2026:AHC:235597-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 998 of 2023

[redacted]

…..Appellant(s)

Versus

Smt. [redacted]

…..Respondent(s)

Counsel for Appellant(s)	:	Nanhe Lal Tripathi
Counsel for Respondent(s)	:	Anupam Dubey

A.F.R.

Court No. - 5

HON'BLE PRAKASH PADIA, J.
HON'BLE INDRAJEET SHUKLA, J.

(Per: Indrajeet Shukla, J.)

"Obligation to maintain minor children is not only a statutory duty but also a legal, moral, and social responsibility of both parents."

1. We are tempted to preface our judgment with the above quote.

2. Heard learned Counsel for the appellant-petitioner and learned Counsel for the respondent-defendant.

3. The jurisdiction of this Court under Section 19 of the Family Court Act, 1955, has been invoked by the appellant, being embittered by the order dated 11.08.2023, by which the application bearing Paper No.25-GA (2) filed on behalf of the respondent-minor Km. [redacted] through her mother, has been allowed in exercise of jurisdiction under

Section 26 of Hindu Marriage Act, 1955 (hereinafter referred to as "the Act, 1955" for the sake of brevity), by fixing liability of Rs.20,000/- against appellant in lieu of maintenance and education.

4. Before we refer to the contentions advanced across the Bar, it would be profitable to briefly refer to the statutory provisions contained in Section 26 of the Act, 1955, which deals with the custody of children, maintenance and education expenditure, reads thus:

> *"26. Custody of children. -*
>
> *In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:*
>
> *Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent."*

5. The essentials of Section 26 of the Act, 1955, a beneficial piece of legislation enacted for the welfare of minor children conferring a quick and efficacious remedy to seek maintenance and educational expenses, depend upon the following requisites being fulfilled:

(i) The application must be made in any proceedings under the Act, 1955

(ii) It must relate to 'minor children'.

6. The language of Section 26 of the Hindu Marriage Act, on the face of it, has a wide connotation and takes within its fold both stages, i.e., pre-decree and post-decree stage. The court has very wide powers under this section with regard to the custody, maintenance and education of children. The primary and paramount consideration for the Court while making any order under this Section would be the welfare of the minor, for which wide discretion has been conferred even before passing of decree as well as after passing of the decree in question for varying,

suspending or revocation of the orders in question from time to time, as alteration of the decree has also been provided for.

7. The provisions contained in the Hindu Marriage and Divorce Rules, 1956 (for brevity, 'the Rules, 1956'), are also being examined as they lay down the procedural safeguards and requirements for entertaining an application filed under Section 26 of the Act, 1955. The said Rules, applicable to the State of Uttar Pradesh, were framed by the Allahabad High Court in exercise of the powers conferred by Sections 14 and 21 of the Act, 1955, vide Notification No. 250/VnC.22 dated 18.09.1956, and came into force with effect from 20.10.1956. Rule 17 of the Rules, 1956, which is relevant for the present purposes, is being quoted below:

> ***"Rule 17. Application for alimony and maintenance:- (a) Every application for any of the reliefs mentioned in sections 24, 25 (1) and 26 of the Act, shall be supported by an affidavit stating the average monthly incomes of the petitioner and the respondent, the sources of the incomes, particulars of the other movable and immovable property owned by them and the names and ages of the persons dependent on the petitioner and the respondent.***
>
> *(b) Every application for either of the reliefs mentioned in sub-sections (2) and (3) of Section 25 of the Act shall be accompanied by a certified copy of the order passed under-section (1) and supported by an affidavit. It may be disposed of by the Court in its discretion on affidavits after giving an opportunity to the party affected to be heard."*
>
> *(Emphasis by us)*

8. A bare perusal of Rule 17 of the Rules, 1956 would go to show that every application for any of the reliefs mentioned in Section 26 of the Act, has to be supported by an affidavit stating the average monthly income of the applicant and the respondent, the sources of the income, particulars of the other movable and immovable property owned by them and the names and ages of the persons dependent upon the applicant and the respondent. It is further provided that the claim made under section 26 of the Act, 1955 being summary in nature may be disposed of by the Court, in its discretion, on affidavits, after giving an opportunity to the parties affected to be heard. However, for doing justice *inter se* the parties, it is within the wisdom of the Court to examine any one who

comes forward with a rightful claim and whose statement is must for doing complete justice in respect of the parties.

9. Rule 17 does not impose any restriction upon the Court with regard to the manner or procedure in which such proceedings are to be decided. Rather, the entire discretion rests with the Court to determine the manner in which the proceedings are to be conducted and adjudicated. The said provisions are directory in nature.

10. The nature and scope of proceedings under Section 26 of the Act, 1955 have already been elaborately discussed in the preceding part of this judgment. It is well settled that the welfare of the child remains the paramount consideration, and the wishes of the child must be duly borne in mind at every stage of the proceedings, particularly when it pertain to custody and meticulous examination of material suggesting expenditure qua maintenance and educational expenses,whether before or after the passing of the decree.

11. The legislature, through various other enactments, has incorporated beneficial provisions for the maintenance of children. The underlying object of such provisions is to achieve a social purpose by preventing vagrancy and destitution and by providing a simple, inexpensive and expeditious mechanism for ensuring support and maintenance to children.

12. Since the subject in issue relates to maintenance during pendency of the proceedings under the Act 1955, inter play of certain other statues enacted by legislature having some bearing also needs to be looked into in order to appreciate the legislative intent and the legal framework governing the field. Other relevant statutory provisions reads as thus:

13. Section 20 of the Hindu Adoption and Maintenance Act, 1956(For brevity, ‘the Act, 1956’) casts an obligation upon a Hindu male or female to maintain his or her legitimate or illegitimate minor children and aged or infirm parents. An aged or infirm parent, which also includes

a childless stepmother, or an unmarried daughter is entitled to claim maintenance if unable to maintain herself.

14. Section 23(2) of the Act, 1956 provides that, while determining the quantum of maintenance payable to children or aged or infirm parents, the Court shall take into consideration various factors, including:

(a) the position and status of the parties;

(b) the reasonable requirements of the claimant;

(c) where the claimant is living separately, whether such separation is justified; and

(d) the income of the claimant and the value of the property, if any, held by him or her.

15. The expression 'dependants', as defined under Section 21, includes the deceased Hindu's minor son, unmarried daughter, widowed daughter, minor illegitimate son and minor illegitimate daughter.

16. An unmarried daughter who is unable to maintain herself is entitled to claim maintenance from her father under the Act, 1956. The father is under an obligation to maintain his unmarried daughter even if she resides separately with her mother. The ratio of law as aforesaid stands fortified by the dictum of the Supreme Court in **Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7.**

17. Further, the entitlement of a daughter to maintenance does not necessarily cease upon her attaining majority. In **Jagdish Jugtawat v. Manju Lata, (2002) 5 SCC 422**, the Supreme Court held that a daughter is entitled to claim maintenance even after attaining majority, until her marriage, by harmoniously construing the provisions of the Code of Criminal Procedure with those of the Hindu Adoption and Maintenance Act, 1956.

18. Under the Act, 1956, both parents, namely, a Hindu divorcee father and an earning Hindu divorcee mother, are under an obligation to contribute towards the maintenance of their children. The father cannot be held exclusively responsible for maintaining the children irrespective of the mother's financial capacity and means.

19. A bare perusal of the statutory prescription extracted hereinabove would show that the Trial Court is empowered to pass interim as well as decree-stage orders concerning the custody, maintenance and educational expenses of minors during or after any matrimonial proceedings, such as (a) divorce, (b) annulment of marriage, (c) judicial separation, (d) restitution of conjugal rights, or (e) a declaration that the marriage is void. The primary and overriding consideration in such proceedings is the welfare and best interests of the child, which supersede the personal conflicts of the parents.

20. Having discussed the legal framework of Section 26 of the Act, 1955 as well as inter play of various other statues providing maintenance and educational expenses to minor child being beneficial legislation, it is now apposite to have a glimpse of various authorities expounded by Constitutional Courts shedding light by removing the grey areas hereinafter:

21. Hon'ble Supreme Court in **Padmja Sharma v. Ratan Lal Sharma, (2000) 4 SCC 266** dealt with the scope of Section 26 of the Act, 1955 in paragraph nos. 10 to 12 as under:

> *"**10.** Maintenance has not been defined in the Act or between the parents whose duty it is to maintain the children. The Hindu Marriage Act, 1955, the Hindu Minority and Guardianship Act, 1956, the Hindu Adoptions and Maintenance Act, 1956 and the Hindu Succession Act, 1956 constitute a law in a coded form for the Hindus. Unless there is anything repugnant to the context definition of a particular word could be lifted from any of the four Acts constituting the law to interpret a certain provision. All these Acts are to be read in conjunction with one another and interpreted accordingly. We can, therefore, go to the Hindu Adoptions and Maintenance Act, 1956 (for short "the Maintenance Act") to understand the meaning of "maintenance". In clause (b) of Section 3 of this Act "maintenance includes — (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage;" and under clause (c) " 'minor' means a person who has not completed his or her age of eighteen years".*
>
> *Under Section 18 of the Maintenance Act a Hindu wife shall be entitled to be maintained by her husband during her lifetime. This is of course subject to certain conditions with which we are not concerned. Section 20 ["20. Maintenance of children and aged parents.—(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.(3) The obligation of a person to*

maintain his or her aged or infirm parents or daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation.—In the section 'parent' includes a childless stepmother."] provides for maintenance of children and aged parents. Under this section a Hindu is bound, during his or her lifetime, to maintain his or her children. A minor child so long as he is a minor can claim maintenance from his or her father or mother. Section 20 is, therefore, to be contrasted with Section 18. Under this section it is as much the obligation of the father to maintain a minor child as that of the mother. It is not the law that how (sic howsoever) affluent the mother may be it is the obligation only of the father to maintain the minor.

11. In the present case both the parents are employed. If we refer to the first application filed under Section 26 of the Act by the wife she mentions that she is getting a salary of Rs 3100 per month and the husband is getting a salary of Rs 5850 per month. She is, therefore, also obliged to contribute in the maintenance of children. Salaries of both the parents have since increased with the course of time. We believe that in the same proportion, maybe perhaps in the case of an employee of Reserve Bank of India, at a somewhat higher rate. If we take the approximate salary of the husband as twice as much as that of the wife, they are bound to contribute for maintenance of their children in that proportion. The Family Court has already fixed a sum of Rs 250 per month for each of the children under Section 125 of the Code. That amount we need not touch.

12. Considering the overall picture in the present case we are of the view that a sum of Rs 3000 per month for each of the children would be sufficient to maintain them, which shall be borne by both the parents in the proportion of 2:1. We, therefore, direct that the respondent shall pay a sum of Rs 2000 per month for each of the two children aforementioned from 4-10-1997, the date of the order of the Family Court. For the earlier period the respondent shall pay Rs 500 per month for each of the children from the date of the application, i.e. 2-8-1991 and @ Rs 1000 per month from the date of the second application, which is 27-10-1995 and @ Rs 1500 per month from the date of the third application, which is 26-8-1997. These amounts shall be apart from the amount which the respondent has already been paying to the children @ Rs 250 per month under Section 125 of the Code. The respondent shall be entitled to make adjustment of the amounts which he has already paid under orders of the Family Court, the High Court or the interim order of this Court."

22. We are further enlightened by another authoritative pronouncement expounded by the Punjab and Haryana High Court on the subject in issue, in the case of **Dr. R.K. Sood vs Usha Rani Sood (1996 SCC OnLine P&H 1020)**, which reads as thus:

"9. Under Section 24 of the Act, the right of either spouse to claim maintenance has been protected under the provisions of this Act. However, grant of such maintenance to the spouse claiming the relief is dependent upon the applicant's satisfying the conditions as postulated in Section 24 of the Act and as well as other parameters in accordance with settled principles of law. Section 24 of the Act comes into play where any proceedings under the Act are pending, while Section 26 of the Act grants children right to claim

maintenance in any proceedings under the Act. Section 26 of the Act reads as under:—

"26. Custody of Children:— In any proceeding under this Act, the Court may, from time to t"The Court reiterated that maintenance of children is not confined to mere subsistence but extends to their education, healthcare, dignity, and overall development. Relying on Rajnesh v. Neha, (2021) 2 SCC 324 and Padmja Sharma v. Ratan Lal Sharma, (2000) 4 SCC 266, the Court held that the mere fact that the mother is earning does not absolve the father of his obligation to provide maintenance of minor children, particularly when the mother is bearing the dual burden of employment and day-to-day caregiving.

The Court reiterated that maintenance of children is not confined to mere subsistence but extends to their education, healthcare, dignity, and overall development. Relying on Rajnesh v. Neha, (2021) 2 SCC 324 and Padmja Sharma v. Ratan Lal Sharma, (2000) 4 SCC 266, the Court held that the mere fact that the mother is earning does not absolve the father of his obligation to provide maintenance of minor children, particularly when the mother is bearing the dual burden of employment and day-to-day caregiving."ime, pass such interim orders, and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, alter the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceedings for obtaining such decree were still pending, and the Court may, also from time to time revoke, suspend or vary any such orders, and provisions previously made."

10. The scope of this section is not restricted. In fact it is in aid to the provisions of Section 24 of the Act. The right to claim maintenance is not only granted to either of spouses to the marriage but also to the children born from the marriage. The Court while exercising jurisdiction under Section 26 of the Act can pass interim orders with respect not only to the custody, education etc. of the minor children but also with regard to their maintenance. The Legislature imposes an obligation upon the Court to pass such orders, at the interim stages and even to pass final orders at the time of passing of a decree or even thereafter on the application of the children, which will be consistent with the wishes of the children as far as possible. The intention of the Legislature to grant definite protection to the minor children is clearly indicated in the scheme of the Act and more particularly relating to grant of maintenance.

17. Under the Hindu Law father not only has a moral but even a statutory obligation to maintain his infant children. The scope of his duty is to be regulated directly in relation to the money, status, that the father enjoys. The right of maintenance of a child from his father cannot be restricted to two meals a day but must be determined on the basis of the benefit, status and money that the child would have enjoyed as if he was living with the family, including his mother and father. Irrespective of the differences and grievances which each spouse may have against the other, the endeavour of the Court has to be to provide the best to the child in the facts and circumstances of each case and more so keeping the welfare of the child in mind for all such determinations. Liability to maintain one's children is clear from the text of this Statute as well as the various decided cases in this regard. The statutory obligation is paramount to the wish of the father and he cannot be permitted to limit this claim of the child on flimsy and baseless grounds.

19. Determination of quantum of maintenance payable to the child has to be determined no doubt on reasonable basis. Reasonable basis must draw a balance between the need of the child on the one hand and the status, income and facilities available to the father on the other. It cannot be said to be reasonable that the father lives in style, has a big house, Government facilities and good income, while on the other hand, the child has to suffer even in the day to day life. The father cannot live like a Lord and make his daughter live like a maid. There has to be an equal balance between the two and the need of the child has to be satisfied from the income of the father. To provide better

living to a child the parents sacrifice but never object to payment of meagre sums or even reasonable sums for the welfare of the child.

21. It is equally settled principle of law that the property of the parties, their income and the status of the parties has to be considered including the family property for the purposes of determining the actual benefit of maintenance which should be awarded specially to the children keeping in view their welfare. In the case of Gurveen Kaur v. Ranjit Singh Sandhu, 1991 (1) All India Hindu Law Reporter 357, after detailed discussion a Bench of this Court upheld the right of the wife to claim maintenance for a minor child living with her and even awarded Rs. 1500/- per month as maintenance charges. In the case of Pradeep Kumar Kapoor v. Shailja Kapoor, 1988 (2) All India Hindu Law Reporter 397 the Court affirmed such principle and in the case of Smt. Renu Jain v. Mahavir Prashad Jain, AIR 1987 Delhi 43 even held that joint properties can be considered while granting relief of maintenance to a wife."

23. The Delhi High Court, while dealing with the issue of parental responsibility towards the maintenance of minor children, has recently rendered a judgment in **2025 SCC OnLine Del 9664**, wherein the Court elaborately considered the obligations of parents towards their children, particularly where the mother is both an earning member and the primary caregiver. The relevant excrepts are reproduced hereinbelow:

"The Court reiterated that maintenance of children is not confined to mere subsistence but extends to their education, healthcare, dignity, and overall development. Relying on Rajnesh v. Neha, (2021) 2 SCC 324 and Padmja Sharma v. Ratan Lal Sharma, (2000) 4 SCC 266, the Court held that the mere fact that the mother is earning does not absolve the father of his obligation to provide maintenance of minor children, particularly when the mother is bearing the dual burden of employment and day-to-day caregiving.

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24. Thus, having marshalled the legislative intent on the subject an various authorities, it can comfortably be deduced that the quantum of maintenance must be determined by taking into account the status and lifestyle of the parties, the reasonable needs of the children, including their educational expenses, as well as the rising cost of living and inflation. The amount so determined should ensure a standard of living commensurate with the financial capacity of the appellant and consistent

with the standard of living to which the children were accustomed prior to the separation.

25. Now, this Court would delve upon the factual features of this Case delineated as under:

Factual Background

26. Admittedly, the Appellant (husband-petitioner in matrimonial petition) and the Respondent (wife-defendant in matrimonial petition) entered into a nuptial knot on 03.05.2014 and, after eight years of married life, a Matrimonial Petition under Section 13(1) (i-a) of the Act, 1955, bearing No. 561 of 2022, was instituted by the Appellant on 12.05.2022, seeking a decree of divorce. The respondent, after entering appearance, filed her written statement on 03.04.2023 and simultaneously instituted miscellaneous proceedings under Section 24 of the Act, 1955, on 28.10.2022, seeking maintenance pendente lite and litigation expenses for herself.

27. The application filed under Section 24 of the Act, 1955, was opposed by the appellant, emphasising that the respondent was herself gainfully employed as a Clerk at [redacted], and is drawing a salary of Rs.60,000/- per month, along with other allowances and perks.

28. Another application under Section 26 of the Act, 1955, read with Section 151 of the Code of Civil Procedure, was filed on behalf of Km. [redacted] (daughter) through her mother, Smt. [redacted], the respondent herein, which was registered as Paper No. 25-Ga (2).

29. A perusal of the application bearing Paper No. 25-Ga (2) reflects that the respondent pleaded expenses amounting to Rs.56,000/- towards admission fees for the Fourth Standard at [redacted]. The further expenses were detailed as Rs.3,783/- towards stationery charges, Rs.3,280/- towards uniform charges, Rs.16,000/-

towards monthly fees (including tuition fees, transport fees, etc.), Rs.8,000/- towards nutritional charges, Rs.2,000/- towards recreational charges and Rs.5,000/- towards miscellaneous expenses. Thus, a sum of Rs.1,00,000/- as one-time expenses and Rs.35,000/- per month was claimed towards maintenance and educational expenses.

30. The application bearing Paper No. 25-Ga(2) was opposed by the appellant, who refuted the claims made under various heads of expenses. The appellant's objection was marked as Paper No. 31-Ga(2). A perusal of Paper No. 31-Ga(2) reflects that it was emphasized that the respondent herself is drawing a salary of more than Rs.60,000/- per month while serving as a Clerk in Central School.

31. It was further stated that the respondent did not bear any household responsibilities, whereas the appellant was working as a Clerk at [redacted], and was drawing a meager salary of Rs.37,504/- per month. The appellant also pointed out his responsibility towards maintaining his old ailing parents and younger unemployed brother.

32. It is admitted between the parties that Km. [redacted], the daughter, was born out of wedlock, and the appellant has not disputed his responsibility to maintain her.

33. In the aforesaid factual backdrop, it can be deduced that the respondent-wife, being employed in a Central Government institution, is drawing a salary of Rs.60,000/- per month, along with other allowances, whereas the appellant is drawing a salary of Rs.37,504/- per month.

34. The learned Trial Court, while considering the claim of Rs.35,000/- towards the maintenance of the minor daughter, apportioned the liability between the parties by fixing a sum of Rs.20,000/- against the respondent-mother and Rs.15,000/- against the appellant-father to be borne by them.

Submissions on behalf of the appellant

35. Learned counsel for the appellant submitted that the father stands as the primary natural guardian of a Hindu minor, whether a boy or an unmarried girl, and that the mother acts as a natural guardian after him. Thus, is ready to take care of his daughter and the custody for such purpose needs to be handed over immediately.

36. The further contention advanced is that the applications under Sections 24 and 26 of the Act, 1955, have been filed by the respondent-wife on behalf of the minor daughter with an ulterior motive and solely to harass the appellant.

37. The further submissions is that the learned Trial Court has miserably failed to take into consideration the income of the respondent and the fact that the appellant, despite being the father, has been deprived of the love and affection of his own daughter. The appellant has expressed his willingness to accompany his daughter; however, the learned Trial Court has brushed this aside without recording any cogent reasons.

38. Lastly, it has been submitted that the respondent is employed at a Central School, where the daughter was earlier pursuing her education. However, merely to torment the appellant, the respondent has shifted the daughter from Central School, where she was entitled to free education being the single girl child of an employee of the Central School, to [redacted]. It is contended that there was no justification or reason for shifting the child to a different school, particularly when the standard of education imparted by Central Schools is well recognized across the country.

39. The finding returned by the learned Trial Court that a minor daughter studying in the Fourth Standard incurs expenses of Rs.35,000/- per month is flawed and erroneous. The learned Trial Court has miserably erred in assessing the expenses, even if the entire claims made by the respondent are treated to be *ex facie* correct.

Submission on behalf of the respondent

40. Learned counsel for the respondent submitted that it is admitted between the parties that the minor daughter was born out of their wedlock. The appellant, being the father, is entrusted with the responsibility of maintaining her and bearing her educational expenses.

41. It has further been contended that once the appellant does not dispute his liability to maintain the minor daughter and bear her educational expenses, he has no right to question the order impugned granting maintenance pendente lite, particularly insofar as it relates to educational expenses.

42. The further contention is that the learned Trial Court has adopted a balanced approach while apportioning the liability by fixing a sum of only Rs.15,000/- per month against the appellant-father, whereas the respondent herself has been burdened with the responsibility of contributing Rs.20,000/- per month towards the maintenance of her daughter.

43. It is contended next that, in the affidavit filed in support of the stay application in the present appeal, the appellant has admitted to incurring loan installments of Rs.21,780/- per month. It is, therefore, on the one hand, the appellant is leading a lavish lifestyle by maintaining a car and, on the other hand, is shirking his responsibility towards maintaining his own minor daughter.

44. Lastly, it is contended that appellant has been evasive in disclosing his actual income and assets and has concealed his true financial status, including details of his movable and immovable properties. It is, therefore, the appellant has failed to discharge his moral and legal obligation to provide reasonable and just maintenance to his only minor daughter, commensurate with his socio-economic status.

Analysis

45. The facts being almost not much disputed we need not to delve and conduct any roving inquiry and the law in regard to maintenance and educational expenses during pendency of the proceedings under the act is also settled where the only consideration is the welfare and the paramount interest of the child which supersede the personal conflicts of the parents.

46. The submission raised at bar by counsel for appellant that the father is the primary natural guardian of a minor in view of the phrase 'after him' occurring in Section 6 of the Act, 1956 gives preferential right of custody though law casts equally an obligation to maintain which includes educational expenses but obligation would come only in picture when the custody is transferred to father. The contention so raised is fallacious on the face of record as no application for custody has been moved by appellant- father and at the same time the law with respect to custody and guardianship and preferential rights has been settled by Larger bench of the Supreme Court in **Ms. Githa Hariharan & Anr. v. Reserve Bank of India & Anr., (1999) 2 SCC 228**, the Hon'ble Supreme Court, while interpreting the expression "after him" occurring in Section 6 of the, 1956, has clarified that the mother can also act as the natural guardian during the lifetime of the father. Any preference based on gender would be violative of equality clause contained under Article 15 (3) of the Constitution of India. The aforesaid authoritative pronouncement has further expounded that both parents are duty bound to take care of person and property of their minor child.

47. The factual matrix in this case is as clear as noon light, despite mother being gainfully employed, it does not absolve the father of his obligation to maintain his minor child and bear educational expenses.

48. The responsibility of maintaining the children is a joint parental obligation, and the father cannot shirk his moral and legal duty merely on the ground that the mother is earning and is capable of contributing

towards their upbringing. The financial capacity of the mother may, however, be taken into consideration while determining the proportionate contribution of each parent. The paramount consideration remains the welfare of the child, and the child cannot be made to suffer on account of the financial circumstances or conflicts between the parents.

49. No doubt, the proceedings under Section 13 of the Act, 1955, have been instituted by the appellant himself, and in such proceedings, an application for the custody of a minor child can be maintained and the same may be decided while decreeing the petition itself or even before. Apart from custody, suitable arrangements for the maintenance and education of minor children, can also be made. Such relief can also be entertained and embarked upon after a decree has been passed. Thus, the adjudication upon question of custody and maintenance is permissible at pre as well as post decree stage.

50. The legislature, in its collective wisdom, has made provision for adjudication of claims, by way of interim orders, in pending proceedings with respect to maintenance and educational expenses. Thus, this Court finds that the application under Section 26, moved at the behest of the minor daughter through her mother, was very well maintainable, and the order passed by the learned Trial Court is well within the four corners of the jurisdiction vested in it by the statute itself.

51. The order with respect to maintenance and educational expenses may form part of the decree or may be passed by way of an interim arrangement. The parties may also seek custody of the minor child in the proceedings under the Act, 1955, itself.

52. The record reflects that the appellant-father has not filed any application seeking custody of the minor daughter, at least in the proceedings under the Act, 1955, particularly under Section 26 thereof.

53. It can easily be deduced from the factual background analyzed herein-above, read in the light of the statutory prescription contained in

Section 26 of the Act, 1955, that the appellant has not disputed his liability to maintain the minor daughter and provide for her education. Further, the appellant has not made any claim for custody of the minor daughter, either in the proceedings under the Act, 1955, or by instituting any separate proceedings.

54. This Court cannot lose sight of the fact that a liability of Rs.20,000/- towards maintenance and educational expenses has been fixed against the wife, but, at the same time, she is not required to pay even a single penny to anyone having custody and guardianship of minor herein. She would, therefore, continue to remain the custodian of the said amount and would be free to spend it. The determination of quantum as made by trial Court towards maintenance and educational expenses of a child studying in the Sixth Standard does not appear to be reasonable, particularly when the minor respondent was receiving free education at a Central School and it was the respondent who opted to change the school, without placing any cogent material to demonstrate that the erstwhile school was not meeting the requisite educational standards. No doubt father being natural guardian is bestowed with the responsibility imparting education in good and repudiated Alma matter commensurate financial and economic viability but same cannot be made a tool for oppression as right to education is a fundamental right but the socio-economic condition of parents are also to be looked into when it comes for adjudication of courts.

55. The liability of the appellant towards his old ailing parents cannot be brushed aside. Thus, a balanced and equitable approach is the need of the hour, which this Court is persuaded to adopt. The respondent is admittedly residing in rented accommodation in District Gautam Buddh Nagar along with his parents, which is an undeniable fact emerging from the record.

56. In view of the admitted factual position that the appellant is residing in rented accommodation, drawing a salary of Rs.37,504/- per

month, and has the additional responsibility of maintaining his old ailing parents , besides possibly responsibility of paying some loan, this Court is inclined to take a balanced view. Accordingly, the impugned order is modified to the extent that, in place of Rs.15,000/- per month, the appellant shall pay a sum of Rs.12,000/- on or before the 7th day of every calendar month. The impugned order stands modified to the above extent. Any arrears outstanding shall be paid by the appellant within the next two months. The appellant shall continue to abide by the order as modified by us towards maintenance and educational expenses, etc.

57. The appeal is **partly allowed** to the above extent. No order as to costs.

(Indrajeet Shukla,J.) (Prakash Padia,J.)

November 05, 2026
S.P.