

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8539 OF 2023

Hitesh Dinesh Gala
Age: 40 years, Occ: Pilot in Indian Air Force,
Residing at: C/o Dinesh Gala, 16/Vandana
Building, 20/3, R.A. Kidwai Road,
Wadala (West), Mumbai – 400 031

...Petitioner

Versus

Hemani Hitesh Gala
Age: 41 years, Occ: Homemaker
Residing at: 11/15 Muni Darshan
Jagdushan Nagar, Ghatkopar (W),
Mumbai – 400 086.

...Respondent

WITH

WRIT PETITION NO. 1256 OF 2024

Hemani Hitesh Gala
Age: 41 years, Occ: Homemaker
Currently residing at
C/o.Shree Nidhi Building,
Flat No.301, 76, Bhau
Daji Road, Matunga,
Mumbai – 400 019

...Petitioner

Versus

Hitesh Dinesh Gala
Age: 41 years, Occ: Pilot in Indian Air Force,
Presently posted at 28Wg AF C/O 56 APO
Air Force Station Hindan,
Ghaziabad, Uttar Pradesh 201 004
Having permanent address at
C/o Dinesh Gala, 16/Vandana
Building, 20/3, R.A. Kidwai Road,
Wadala (West), Mumbai – 400 031

...Respondent

Ms. Seema Sarnaik, Senior Advocate i/b. Ms. Sangeeta Salvi,
Advocate for the Petitioner Wife in W.P. 1256 of 2023, 1258
of 2023 and CP(ST.)/8127/2025 and for Respondent Wife
in WP/8539/2023.

Mr. Aashutosh Kulkarni a/w. Ms. Simran Raut i/b. Ms. Vrushali
Maindad, advocate for the Respondent.

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 20TH NOVEMBER 2025

PRONOUNCED ON : 4TH DECEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith. Taken up for final disposal with the consent of parties.
2. Since the two Writ Petitions raise challenge to one and the same order below **Exh.25** passed by the Family Court, Bandra dated 17.04.2023, hence they are heard together and are also decided by way of this common Judgment. Writ Petition 8539 of 2023 is filed by Hitesh Gala which is filed first in the point of time hence for the convenience, the parties are referred to as shown in the title of that Writ Petition.
3. The Petitioner and the Respondent were married on 23.11.2008 at Gujarat as per Hindu Vedic Rites. The Petitioner is serving as an

Officer in the Indian Air Force and is transferred from time to time. He was posted at Uttar Pradesh when the present Writ Petition is filed.

After their marriage the parties have resided together at various stations. During 11.11.2013 to 09.10.2016, they occupied the allotted quarters at the Air Force Station, Darzipura, Vadodara. While he was posted at Vadodara he received a call from his superior Commanding Officer calling upon him to resolve the dispute between him and his wife.

4. The Respondent filed an application addressed to the Indian Air Force requesting to provide her interim maintenance, sometime in September 2016. In response to her application an order came to be passed in her favour sanctioning deductions of Rs.20,800/- per month, from the Pay and Allowances of the Petitioner with effect from 21.03.2017, payable on the last working day of each month towards maintenance in accordance with Section 91 (i) of the Air Force Act, 1950.

5. The Petitioner filed Petition No. A-1051 of 2017 for Divorce before the Family Court, Bandra under Section 13 (1) (i-a) of the Hindu Marriage Act. During the pendency of the Divorce Petition, the

Respondent wife filed Interim Application for maintenance. After considering the reply filed by the Respondent and the Affidavit of Assets and Liabilities filed by the respective parties, the Learned Judge, of the Family Court has partly allowed the application **Exh.25** filed by the Respondent by directing the Petitioner to pay Rs. 20,000/- per month, in addition to the maintenance awarded by the Ministry of Defence to the Respondent-Wife from the date of her Application. The arrears of the Interim maintenance were directed to be paid in 6 monthly installments starting from 01.05.2023. This order dated 27.04.2023 passed by the Judge Family Court No. 7, Mumbai is subject matter of challenge in both Writ Petitions.

6. At the outset, the learned counsel for the Petitioner Mr. Ashutosh Kulkarni submits that, it needs to be appreciated that, due to adamant approach of the Respondent, by refusing to vacate the official quarters, the Petitioner has been charged with penalty of Rs. 16 Lakhs by his own Organization. The Petitioner is in receipt of a communication of deduction of huge penal amount of Rs. 16 Lakhs from his salary. Due to the *malafide* approach of the Respondent he was also forced to face Disciplinary Inquiry. As a result of the unauthorized continuous possession of the official Quarters by the Respondent, he is not only

penalized, but also forced to face Disciplinary Inquiry. Due to the conduct of the Respondent he has been robbed of his pride and dignity in his own organization.

7. It is the contention of the Petitioner that, though Respondent refused to vacate the official quarters on the ground of having no alternate accommodation, she was in fact all the while residing with her parents at Mumbai. In spite of his transfer from Vadodara to other Station, she continued to occupy quarters at Vadodara for 5 years, solely with an intention to harass him. During the said period she was either living with her parents or in the Ashram of One Babaji at Dharampur, of whom she was a staunch follower.

It is contended that the Respondent is trying to extract money from the Petitioner by resorting to pressure tactics. Respondent is a qualified and educated lady, capable to earn her livelihood, yet she is claiming maintenance from the Petitioner. She is very much capable of earning of her livelihood, since she holds a degree of Management studies, with a Diploma in Software Testing and a Post Graduate Degree in Commerce. She has already worked in the Corporate Sector prior to her marriage. In spite of having sufficient income from the various

investments made by her, she is claiming maintenance from the petitioner.

8. It is submitted that, the Respondent has suppressed the vital information about her independent sources of income, such as FDs, Bank Statements and PPF income. The details of various Bank accounts of the Respondent, are not given to the Petitioner by the Respondent. It is submitted that in fact while granting the maintenance of Rs.20,000/- per month by the Family Court, the maintenance of Rs. 20,800/- awarded by the Ministry of Defence vide order dated 20.08.2017 has been taken into account. But in the meanwhile the amount of maintenance awarded by the Ministry of Defence has been enhanced to Rs. 30,000/- per month from March 2022 vide order dated 29.08.2023, for a period of 2 years from month of March, 2022 till the grant of divorce or grant of maintenance allowance by the Civil Court or discharge / retirement of the individual, subject or material change in facts and circumstances, whichever is earlier.

9. According to the Learned counsel for the Petitioner fact about the enhancement of maintenance in favour of Respondent by the Ministry of Defence, was not brought to the Notice of Learned Judge, Family Court while passing the order. The impugned order has been passed by

the Family Court on the assumption that the Respondent is receiving Rs.20,800/- per month from the Indian Air Force therefore Rs. 20,000/- would be sufficient for her sustenance. The order below **Exh.25** has been passed by drawing an inference that the Petitioner is receiving salary of Rs. 1,60,000/- per month. While calculating the entitlement of the amount of maintenance admissible to the Respondent, the penalty on account of unauthorized use of official quarters by the Respondent which is still being deducted from his salary, needs to be considered. As a result over and above the two maintenance amounts of Rs. 20,000 /- and 30,000 /- per month awarded to the Respondent, the installment of penalty is also deducted from his salary. On this background it urged that the Order passed below **Exh.25** requires interference by this Court.

10. Per contra, the learned Senior Counsel Ms. Seema Sarnaik while opposing the prayer made by the Petitioner in Writ Petition No. 8539 of 2023 and making submissions in support of her prayer for enhancement of maintenance made in Writ Petition No. 1256 of 2024, would submit that, in fact, in the Interim Application the Respondent has prayed for an amount of Rs.75,000/- per month towards interim maintenance, during the pendency of Hindu Marriage Petition for Divorce filed by the Petitioner, alongwith a prayer to pay litigation expenses of

Rs.2,50,000/- which is allowed only partially by awarding Rs. 20,000 /- per month towards maintenance.

11. It is submitted that, the Respondent has filed her affidavit of Assets and Liabilities in support of her Interim Application on 06.04.2021. In her Affidavit she has stated that she has been dispossessed by the Air Force Authority, Vadodara on 27.02.2021 by invoking provisions of the Public premises (Eviction of Unauthorized Occupants) Act, 1971. After being forcefully evicted from official Quarters at Vadodara, she has returned to Mumbai and has been residing with her relatives. Under the head of general monthly expenses she has shown Rs. 35,000/- per month, towards her household expenses; Rs. 42,000/- as Rent; Rs. 7000 /- as travel expenses; Rs.5241/- for attending Court dates at Varodara per visit. On the basis of these calculations, she has prayed for Interim maintenance of Rs.75,000/- per month.

12. The Learned Counsel further submits that, while she was residing in the official Quarters, she was allowed to use the CSD (Card) provided to the employees of Defence Services, therefore the maintenance granted by the Ministry of Defence was sufficient for her survival. However, when the Petitioner left his station on his transfer from

Vadodara to join the other station, he did not take her alongwith him. He also applied for a new Grocery Card (CSD), as a result the old Grocery Card, used by her stood cancelled and she is unable to buy Grocery and other items at concessional rates.

After her eviction from the Government quarters from 27.02.2021, and the Transfer of the Petitioner to other Station, she has been deprived of residential quarters as well as subsidized grocery and household items necessary for her day to day life, which makes the interim maintenance totally insufficient for the survival of the Respondent. The Petitioner has not deposited the maintenance granted by the Family Court regularly, as a result, he is in arrears of interim maintenance which have now mounted to the extent of Rs. 4,00,000/-. The Respondent is therefore constrained to file contempt petition before this Court for non-compliance of the orders dated 03.05.2024, directing the Petitioner to clear the outstanding amount of maintenance, payable to the Respondent, which is still pending before this Court.

13. According to the learned Counsel, though the Respondent is qualified and educated however due to the transferable Job of the Petitioner, and his postings throughout India, she was never employed, after their marriage and has continued to be a homemaker. The

Petitioner has failed and neglected to maintain her which constrained her to make an application to the Ministry of Defence, for providing her interim maintenance. The order was passed by the Ministry of Defence on 21.03.2017, granting maintenance of Rs. 20,800/- per month to be deducted from the salary of Petitioner for 5 years is as per the Air Force, Act. It needs to be appreciated that, the amount of maintenance granted by the Ministry of Defence was based on the salary drawn by the Petitioner as on 21.03.2017, but, during the intervening period, the salary of the Petitioner has also increased considerably.

14. It is further submitted that, before the Family Court, though the Petitioner has claimed his income for the month of March 2021 to be Rs. 97,840/-, the information received under the RTI dated 11.08.2022 discloses his income for the same month was Rs. 2,01,904 /-. This itself reflects that the Petitioner has not approached the Court with clean hands, and has suppressed his actual income. According to the Respondent, she is entitled to a standard of living which is similar to the Petitioner. The income of Petitioner as on February, 2022 is Rs.2,28,181 /- therefore she would be entitled to an amount of Rs. 75,000 /- per month. Thus, the order passed by the Learned Judge of the Family Court needs to be set aside by directing the Petitioner to pay

maintenance of Rs. 75,000 /- per month and also to direct the Petitioner to pay cost of Rs. 2,50,000 /- towards litigation expenses.

15. I have heard the respective counsels and I have gone through the impugned order alongwith the documents placed on record in both these Writ Petitions. In both these Writ Petitions the order under challenge is one and the same. The Petitioner by way of Amendment has challenged the order dated 29.08.2023, and 14.09.2023 passed by the Ministry of Defence, deducting an amount of Rs. 75,000/- per month from his salary towards the enhanced maintenance of Rs.30,000/- per month alongwith arrears in favour of the Respondent; as well as the order passed by the Family Court below **Exh.25** dated 17.04.2023, passed in Interim Application granting maintenance of Rs.20,000 /- per month to the Respondent.

So far the amended prayer is concerned, after going through the orders dated 29.08.2023 and 14.09.2023, it transpires that, these orders are independently passed on the application of the Respondent, by the Ministry of Defence, and the order below **Exh.25** is passed in the pending Divorce proceedings between the parties, as such they are, independent orders in two difference proceedings.

16. Upon perusal of the order dated 29.08.2023, it is evident that the Respondent has addressed applications to the Air Force Authority on 27.05.2022 and 27.02.2023 requesting for continuation of her maintenance allowance sanctioned in her favour for a period of 5 years vide order dated 21.03.2017, which had ceased to operate sometime in February, 2022.

17. The Respondent had claimed continuation of maintenance at enhanced rate in view of the promotion and rise in salary of the Petitioner. After considering her case an amount of Rs. 30,000 /- per month from the salary of the Petitioner has been sanctioned for period 2 years w.e.f. March, 2022 under Section 91 (i) Air Force Act. This order is passed on 29.08.2023, but is given effect from March, 2022. Resultantly the arrears for the period between March 2022 to August 2023 are also directed to be recovered in 12 EMIs at the rate of Rs.45,000 /- per month. Similarly from September, 2023 to August, 2024 and from August, 2023 till February, 2024 an amount at the rate of 30,000 /- per month towards regular monthly maintenance is directed to be recovered from the salary of the Petitioner, which adds upto Rs. 75,000 /- per month. It is his grievance that, in addition to Rs.75,000 /-, there are deductions made towards the penalty of

unauthorized use of Quarters by the Respondent, which leaves meagre amount for his own use.

18. The first and foremost aspect that needs to be considered is that the order passed by the Ministry of Defence on 29.08.2023 and 14.09.2023 are independent orders, passed in exercise of provisions of Air Force Act, 1950, while the order passed by the Judge Family Court on **Exh.25** vide order dated 17.04.2023 is under the Hindu Marriage Act, 1955. The order dated 17.04.2023 is passed in an Application for Interim maintenance arising out of Divorce proceedings. Whereas, the order dated 29.08.2023 and 14.09.2023 are passed in exercise of powers under Section 91 (i) of the Air Force Act. During the course of arguments it is submitted that such maintenance is granted to the Wife and Children of the Defence personnel in order to maintain the dignity of wife, in case of any existing matrimonial or family dispute between the parties. A reasonable amount is granted proportionate to the salary of the concerned officer. The Learned Judge, Family Court had passed an order granting maintenance of Rs. 20,000 /- per month, after taking into account, the monthly maintenance of Rs. 20,800 /- granted by the Ministry of Defence vide order 21.03.2017, the total of these two amounts received by the Petitioner comes to Rs. 40,800 /- per month.

19. It is brought to the notice of this court that now the amount sanctioned by the Ministry of Defence has been increased from 20,800 - to Rs. 30,000 /- with effect from March, 2022. Hence the total maintenance amount received by the Respondent stands enhanced considerably. The Petitioner is aggrieved by the orders passed by the Ministry of Defence on 29.08.2023 and resultant deductions ordered vide order dated 14.09.2023 as well as the order passed by the Family Court on 17.04.2023. The subsequent orders passed by the Ministry of Defence are based on Section 91(i) of the Air Force Act, 1950. which empowers the central government to mandate payment of maintenance to the wife and children of defense personnel, from his pay and allowance. These orders are passed on the Application of the aggrieved wife, which according to the Petitioner are obtained by suppressing, the maintenance awarded by the Family Court, if that be so, it needs to be brought to the notice of authority granting such enhancement. Whereas the amount awarded by the Family Court, is based on the contesting rival claims and evidence produced by the parties. The amount of maintenance, awarded by the Family Court, Bandra has rightly taken into account the deductions in the salary as per the order dated 21.03.2017, passed by the Ministry of Defence. It is the grievance of the Petitioner, apart from maintenance of Rs. 20,000 /- per month granted

by the Family Court, Bandra, an amount of Rs. 75,000 /- per month is deducted from his salary due to enhancement of maintenance from 20,800 /- to 30,000 /- per month, and the arrears of the same, in addition to the deductions for penalty of Rs. 16,00,000 /- for the unauthorized use of official Quarters by the Respondent.

Therefore, all these aspects needs to be appreciate by this Court and passed appropriate orders. So far as the orders passed by the Ministry of Defence is concerned, the Petitioner to challenge the orders, before appropriate forum available in law. In my opinion, these orders cannot be challenged in present proceedings in its supervisory jurisdiction under Article 227 of the Constitution of India. Therefore, so far as order dated 29.08.2023 and 14.09.2023 passed by the Ministry of Defence is concerned petitioner may resort to the appropriate remedy available to him under the law.

20. If there is a change in the amount granted by the Ministry of Defence, this in my view is a change in circumstances which needs to be brought to the notice of the Family Court where substantive matrimonial proceeding between the parties are still pending. The order passed by the Ministry of Defence itself contains a stipulation that the maintenance allowance is granted for a period of 2 years or till re-union

or divorce or grant of maintenance allowance by the Civil Court or discharge / retirement of the individual subject to Air Force Act, 1950 or material change in facts and circumstances whichever is earlier. Thus, the period of 2 years is not a fixed period but is subject to various contingencies that may arise. Even otherwise the rights of the respective parties regarding matrimonial disputes are governed by their personal laws and the amount of maintenance granted by the Ministry of Defence is to be considered while granting maintenance by the Civil Court and *vice versa*.

21. Hence, in this view of the matter the prayer made by the Petitioner challenging the order of the Family Court passed below **Exh.25**, as well as the orders passed by Ministry of Defence dated 29.08.2023 and 14.09.2023 cannot be entertained in present Writ Petition. The orders passed by the Ministry of Defence will have to be brought to the notice of the Family Court by filing appropriate application for modification of orders, due to change in circumstances and if the Petitioner wants to challenge those orders, he has to approach appropriate forum. Hence, the challenge to the orders in Writ Petition No. 8539 of 2023 fails.

22. In view of the aforementioned background and subsequent developments, I do not find any merit even in the challenge raised by the Respondent to the order passed by the Family Court below **Exh.25**. It is an order based on the documents that are placed on record in the form of Assets and liabilities and bank statements of both the parties. Said order is passed taking into account the maintenance of Rs.20,800 /- per month already awarded vide order dated 21.03.2017, passed by the Ministry of Defence. There is no error or any arbitrariness in the order passed by the Judge Family Court. Considering the subsequent order dated 29.08.2023 passed by the Ministry of Defence, enhancing the amount of maintenance in favour of the Respondent amounts to change in circumstances, hence the aggrieved party is at liberty to file appropriate Application.

23. I do not find any merit in the challenge raised by the Respondent since, the Respondent is already receiving an enhanced amount of maintenance as a result of the Order dated 29.08.2023 passed by Ministry of Defence, which takes care even of the arrears which are deducted from the salary of the Petitioner. As a result if, at all, the Respondent has any grievance about the arrears of maintenance granted

by the Family Court, she is at liberty to agitate it by filing appropriate application before the Family Court.

Resultantly the challenge in both the Writ Petition i.e. No.1256 of 2024 and No. 8539 of 2023 fails.

24. Rule is discharged.

[MANJUSHA DESHPANDE, J.]

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