not to grant permanent alimony. Sub-section (1) of Section 25 provides that a matrimonial Court exercising the jurisdiction under the Hindu Marriage Act may at the time of passing a decree or at any time subsequent thereto on an Application made to it, order to pay maintenance.

40. Thus, a power is conferred on the Matrimonial Court to grant permanent alimony or maintenance on the basis of a decree of divorce passed under the Hindu Marriage Act even subsequent to the date of passing of the decree on the basis of an application made in that behalf. Sub-section (2) of Section 25 confers a power on the Court to vary, modify or rescind the order made under Sub-section (1) of Section 25 in case of change in circumstances. The power under Sub-section (3) of Section 25 is an independent power. The said power can be exercised if the Court is satisfied that the wife in whose favour an order under Subsection (1) of Section 25 of the Hindu Marriage Act is made has not remained chaste. In such event, at the instance of the other party, the Court may vary, modify or rescind the order under Sub-section (1) of Section 25 of the Hindu Marriage Act.

41. Reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy,*** **(2017) 14 SCC 200.** For ready reference, paragraph-14 of the judgment is quoted as under:

> *"**14.** Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of the Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in sub-section (1) of Section 25. In exercising the power under Section 25(2), the court would have regard to the "change in the circumstances of the parties". There must be some change in the circumstances of either party which may have to be taken into account when an application is made under sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem just."*

42. We may note here that an amendment has been brought to Sub-section (3) of Section 25 of the Hindu Marriage Act by the Act No. 68 of 1976 with effect from 27th May 1996. Earlier, it was provided under Sub-section (3) of Section 25 that if the Court was satisfied that the party in whose favour an order has been made has not remained chaste, it shall rescind the order. The words "it shall rescind the order" appearing in Sub-section (3) of Section 25 were replaced by the said amendment by the words "it may at the instance of the other party vary, modify or rescind any such order .....". The legislature in its wisdom by the said amendment has provided that after the facts stated in Sub-section (3) of Section 25 of the Hindu Marriage Act are established, the Court may vary, modify or rescind any such order under Sub-section (1) of Section 25 of the Hindu Marriage Act. Thus, after 1976, there is a discretion conferred on the Court by Sub-section (3) of Section 25 of the Hindu Marriage Act of declining to rescind, vary or modify the order under Sub-section (1) of Section 25 thereof, even if on an Application made by the husband, it is established that the wife has not remained chaste after the decree of maintenance is passed under Sub-section (1) of Section 25.

43. The Hon'ble Apex Court in the case of ***Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112*** while appreciating the core of Section 25 of the Act 1955 has observed thatfor permanent alimony and maintenance of either spouse, the respondent's own income and other property, and the income and other property of the applicant are all relevant material in addition to the conduct of the parties and other circumstances of the case, for ready reference, the relevant paragraph of the aforesaid judgment is being quoted as under:

> *"12. As per Section 25, while considering the claim for permanent alimony and maintenance of either spouse, the respondent's own income and other property, and the income and other property of the applicant are all relevant material in addition to the conduct of the parties and other circumstances of the case. It is further seen that the court considering such claim has to consider all the above relevant materials and determine the amount which is to be just for living standard. No fixed formula can be laid for fixing the amount of maintenance. It has to be in the nature of things which depend on various facts and circumstances of each case. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party. These are all the broad principles courts have to be kept (sic keep) in mind while determining maintenance or permanent alimony."*

44. It needs to refer herein that no arithmetic formula can be adopted for grant of permanent alimony to wife. However, status of parties, their respective social needs, financial capacity of husband and other obligations must be taken into account.

45. The Hon'ble Apex Court in the case of ***U. Sree v. U. Srinivas, (2013) 2 SCC 114*** has observed that while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. For ready reference the relevant paragraph is being quoted as under:

> *"**33.** We have reproduced the aforesaid orders to highlight that the husband had agreed to buy a flat at Hyderabad. However, when the matter was listed thereafter, there was disagreement with regard to the locality of the flat arranged by the husband and, therefore, the matter was heard on merits. We have already opined that the husband has made out a case for divorce by proving mental cruelty. As a decree is passed, the wife is entitled to permanent alimony for her sustenance. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In Vinny Parmvir Parmar v. Parmvir Parmar [(2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290] (SCC p. 116, para 12) while dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party."*

46. In the case of ***Rajnesh v. Neha & Anr (supra)*** the Hon'ble Apex Court has extensively dealt with the issue of granting interim/permanent alimony and has categorically held that the objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded. The Hon'ble Apex Court further held that the Court while considering the issue of maintenance, should consider the factors like the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage, for ready reference, the relevant paragraphs of the aforesaid judgment are being quoted as under:

> *"**77.** The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.*
>
> ***78.** The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same*

standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

79. *In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.*

80. *On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [ReemaSalkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]*

> ***81.*** *A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort."*

47. The Hon'ble Supreme Court in the case of ***Rajnesh v. Neha (supra)***, provided a comprehensive criterion and list of factors to be looked into while deciding the question of permanent alimony. This judgment lays down an elaborate and comprehensive framework necessary for deciding the amount of maintenance in all matrimonial proceedings, which specific emphasis on permanent alimony and the same has been reiterated by Hon'ble Supreme Court in ***Kiran Jyot Maini v. Anish Pramod Patel***, reported in ***2024 SCC OnLine SC 1724***.

48. The Hon'ble Supreme Court in ***Kiran Jyot Maini (supra),*** while discussing the husband's obligation to maintain the wife and the importance of his financial capacity in deciding the quantum, observed under para 26 that:-

> *"26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The*

Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fail maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. ***Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed.*** *The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation."*

49. The Hon'ble Supreme Court in the case of ***Pravin Kumar Jain v. Anju Jain***, reported in ***2024 SCC OnLine SC 3678*** has taken note of the various judgments to clarify the position of law with regard to determination of permanent alimony and the factors that need to be considered in order to arrive at a just, fair, and reasonable amount of permanent alimony. In para 31 it is held as under:

"31. There cannot be strict guidelines or a fixed formula for fixing the amount of permanent maintenance. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents;

the quality of life enjoyed by the wife during the subsistence of the marriage; and such other similar factors. This position was laid down by this Court in Vinny Paramvir Parmar v. Paramvir Parmar, and Vishwanath Agrawal v. Sarla Vishwanath Agrawal."

50. Recently, the Hon'ble Apex Court in the case of ***Rakhi Sadhukhan Vs. Raja Sadhukhan, [2025 SCC OnLine SC1259]*** has enhanced the amount of alimony subject to increase of alimony in every two years.

51. This Court has considered the factual aspect of the said case and on perusal of the fact, referred therein, it is evident that in the said case, the appellant-wife and respondent-husband were married on 18.06.1997. A son was born to them on 05.08.1998. In July 2008, the respondent-husband filed Matrimonial Suit No. 430 of 2008 under Section 27 of the Special Marriage Act, 1954 seeking dissolution of marriage on the ground of cruelty allegedly inflicted by the appellant-wife. Subsequently, the appellant-wife filed Misc. Case No. 155 of 2008 in the same suit under Section 24 of the Hindu Marriage Act, 1955, seeking interim maintenance for herself and the minor son. The Trial Court, by order dated 14.01.2010, awarded interim maintenance of Rs. 8,000/- per month to the appellant-wife and Rs. 10,000/- towards litigation expenses. The appellant-wife then instituted Misc. Case No. 116 of 2010 under Section 125 of the Criminal Procedure Code, 1973. The Trial

Court, *vide* order dated 28.03.2014, directed the respondent-husband to pay maintenance of Rs. 8,000/- per month to the appellant-wife and Rs. 6,000/- per month to the minor son, along with Rs. 5,000/- towards litigation costs. The Trial Court, *vide* order dated 10.01.2016, dismissed the matrimonial suit, finding that the respondent-husband had failed to prove cruelty. Aggrieved, the respondent filed FAT No. 122 of 2015 before the High Court of Calcutta. During the pendency of the appeal, the appellant-wife filed CAN No. 4505 of 2025 seeking interim maintenance of Rs. 30,000/- for herself and Rs. 20,000/- for the son, along with Rs. 50,000/- towards litigation expenses. The High Court, by order dated 14.05.2015, directed the respondent-husband to pay interim maintenance of Rs. 15,000/- per month. Subsequently, by order dated 14.07.2016, the High Court noted that the respondent-husband was drawing a net monthly salary of Rs. 69,000/- and enhanced the interim maintenance to Rs. 20,000/- per month. Finally, the High Court, by the impugned order dated 25.06.2019, allowed the respondent's appeal, granted a decree of divorce on the ground of mental cruelty and irretrievable breakdown of marriage, and directed the respondent-husband to redeem the mortgage on the flat where the appellant-wife was residing and transfer the title deed to her name by 31.08.2019; allowed the appellant-wife and their son to continue residing in the said flat; and continue to pay permanent alimony of Rs. 20,000/- per month to the appellant-wife, subject to a 5% increase every three years. Additionally, the High Court directed payment of educational expenses for the son's university education and Rs. 5,000/- per month for private tuition.

52. Aggrieved by the quantum of alimony awarded, the appellant-wife approached the Hon'ble Apex Court.

53. The Hon'ble Apex Court, by interim order dated 07.11.2023, noting the absence of representation on behalf of the respondent-husband despite proof of service, enhanced the monthly maintenance to Rs. 75,000/- with effect from 01.11.2023. The respondent-husband subsequently entered appearance and filed an application seeking vacation of the said interim order.

54. The appellant-wife contended that the amount of Rs.20,000/- per month, which the High Court made final, was originally awarded as interim maintenance. She submitted that the respondent-husband has a monthly income of approximately Rs. 4,00,000/- and the quantum of alimony awarded is not commensurate with the standard of living maintained by the parties during the marriage.

55. In response, the respondent-husband submitted that his current net monthly income is Rs. 1,64,039/-, earned from his employment at the Institute of Hotel Management, Taratala, Kolkata. He has placed on record salary slips, bank statements, and income tax returns for the year 2023-2024. It is further stated that he was earlier employed with the Taj Hotel, drawing a gross annual salary of Rs. 21,92,525/-. He also submits that his monthly household expenses total Rs. 1,72,088/-, and that he has remarried, has a dependent family, and aged parents. The respondent-husband contends that their son, now 26 years of age, is no longer financially dependent.

56. The Hon'ble Apex Court, taking note of the quantum of permanent alimony fixed by the High Court, has come to the conclusion that it requires revision. The said revision is on the basis of the respondent-husband's income, financial disclosures, and past earnings which establish that he is in a position to pay a higher amount. The Hon'ble Apex Court has observed that the appellant-wife, who has remained unmarried and is living independently, is entitled to a level of maintenance that is reflective of the standard of living she enjoyed during the marriage and which reasonably secures her future. It has also been observed, the inflationary cost of living and her continued reliance on maintenance as the sole means of financial support necessitate a reassessment of the amount.

57. Therefore, Hon'ble Apex Court has held that, a sum of Rs. 50,000/- per month would be just, fair and reasonable to ensure financial stability for the appellant-wife. The said amount shall be subject to an enhancement of 5% every two years. As regards the son, now aged 26, the Hon'ble Apex Court has expressed its view that the Court is not inclined to direct any further mandatory financial support. However, it is open to the respondent-husband to voluntarily assist him with educational or other reasonable expenses. It has been clarified that the son's right to inheritance remains unaffected, and any claim to ancestral or other property may be pursued in accordance with law.

58. Accordingly, the appeal was allowed and the order of the High Court was modified to the extent that the permanent alimony payable to the appellant-wife shall be Rs. 50,000/- per month, subject to a 5% increase every two years, for ready reference the relevant paragraph of the said order is being quoted as under:

> ***"7.*** *Having considered the submissions and materials on record, we are of the view that the quantum of permanent alimony fixed by the High Court requires revision. The respondent-husband's income, financial disclosures, and past earnings establish that he is in a position to pay a higher amount. The appellant-wife, who has remained unmarried and is living independently, is entitled to a level of maintenance that is reflective of the standard of living she enjoyed during the marriage and which reasonably secures her future. Furthermore, the inflationary cost of living and her continued reliance on maintenance as the sole means of financial support necessitate a reassessment of the amount.*
>
> ***8.*** *In our considered opinion, a sum of Rs. 50,000/- per month would be just, fair and reasonable to ensure financial stability for the appellant-wife. This amount shall*

be subject to an enhancement of 5% every two years. As regards the son, now aged 26, we are not inclined to direct any further mandatory financial support. However, it is open to the respondent-husband to voluntarily assist him with educational or other reasonable expenses. We clarify that the son's right to inheritance remains unaffected, and any claim to ancestral or other property may be pursued in accordance with law.

***9.** In view of the above, the appeal is allowed. The impugned order of the High Court is modified to the extent that the permanent alimony payable to the appellant-wife shall be Rs. 50,000/- per month, subject to a 5% increase every two years, as noted above."*

59. Further, it needs to refer herein that in maintenance proceedings, it is of primary importance that the income of the spouse is first assessed. The process of determining maintenance cannot begin or end with assumptions and it must rest on an assessment of the earning capacity of the person from whom maintenance is sought. If both spouses are earning, the income of each must be examined. However, where the wife is not employed or has no independent source of income, the focus naturally shifts to the income of the husband, which becomes the foundation for fixing the amount of maintenance payable.

60. Such assessment of income may be of two kinds. In cases where documentary evidence such as salary slips, bank statements, or income tax returns are available, the Court can take the actual income as discernible from the record. However, in many cases, husband either fail to disclose his true income, conceal relevant details, or claim to be unemployed despite indications to the contrary. In such circumstances, the Courts must make a reasonable and fair assessment of the husband's income, taking into account his educational qualifications, professional background, past employment, lifestyle, bank transactions, and other material placed on record.

61. Once the income, whether actual or notional, is determined, the Family Court must then proceed to apportion the same among the dependents, including the wife and any children, keeping in view their reasonable needs and standard of living. Therefore, assessing income is the first and most crucial step, as maintenance cannot be determined in vacuum. Only after establishing what the earning spouse actually earns, or can reasonably be expected to earn, can a just and proportionate amount be fixed towards the sustenance of those who are entitled to be maintained.

62. The fact that the wife is earning some amount cannot, by itself, be a ground to deny her claim for maintenance. In the case of ***Sunita Kachwaha & Ors. v. Anil Kachwaha, (2014) 16 SCC 715***, the Hon'ble Supreme Court has observed that even if the wife is employed and earning, that alone does not disentitle her to maintenance if her income is insufficient to enable her to maintain herself with the standard of living that she enjoyed in the matrimonial home. Maintenance, after all, is not a matter of charity but of right – a continuing obligation flowing from the marital relationship, which the husband cannot evade merely by pointing to the wife's limited earning capacity.

63. Further, in ***Manish Jain v. Akanksha Jain (supra),*** which has also been referred to in ***Rajnesh v. Neha (supra),*** the Hon'ble Supreme Court categorically held that the financial position of the parents of the applicant-wife is immaterial while determining the quantum of maintenance. The responsibility to maintain a wife flows from the marital relationship itself and cannot be shifted upon her parents, however well-off they may be.

64. The object of law of maintenance is precisely to prevent such dependence. The grant of maintenance ensures that a woman is not forced to rely on her parents or relatives for basic needs, but can live with dignity and autonomy. Only when adequate maintenance is granted, she can hope to secure independent accommodation, meet her daily expenses and denying or reducing maintenance on the assumption that her parents can support her effectively undermines the very purpose of law of maintenance, which seeks to protect a deserted or destitute spouse from financial helplessness. The duty to maintain a wife rests primarily on the husband, in case she is not earning for herself, and cannot be diluted on the ground that she is presently living with her parents or that her parents have means to assist her.

65. In every proceeding of determination of alimony, there are two sides to a human story- that of the wife and that of the husband. Each brings forth a version shaped by their experiences, grievances, and perceptions. It is the duty of the Court to assess these narratives not mechanically but pragmatically, and to arrive at a conclusion that is grounded in both evidence and social reality.

66. Thus, the principle governing grant of permanent alimony is that it must be fair, reasonable, and commensurate with the status of the parties, the income and capacity of the husband, and the needs of the wife. The Court cannot impose an amount which is beyond the paying capacity of the husband, nor can it leave the wife without adequate financial security.

67. In the backdrop of the aforesaid settled position of law, this Court is now re-adverting to the factual aspects of the instant case.

68. Herein, admittedly, in terms of the judgment rendered by Hon'ble Apex Court in the case of ***Rajnesh v. Neha & Anr.*****, (supra),** the affidavit has been filed on behalf of the appellant-husband annexing therewith the details of salary, movable and immovable property. The respondent-wife has also filed the affidavit regarding her financial position and need.

69. We have perused the affidavit filed by the appellant-husband wherefrom, it is evident that the appellant is Contractual Doctor employed at Sadar Hospital, Garhwa.

70. It has been urged on behalf of the appellant that his gross monthly emoluments stand at ₹1,61,260/-, out of which, a substantial deduction of ₹1,28,252/- is effected towards repayment of loans.

71. It has also been contended that the Maa Parwati Hospital is owned by Sanjiv Kumar Singh (examined as P.W.3). The appellant only occasionally attends the facility as an on-call doctor after completing his statutory government duty.

72. So far immovable property is concerned, submission has been made that a tract of land was purchased in the year 2005 by the appellant's father. The property remains undivided joint-family property.

73. It has also been submitted that the appellant had purchased a land at Garhwa with financial assistance from friends and relatives, valued at Rs.22,00,000/-. The said land was acquired specifically for the construction of a hospital under a charitable Trust, which is currently still under construction.

74. Submission has been made on behalf of respondent-wife that her husband is presently engaged in the construction and establishment of a private hospital and has invested substantial amount toward the said project.

75. Further, submission has been made that considering the life expectancy and the fact that the respondent-wife is having two children; and further there would incur huge amount on the education/medical etc. of son, who is only 14 years of age and further, on the marriage of one daughter who is only 12 years of age and taking into consideration the future inflation etc., though, a huge amount would require for survival of the wife, a son and one daughter.

76. This Court, considering the submissions advanced on behalf of parties and law laid by Hon'ble Apex Court as referred hereinabove, has again perused the affidavits filed by the appellant-husband and found therefrom that his gross monthly salary is Rs. 1,61,260/- per month, and as per the assertions made by the respondent regarding the appellant that he is running a highly profitable private clinic and pathology lab and the appellant occasionally attends the facility as an on-call doctor after completing his statutory government duty hours.

77. Herein emphatically, it has been canvassed on behalf of the appellant that his gross monthly emoluments stand at ₹1,61,260/-, out of which, a substantial deduction of ₹1,28,252/- is effected towards repayment of loans. The appellant, therefore, asserts that his net disposable income is considerably diminished, and such financial constraint ought to be duly considered while adjudicating the quantum of permanent alimony payable to the respondent-wife.

78. At this juncture, it needs to refer herein the settled position of law that the impact of a loan taken by a husband for "future wealth construction" during the pendency of a matrimonial suit or before the matrimonial suit, which consequently reduces his total income due to loan payments, on the amount of alimony payable to his wife is a matter that courts scrutinize carefully. Generally, such voluntary financial commitments are not permitted to diminish the husband's primary obligation to maintain his wife.

79. The husband's duty to maintain his wife is paramount. Any voluntary financial liability, such as a loan for "future wealth construction," should not be allowed to diminish this fundamental duty. The wife's right to maintenance is often considered paramount. The court will scrutinize the genuineness and purpose of the loan. If the loan is taken primarily to reduce disposable income and thereby evade maintenance obligations, or if the "future wealth construction" is speculative or solely for the husband's benefit without any direct or indirect benefit to the wife or children, the court may disregard the reduction in income caused by EMI payments.

80. Courts often consider not just the actual income but also the earning capacity of the husband. If the loan is perceived as a deliberate act to reduce visible income despite a healthy earning capacity, the court may fix maintenance based on his potential earnings rather than his artificially reduced net income. Courts have consistently held that voluntary deductions or liabilities incurred by the husband, which are not necessary for his sustenance or statutory obligations, cannot be used to reduce maintenance payable to the wife. Repayments of loans, particularly those for asset creation, are considered voluntary capital investments rather than essential or unavoidable expenditures.

81. In the case of ***Deepa Joshi v. Gaurav Joshi, (2026) INSC 370*** the Hon'ble Apex Court has categorically observed that deductions arising from financial commitments such as loan repayments, particularly when they contribute towards the creation of assets, cannot be treated on the same footing as necessary expenditure to substantially reduce the husband's liability for maintenance. The Court emphasized that the liability to maintain a spouse is a primary obligation and cannot be subordinated to such financial arrangements. It clarified that repayments of loans, especially those resulting in the creation or acquisition of assets, partake in the character of capital investment and cannot be equated with essential or unavoidable expenditure. Such financial commitments, being voluntary in nature, cannot be given precedence over the statutory and legally enforceable obligation of maintenance. For ready reference, the relevant paragraphs of the aforesaid judgment are being quoted as under:

"13. However, deductions arising out of financial commitments such as loan repayments, particularly where they contribute towards creation of assets, cannot be placed on the same footing as necessary expenditure so as to substantially reduce the liability of maintenance. The liability to maintain a spouse is a primary obligation and cannot be subordinated to such financial arrangements.

14. It is also not in dispute that the appellant ha no independent source of income and has been residing separately shortly after the marriage. The maintenance awarded must therefore enable her to sustain herself with a reasonable degree of dignity, consistent with the status of the parties. At the same time, it is necessary to ensure that the determination remains fair and reasonable and does not impose an excessive burden upon the respondent. The exercise is one of achieving a just balance between competing considerations.

15. Insofar as the financial capacity of the respondent is concerned, it is borne out from the compliance affidavit filed pursuant to the order dated 06.02.2026 that the respondent is employed as a Manager with Canara Bank and is drawing a gross monthly income of ₹1,15,670/-. The Courts below have taken note of certain deductions from the said income, including repayments towards loans. ***<u>However, it is well settled that repayments of loans, particularly where such repayments result in creation or acquisition of assets, partake the character of capital investment and cannot be equated with essential or unavoidable expenditure. Such financial commitments, being voluntary in nature, cannot be accorded precedence over the statutory and legally enforceable obligation of maintenance.</u>***

16. ***<u>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</u>***

<u>permitted to substantially dilute the respondent's real earning capacity for the purpose of determining maintenance.</u>

82. Based on the consistent judicial pronouncements, particularly the Supreme Court's ruling in ***Deepa Joshi v. Gaurav Joshi (supra)*** a loan taken by the husband for "future wealth construction" during the pendency of a matrimonial suit, which reduces his income, will generally not affect the amount of alimony to the wife adversely. Courts view such loans as voluntary financial commitments or capital investments that cannot take precedence over the husband's primary and statutory obligation to maintain his wife. The court will assess the husband's actual earning capacity and ensure that the wife receives adequate maintenance commensurate with her needs and the marital standard of living.

83. In the instant case, it is manifest from the affidavit filed by the petitioner-appellant/husband particularly paragraph-3 of the said affidavit that he has availed a personal loan from Axis Bank to the tune of ₹38,00,000/-, which was disbursed into his account on 03.06.2025 during the pendency of the present appeal. In consequence thereof, a sum of ₹81,771/- per month is being deducted from his salary under the head of loan repayment. The aforesaid fact stands duly substantiated by Annexure–1 series appended to the supplementary affidavit filed by the appellant-husband, in conformity with the disclosure requirements laid down by the Hon'ble Supreme Court in ***Rajnesh v. Neha*** **(supra).**

84. It further emerges from paragraph-3 of the affidavit that there is no disclosure to the effect that the aforesaid loan was contracted to meet any essential, necessary, or obligatory financial requirement. In such circumstances and applying the ratio laid down by the Hon'ble Supreme Court in ***Deepa Joshi v. Gaurav Joshi (supra),*** the deduction of ₹81,771/- per month from the salary of the appellant-husband towards repayment of the said loan cannot be permitted to operate to the detriment of the respondent-wife in the matter of fixation of permanent alimony.

85. Further from record, it is evident that the respondent-wife has to survive for her livelihood as also to take care of upbringing and better education of the son and daughter born out of their wedlock solely on the amount of permanent alimony so given by the appellant-husband.

86. At present, the respondent-wife is only 40 years and taking into life expectancy of even 72 years, she has to survive for long 32 years on the amount of permanent alimony given by her husband beating the inflation etc. along with his son, who is 14 years old and daughter, who is 12 years of age.

87. As per the submission advanced on behalf of the respondent-wife, it has been contended that if the life expectancy of respondent/wife is taken into account and the computation is made by applying the multiplier method on one-third of his monthly salary, the resultant figure would exceed ₹1 crore. Nevertheless, having regard to the present financial capacity of the appellant, the respondent-wife has moderated her claim and has expressed expectation of ₹40,00,000/- (Forty lakhs) towards her own permanent alimony, ₹25,00,000/- (Twenty-five lakhs) earmarked for the son, and a further sum of ₹25,00,000/- (Twenty-five lakhs) for the daughter born out of the wedlock.

88. This Court is conscious that the appellant-husband is also to survive and he has other liability and responsibility but *vis-à-vis* it is also his utmost duty to maintain the standard of life of the respondent-wife, his son and daughter, they would have enjoyed during subsistence of the marriage as per income and status of his husband/father, the appellant herein.

89. For the reasons aforesaid, this Court thought it proper that a sum of Rs. ₹40,00,000/- towards respondent/wife as permanent alimony, ₹25,00,000/- earmarked for the son, and a further sum of ₹25,00,000/- for the daughter, as such, 90,00,000/- [Ninety lakhs] in total as one-time permanent alimony would be just, fair and reasonable, for sustenance of the respondent-wife, who has no other source of income than the alimony so received by the appellant-husband and the son and the daughter born out of their wedlock for their livelihood, sustenance and study.

90. In such view of the matter, the appellant-husband is directed to pay a sum of Rs. Rs. ₹40,00,000/- (Forty Lakhs) towards respondent/wife as permanent alimony, ₹25,00,000/- (Twenty-five Lakhs) earmarked for the son, and a further sum of ₹25,00,000/- (Twenty-five Lakhs) for the daughter**,** which shall be paid by him in four equal installments within a period of 12 months from the date of passing of the order and first installment shall be paid within a period of one month from today.

91. It is made clear that the appellant is directed to do fix deposit of Rs.25 lakhs each in the nationalized bank in name of his son and his daughter respectively for their education/marriage etc.

92. It is made clear that the son's and daughter's right to inheritance remains unaffected, and any claim to ancestral or other property may be pursued in accordance with law.

93. This Court, considering the factual aspect involved in the case and particularly the fact that due to financial crunch the survival of the respondent-wife, son and daughter as also the study of the children may not get disturbed, grants liberty to the respondent-wife that if the amount is not credited to her account, as per the direction passed by this Court, the respondent-wife will be at liberty to approach the court of law in accordance with law.

94. This Court, however, hope and trust that the appellant-husband will not invite such situation and will abide by the direction so passed by this Court for permanent alimony in favour of respondent-wife, son and daughter.

95. Accordingly, the impugned order/judgment dated 19.02.2025 and decree signed on 07.03.2025 passed by the learned Principal Judge, Family Court, Garhwa in Original Suit No. 78 of 2020 are hereby quashed and set aside and the marriage is dissolved, subject to the final payment of alimony, as directed by this Court.

96. With the aforesaid directions and observations, as made hereinabove, the instant appeal stands disposed of and decreed in the above terms.

97. Pending Interlocutory Application, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

06/08/2026
A.F.R
Rohit/-
Uploaded on 07.08.2026