

CANADA / JUDGMENT

Aulakh v. Aulakh

2026 BCSC 557

COURT

Supreme Court of British Columbia

DECIDED

11 February 2026

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2026 BCSC 557 Aulakh v. Aulakh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Aulakh v. Aulakh,

2026 BCSC 557

Date: 20260211

Docket: E04847

Registry: Abbotsford

Between:

Kuldeep Singh Aulakh also known as Kuldeep Singh Aoulkh

Claimant

And

Kulwinder Kaur Aulakh also known as Kulwinder Kaur Dhaliwal

Respondent

Before: Associate Judge Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

G.S. Chaina

Counsel for the Respondent:

M. Chhibber

Place and Date of Hearing:

Chilliwack, B.C.

January 19, 2026

Place and Date of Judgment:

Chilliwack, B.C.

February 11, 2026

- [1] THE COURT: This is my decision in this matter. The parties were married on March 1, 2004 and separated in January 2020. The parties have two children, currently ages 19 and 14.
- [2] The claimant filed his notice of family claim on February 2, 2020. The respondent filed a response and counterclaim on August 9, 2021.
- [3] It is alleged by the respondent that the claimant abandoned her and the children and left for India from approximately November 2023 to June 2025.
- [4] The former family home located in Abbotsford was sold in March 2025, after the respondent made court applications to obtain an order for sole conduct of sale. The former family home was under foreclosure, and the claimant did not participate in that entire process; in fact, he could not be located for a significant period, despite efforts by the respondent and her counsel to locate him through inquiries with family members.
- [5] A trial was scheduled to commence on June 16, 2025 for 10 days, but it was adjourned by the trial judge as the claimant showed up at the first day of trial without counsel and sought an adjournment. An adjournment was granted and he was ordered to pay costs thrown away. The trial is now currently scheduled for April 27, 2026.
- [6] The net sale proceeds from the sale of the former family home are in trust. The claimant has filed an application for an interim distribution of family property pursuant to s. 89 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], seeking the sum of \$100,000. However, the application is framed as the funds being used mostly to pay debts that are set out in his affidavit, along with legal fees. The debt includes payment of outstanding storage fees and for repairs and insurance to his commercial truck. He also seeks funds to pay for his living expenses and for ongoing legal expenses.
- [7] While a s. 89 application is within the jurisdiction of an associate judge, when it was previously adjourned, that presider suggested to counsel that the application should be heard in judge's chambers, as an associate judge may not have jurisdiction to make the orders sought.

- [8] Subsequently, counsel filed a requisition resetting the matter and on it indicated the application was not within the jurisdiction of an associate judge. However, when it came on for hearing on January 19 there was no judge available, so it was set in associate judge's chambers before me. When I raised the issue about my jurisdiction, claimant's counsel insisted that the application fell within the parameters of s. 89 and that the claimant wanted to proceed with the application.
- [9] Respondent's counsel took the position that my jurisdiction is limited to within the parameters set out in s. 89 and that I do not have inherent jurisdiction that would allow an order to be made for payment of debt and living expenses.
- [10] Section 226 of the FLA provides that the court may make orders with respect to expenses to maintain a residence but, of course, that would not apply here. Section 97 provides a broad discretion for the court to make various orders with respect to division of property, but that section may not apply to interim distributions.
- [11] On September 4, 2024, Associate Judge Hughes made an order for the interim sale of the former family home as follows:
1. Under Rule 15-8 (2) and (3) of the Supreme Court Family Rules, the Respondent is awarded exclusive conduct of the sale of the matrimonial home located at [address redacted], Abbotsford, BC (the "Matrimonial Home").
 2. The Respondent is to choose the Matrimonial Home's listing Realtor and its listing price in consultation with that listing Realtor.
 3. The Respondent is to provide the Claimant by way of his e-mail [redacted], with a copy of any offer of purchase received for the Matrimonial Home.
 4. If the Claimant does not provide his written agreement to the Matrimonial Home's purchase offer within 24 hours of being provided with the purchase offer, the Respondent may apply to court for approval of the sale on providing 3 business days notice to the Claimant.
 5. The Matrimonial Home's net purchase price after adjustments shall be paid out in accordance with the following priorities without further court order:
 - A) First, any arrears of taxes, water and sewer rates, interest and penalties therein;
 - B) Second, real estate commission;
 - C) Third, to the bank or lender, the amount required to pay the outstanding balance of its mortgage(s), plus applicable interest; and
 - D) Lastly, the balance of the net sale of proceeds to be held in trust by Dhanu Dhaliwal Law Group, to the credit of this action and pending further order of the Court or agreement in writing by the parties.

- [12] After interim distributions were made, that I will refer to in a moment, there remained in trust approximately \$645,000.
- [13] On June 16, 2025, when Justice Thomas adjourned the trial, he ordered that \$20,000 be paid from the sale proceeds to the claimant for him to retain counsel and that another \$5,000 be distributed to the claimant to be used for payment of his living expenses. He further ordered that the respondent receive a lump sum payment of \$100,000 for child support and \$50,000 for lump-sum spousal support from the sale proceeds. The order does not refer to s. 89, so it is possible that the learned judge made the order pursuant to his inherent jurisdiction and as a condition of the adjournment that was sought by the claimant.
- [14] The affidavit of the claimant sets out in detail the various debts he wants to pay, so that he can return to work. This includes repairs to his commercial truck and other non-legal expenses he wishes to pay that are approximately \$75,000. He further deposes the initial \$20,000 that was distributed to him has been used to pay legal fees.
- [15] In another affidavit, which was sworn in July 2025 but not filed until December 31, 2025, the claimant attached as an exhibit a spreadsheet that estimates the legal expenses related to preparing for and attending at the trial. The legal expenses are estimated at approximately \$41,000 but that would not include interpreters or experts, if any. However, that budget included approximately \$5,500 for the purpose of conducting examinations for discovery. There have been no examinations for discovery, and none are scheduled prior to the trial.
- [16] As I indicated to counsel during submissions, s. 89 is restricted to interim distributions to fund a family law proceeding and is not so broad as to include distributions to pay debt or living expenses or other non-legal expenses. Section 89 has been narrowly interpreted in this manner, as can be seen in *K.S.P. v. J.T.P.*, 2022 BCSC 1017. In the application that was heard by Justice MacNaughton (then a member of this Court), a spouse sought an interim distribution to fund legal fees in the family law proceeding, including \$35,000 for legal fees associated with an appeal of a judge's order with respect to an award of damages made in a companion tort action against the spouse. The applicant submitted that the court had jurisdiction to make an advance with respect to the civil case, as the plaintiff chose to pursue her claims for civil damages separately, when she could have done so within the family law proceeding.
- [17] Justice MacNaughton stated:
- [7] I conclude that I do not have jurisdiction under s. 89 of the [Family Law Act] to award an interim property distribution for the purposes of funding the appeal of the civil case, [because it is] a separate proceeding, based on tort.

- [18] Accordingly, she ordered that the interim distribution, at least with respect to funding the appeal of the civil case, had to be dismissed. The applicant also sought use of some of the family property to pay municipal utility fees and property insurance premiums for another property. In dismissing that application, Justice MacNaughton noted that a similar order had been made in favour of the other spouse by consent before another judge. She stated:
- [12] As this order is not going [by] consent, I do not have jurisdiction to make that order [either] as it does not come within the strict wording of s. 89. It is, of course, always open to the parties to separately consent to such payments being made
- [19] The claimant provided several authorities in support of his application. They all relate to s. 89 distributions to fund litigation. None authorize a distribution under s. 89 to pay living expenses or to pay debt.
- [20] However, the claimant did refer to one case that I need to address. It is the decision of Justice Matthews in *R.D. v. R.S.D.*, 2023 BCSC 6. In that case, the court, on this very narrow issue, held that by virtue of an order requiring sale proceeds to be held in trust until further agreement or court order, that the court had jurisdiction to order disbursement of funds from trust that were not related to legal fees. The application of S.D. was to payout a Surrey property mortgage using the proceeds from the sale of a separate Vancouver property. Justice Matthews said:
- [117] S.D. applies for orders that funds to discharge the Antrim mortgage on the Surrey property be paid out of the funds held in trust from the proceeds of sale of the Vancouver property; and that [approximately] 80% [of the remaining proceeds] be paid out to her.
- [118] This application is not made under s. 89 of the Family Law Act because S.D. is not a spouse
- [21] S.D. is the extended family member of one of the spouses:
- S.D. argued that the Court has jurisdiction under the inherent jurisdiction of the court to make the order.
- [22] Matthews J. concluded:
- [119] I do not need to consider exercising the inherent jurisdiction of the court. The money is held in trust pursuant to a consent order that it be held until further agreement of the parties or further order of the court. In my view, that order provides the Court with jurisdiction to entertain the application and make the order sought. [Furthermore, the respondent] did not argue otherwise.

- [23] While I agree that the funds held in trust are from an order for interim sale, I find this case to be distinguishable in two respects. First, in R.D., the applicant was not a spouse, so s. 89 could not apply. Furthermore, in the case before me, the application is framed as being pursuant to s. 89 by a spouse and submissions were made by both parties that any order made is pursuant to s. 89. Second, the respondent in the R.D. case did not oppose the application.
- [24] Accordingly, any order I make must be within the confines of s. 89. I am only prepared to consider the application by the claimant for a distribution of funds with respect to this litigation.
- [25] The principles that are to be applied are not in dispute. Section 89 allows the court to order an interim distribution of family property in limited circumstances. The court must be satisfied it would not be harmful to the interests of a spouse and is necessary for the purposes listed below.
- [26] Those purposes are to provide money to fund a family dispute resolution, all or part of a proceeding under the FLA or for the obtaining of information or evidence to support a family dispute resolution or an application to a court.
- [27] The primary purpose of an interim distribution is to promote balanced participation in family law disputes. The assessment of the amount of the interim distribution, as well as the need for one, needs to be approached with caution (*Etemadi v. Maali*, 2021 BCCA 298). The court must do a preliminary assessment of the circumstances that considers the s. 89 requirements; namely, whether the applicant can show that it would not be harmful to the interests of the other spouse and it is necessary for the purpose of funding dispute resolution.
- [28] Whether an interim distribution is necessary involves consideration of the quantum required. The court should not order a distribution in an amount greater than what is necessary. Orders under s. 89 are discretionary and depend on the unique facts of each case.
- [29] The claimant already received \$20,000 pursuant to the order of Justice Thomas. The budget that was prepared suggested that at that time, at least \$41,000 was required to fund the litigation. The evidence of the claimant with respect to his ability to fund the litigation is as follows.
- [30] He deposes that for the past several years he has suffered from significant health issues, including a medical diagnosis of clinical depression which has rendered him unable to work. He is under the care of a psychiatrist. As a direct result of his medical condition, he has been unable to work. He has faced extreme financial hardship. This necessitated a temporary relocation to India for two years, where he received medical treatment and financial and emotional support from his family.
- [31] In his Affidavit #4, he expands upon this. He deposes:

In and around October 2023, I went to India for a surgical procedure to my nose. I had a crooked bone which caused buildup, making it hard for me to breathe.

- [32] He further deposes that he also went to India to receive treatment for depression. He started to experience severe mental health issues, to the point he was unable to sleep and had suicidal ideations. When this affidavit was signed in July 2025, he said his mental health was much better. He is trying to get back on his feet and resolve this matter so that he can move forward. He confirms he returned to Canada from India in around June 2025.
- [33] I am satisfied that a further advance is necessary for the claimant to advance his case and to challenge the other party's position at trial.
- [34] The other party's position is that he abandoned his family and he may again leave the country if he receives any of the sale proceeds, and that he would never voluntarily support his family, including the respondent.
- [35] Pursuant to s. 89, the claimant must also demonstrate that the advance will not jeopardize the other party's claim. In that respect, the respondent argues she took on significant debt during the marriage. Despite court orders, the claimant has failed to provide complete disclosure which would enable her to properly assess how much of the sale proceeds she may be entitled to. She submits there is a strong likelihood that the claimant will receive a smaller portion of the sale proceeds at trial, possibly less than the \$100,000 he is requesting.
- [36] No child or spousal support has been paid voluntarily by the claimant to date. She says overall, she is agreeable to the debt regarding the truck being paid off, as she understands the claimant needs to return to work.
- [37] It is likely that the claimant will receive less than half of the funds in trust. However, I find it difficult to conclude that it may be an insignificant amount when there is still \$645,000 currently in trust and \$150,000 had already been advanced to the respondent for lump-sum spousal support and child support.
- [38] Furthermore, while it may be successfully argued that the claimant failed to discharge his financial obligation to the respondent and his children, I do not find that an interim distribution will jeopardize the respondent's claim. Since the litigation budget was prepared, I expect there have been additional fees incurred that may not have been anticipated at that time.
- [39] It is correctly argued that, on the face of it, the claimant seeks less than \$25,000 for legal fees, as at least \$75,000 or more is being sought for non-legal expenses. I am satisfied that in order to fund this trial, which will likely include fees for an interpreter, in addition to funds already advanced, another \$30,000 should be forthwith paid to the claimant from the funds in trust as an interim distribution.

- [40] I do not have jurisdiction pursuant to s. 89, to make an order that funds be advanced to the claimant which are not related to the litigation. Accordingly, I dismiss his application that funds be advanced for non-legal expenses.
- [41] However, I will make these exceptions, which are agreed to by the respondent in her application response. I will further order that with respect to the storage/parking fees owed to Pannu Brothers Trucking Ltd., funds can be directly paid to them to pay those fees. I am unclear as to the amount, so I do not wish to specify the amount, and it may have changed over time. It may be around \$6,000 to \$8,000 that can be paid directly to them from the funds in trust.
- [42] I will further order, also set out in the application response, that upon the respondent being provided with an invoice from a certified mechanic with respect to the necessary repairs for the truck, and once the estimate has been verified and approved by the respondent, that invoice or invoices can be paid directly to the mechanic.
- [43] I am only making those latter orders as it is by consent of the respondent.
- [44] Any submissions on costs?
- [45] CNSL M. CHHIBBER: Yes, Your Honour. Your Honour, this application was brought at the wrong forum. I advised my friend that this is not an application - the way it's framed is not for an associate judge, it's for a judge. That was overlooked. And the way he drafted his application, he was not successful for the majority of what he was seeking. My client had already consented to the Pannu Brothers, the mechanics, and \$20,000 worth of legal fees. So there was some consent. There was no response on that. So I say that he was not successful in his application, and the way that he brought this application was incorrect. So the respondent should be awarded costs in any event of the cause.
- [46] THE COURT: Mr. Chaina?
- [47] CNSL G. CHAINA: Your Honour, I'm [indiscernible] any kind of costs because of the repair of the truck, because they admitted in the letter many, many months ago and they didn't pay for that. We are still suffering because due to non-availability of work and to pay for the truck and to back - the truck back on the road. So that is also a cause of stress to my client, which is already facing to his family situation. So I don't think so, any kind of costs, I'm opposing.
- [48] THE COURT: Thank you. The respondent was largely successful in opposing this application. She did, during submissions, suggest that \$20,000 could still be paid out. Although I ordered an amount higher than that, it was not significantly higher. I do find the respondent was successful in this application. Therefore, she is entitled to costs of this application, but it will be in the cause.
- [49] CNSL G. CHAINA: Your Honour, one submission I have.

[50] THE COURT: Yes.

[51] CNSL G. CHAINA: Because this \$20,000 already in the trust of the Baker and Newby law firm, and after that, they directed \$8,000 and they disbursed me the \$12,000 only. And for the last five month, there are multiple applications I filed in preparation for the trial and for the TMC and for the further attendance -

[52] THE COURT: So what are you asking? I was just asking about costs for today.

[53] CNSL G. CHAINA: Yeah, I got - pardon?

[54] THE COURT: I just asked about costs of this application. What are you asking for?

[55] CNSL G. CHAINA: Cost, I don't think so, Your Honour, they are -

[56] THE COURT: No, I have your position. I have made that order.

[57] CNSL G. CHAINA: Okay.

[58] THE COURT: The costs I have ordered is in favour of the respondent, but they are in the cause. Thank you. This all goes back to counsel.

[59] CNSL M. CHHIBBER: Your Honour, just one housekeeping - last housekeeping issue.

[60] THE COURT: Yes.

[61] CNSL. M. CHHIBBER: The order that was made for the \$30,000, is that to be disbursed to the claimant's counsel?

[62] THE COURT: No -

[63] CNSL M. CHHIBBER: For the purposes of legal fees? Because the order, as I understand, was not specific to that point.

[64] THE COURT: No, I did not specify that. I have made the order under paragraph one, it is that is paid and presumably goes to claimant's counsel, but it is for the claimant.

[65] CNSL M. CHHIBBER: So the order should be paid to the claimant or paid to the claimant's counsel in trust?

[66] THE COURT: Do you wish to have it paid to you in trust?

[67] CNSL G. CHAINA: Yes.

[68] THE COURT: It should be paid to claimant's counsel.

[69] CNSL G. CHAINA: Thank you.

[70] CNSL M. CHHIBBER: Thank you, Your Honour.

"Krentz A.J".

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