

SQP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 64 OF 2014
IN
FAMILY COURT APPEAL NO. 23 OF 2012**

Mahesh Wamanrao Jadhav ...Applicant
Versus
Ujwala Mahesh Jadhav ...Respondent

**WITH
CIVIL APPLICATION NO. 359 OF 2014
IN
FAMILY COURT APPEAL NO. 23 OF 2012**

Ujwala Mahesh Jadhav ...Applicant
Versus
Mahesh Wamanrao Jadhav ...Respondent

Ms. Seema Sarnaik for the Applicant in CAM/64/2014 and for the Respondent in CAM/359/2014

Mr. O. B. Molankar for the Applicant in CAM/359/2014 and for the Respondent in CAM/64/2014

**CORAM : A. S. OKA &
REVATI MOHITE DERE, JJ.
THURSDAY, 13TH AUGUST, 2015**

P.C. :

1. As per administrative order dated 16th July, 2015, these two applications along with Civil Application No. 30 of 2015 have been assigned to a Division Bench headed by one of us (A. S. Oka, J.). These Civil Applications arise out of Family Court Appeal Nos. 23 of 2012 and 13 of 2012.

2. By the impugned judgment and decree, the Family Court at Bandra, Mumbai decided the petition for divorce filed by the husband and a petition under Section 125 of the Code of Criminal Procedure, 1973 made by the wife. By the impugned judgment and decree, the learned Judge of the Family Court proceeded to dissolve the marriage by passing a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The husband was directed to pay permanent alimony of Rs. 5,000/- per month to the wife under Section 25 of the said Act of 1955. The operative part of the impugned decree which is material for consideration of these two applications reads thus :

“O R D E R

.....

Petitioner-husband shall provide alternative accommodation of atleast two rooms in the vicinity of existing matrimonial house within 30 days from the date of decree, on failure to provide for such alternative accommodation, petitioner-husband shall pay Rs.7,000/- per month to the respondent-wife to fetch rented accommodation.

Till compliance of above clause, accommodation of respondent-wife in Railway Quarters is protected. It is needless to mention that on providing alternative accommodation or rent, the respondent-wife shall vacate the official residence in Railway Quarters.

.....”

3. Family Court Appeal No. 23 of 2012 has been preferred by the husband and Family Court Appeal No. 13 of 2012 has been preferred by the wife against the impugned judgment and decree.

4. Civil Application No. 40 of 2012 was taken out by the applicant-husband in Family Court Appeal No. 23 of 2012. The prayers were two-fold. The first prayer was for grant of stay of the impugned decree of maintenance at the rate of Rs. 5,000/- per month granted by the Family Court. The applicant husband is an employee of Western Railways. As reflected from the impugned decree, he was allotted a service quarters at 75/A, Western Railway Quarters, Vile Parle, Mumbai – 400 057. The second prayer in Civil Application No. 40 of 2012 was that the wife be ordered to vacate the said service quarters and permit the husband to deposit a sum of Rs. 1,100/- per month in this Court towards the rent of the accommodation for the benefit of the wife. Further prayer was made directing the wife to occupy separate premises offered by the husband situated at Dombivli. The said Civil Application No. 40 of 2012 was disposed of by a Division Bench of this Court by order dated 11th October,

2013. The Division Bench rejected the prayer for stay of execution and operation of decree of maintenance. However, the second prayer made in the application was partly allowed. Paragraphs 4 to 6 of the said order read thus :

“4. By judgment and decree dated 13.12.2011 the Petition of the husband for divorce on the ground of cruelty came to be allowed and he was directed to pay permanent alimony of Rs.5000/ per month to the wife under Section 25 of the Hindu Marriage Act, 1955 from the date of the order. The husband was also directed to provide alternate accommodation of at least two rooms in the vicinity of the existing matrimonial home within 30 days from the date of decree, on failure to provide for such alternate accommodation, the husband shall pay Rs.7000/ per month to the wife to get accommodation on rent. Till compliance of the above order, the accommodation of the wife in the Railway Quarters which was occupied by the husband and the wife was protected. The order further states that needless to mention that on providing alternate accommodation or rent, the wife shall vacate the official residence in the Railway Quarters.

5. Learned Counsel for the husband states that the husband is willing to deposit an amount of Rs.7000/ by way of rent for the accommodation, however, the wife is not willing to vacate the official residence in the railway quarters. The learned Counsel for the wife stated that it was not possible to get an accommodation on rent for Rs.7000/ per month.

6. At present the wife is occupying the Railway Quarters which were given to the husband and because the wife is not vacating the quarter, he has to pay penal rent thereon. The wife cannot hold on to the Railway Quarters which is Official Quarter and she has to vacate the same on the husband depositing an amount towards the rent, either directly in her account or by handing over cheque to her. In this view of the matter, by way of interim measure during the pendency of the Family Court Appeal, we direct the husband to deposit Rs.10000/ per month directly in the bank account of the wife by

cheque or by bank transfer to enable the wife to get accommodation on rent. The husband states that he will deposit the amount of Rs.10000/ in the wife's account within two days from today. In view of this statement, on the amount being credited in the account of the wife, she shall vacate the Railway Quarters within seven days of receiving the amount.”

(emphasis added)

5. Present Civil Application has been filed by the husband on 5th February, 2014. The first substantive prayer is for extension of time of two days granted vide order dated 11th October, 2013 by 30 days to deposit a sum of Rs. 10,000/-. The second prayer is for a declaration that the sum of Rs. 10,000/- deposited by the applicant-husband on 14th October, 2013 in this Court shall be treated as in compliance of the order dated 11th October, 2013. The third prayer for modification is that instead of transferring the amount of Rs. 10,000/- per month to the wife's account, applicant-husband may be permitted to deposit the said amount in this Court. The last prayer is a consequential prayer directing the wife to vacate the service quarters.

6. Civil Application No. 359 of 2014 has been preferred by the respondent-wife seeking a direction against the husband to provide two rooms premises in the vicinity of the matrimonial home. We must note here that the Family Court accepted the contention of the wife that the

service quarters is the matrimonial home.

7. At this stage, it is important to note that the aforesaid order dated 11th October, 2013 passed by this Court in Civil Application No. 40 of 2012 was challenged by both husband and wife by filing Special Leave Petitions before the Apex Court. By order dated 27th January, 2014, both the Special Leave Petitions were dismissed by the Apex Court.

8. The learned Counsel appearing for the applicant-husband in support of application No. 64 of 2014 invited attention of the Court to the averments made in paragraph 4 of the application and the record of SMS exchanged between the husband's Advocate and the wife's Advocate. It is her contention that the record of SMS will show that the Advocate for the husband tried to obtain account particulars of the wife's bank account from the Advocate for the wife to enable the husband to deposit the amount of Rs. 10,000/-. She pointed out that a sum of Rs. 10,000/- was deposited by the husband with the Registry on 14th October, 2013 towards the rent. As stated earlier, a sum of Rs. 10,000/- was to be transferred by the husband to the wife's account within two days from 11th October, 2013. The learned

Counsel appearing for the applicant pointed out that substantial compliance was in fact made by the applicant of the said order dated 11th October, 2013. She pointed out that as a result of failure of the respondent to vacate the service quarters, applicant is paying penal rent of Rs. 8,655/- per month and in fact arrears of penal rent have been recovered from the applicant. Her submission is that by formally extending the time to pay the amount of Rs. 10,000/-, the wife should be directed to vacate the service quarters. On a query being made by this Court, she stated that the applicant is willing to deposit a sum of Rs. 50,000/- to Rs. 60,000/- to facilitate the wife to pay the deposit for securing a premises on rental basis or on leave and license basis. However, she submitted that if the said amount is not utilized, the same be refunded to the husband.

9. The learned Counsel appearing for the wife urged that the order dated 11th October, 2013 itself shows that the husband was aware of the bank account particulars of the wife and that is the reason why the husband made a statement that he will deposit sum of Rs. 10,000/- in the account of the wife within a period of two days from the date of the order. His submission is that the contention that the husband was not aware of the

account details of the wife is clearly an afterthought. He urged that after having committed breach of the order passed in Civil Application No. 40 of 2013, now the husband will have to comply with the decree which directs him to provide alternative accommodation of at least two rooms in the vicinity of the existing matrimonial house, which is the service quarters.

10. The learned Counsel appearing for the wife submitted that it is impossible for the wife to secure rental accommodation by paying a sum of Rs. 10,000/- per month in the vicinity of the matrimonial home. He submitted that it is impossible for the wife to obtain accommodation in such a meager amount. He, therefore, submitted that considering the spirit of the decree and considering the order dated 21st January, 2010 passed by the learned Single Judge of this Court in Writ Petition No. 457 of 2010, Civil Application No. 64 of 2014 filed by the husband be rejected and Civil Application No. 359 of 2014 be considered on merits and the same may be allowed.

11. At this stage, we must note that during the course of submissions, the learned Counsel appearing for the wife submitted that if

this Court allows the application filed by the husband, the wife will have no choice but to commit suicide. At the outset, we must deprecate the practice of such statements being made by the members of the Bar. The members of the bar are expected to act as the Officers of the Court.

12. We have carefully considered the submissions. We have perused the orders passed by this Court from time to time. The first issue to be considered is whether the time to comply with the order dated 11th October, 2013 deserves to be extended. If a case is made out for extending the time, the question is on what terms and conditions the time should be extended. It follows that if the case for extension of time is not made out, the application made by the wife being Civil Application No. 359 of 2014 will have to be favourably considered.

13. In terms of one of the orders passed during the pendency of these two applications, Western Railway has produced a chart showing the gross salary and net salary payable to the husband during the year 2014-15. The gross monthly pay ranges between Rs. 70,000/- and Rs. 47,576/-. The net amount payable to the husband ranges between Rs. 26,199/- and

Rs. 53,332/- per month. The said chart submitted under the signature of Sr. DPO, BCT of Western Railway shows that rent of Rs. 8,655/- per month is being recovered by the Railways in respect of service quarters from the husband.

14. As far as the status of the service quarters is concerned, in terms of the order of this Court, Shri Arun A. Sonawane, Divisional Personnel Officer of the Western Railways has filed an affidavit dated 18th March, 2015. He has stated that the possession of the service quarters by the husband is unauthorized from 10th July, 2007 and penal rent is being recovered from the husband at the rate of Rs. 132 per square meter. It is stated that on 9th July, 2007, the husband was transferred outside Mumbai to Dahanu Road. It is specifically stated that though the husband was transferred back to Mumbai on 17th June, 2011, he is not entitled to retain the same service quarters and he has to apply afresh for allotment of a service quarters. It is stated that as per the procedure, an employee who is in unauthorised possession of the service quarters, cannot be considered for allotment of new quarters, unless he vacates the earlier quarters. It is stated that Railways are entitled to proceed against the husband under the

provisions of Public Premises Eviction of Unauthorised Occupants Act, 1971. It is stated that the present service quarters cannot be regularized.

15. The said affidavit brings on record the fact that the husband is dis-entitled to occupy the service quarters from 10th July, 2007 onwards and that till he vacates the service quarters, the husband will have to pay penal rent @ Rs. 132 per square meter. There is no possibility of husband getting another service quarters unless he vacates the present service quarters. This perhaps was the reason as to why under the order dated 11th October, 2013, this Court directed the wife to vacate the service quarters. That is precisely the finding recorded in paragraph 5 of the order dated 11th October, 2013. In fact, paragraph 6 records that as the wife is not vacating the service quarters, the husband has to pay penal rent.

16. As stated earlier, the order dated 11th October, 2013 has been confirmed by the Apex Court.

17. It will be necessary to make reference to averments made in the application No. 64 of 2014 and in particular paragraph 4. Firstly, it is

stated that the Advocate for the applicant-husband exchanged SMS with the Advocate for the respondent-wife with a view to ascertain the account details of the wife. As per the order dated 11th October, 2013, a sum of Rs. 10,000/- was required to be deposited directly in the bank account of the wife on or before 13th October, 2013. The document at Exhibit 'C' to application No. 64 of 2014 shows that a sum of Rs. 10,000/- was deposited by the husband towards rent with the Registry on 14th October, 2013. As far as averments made in paragraph 4 of the application are concerned, in the reply filed by the wife in paragraph 4, it is merely stated that the averments are contradictory in nature and not in accordance with order dated 11th October, 2013. Thus there is no specific denial of the exchange of the SMS and the fact that on 14th October, 2013, a sum of Rs. 10,000/- was deposited by the husband with the Registry. Thus, instead of transferring a sum of Rs. 10,000/- to the bank account of the wife on or before 13th October, 2013, the husband deposited the said amount in this Court one day thereafter, i.e. on 14th October, 2013. The learned Counsel appearing for the husband stated that on 19th September, 2014, further amount of Rs. 10,000/- has been deposited in the Bank account of the wife.

18. Therefore, in our view, a case is made out for grant of extension of time. There is one more reason why time will have to be extended. As stated earlier, the affidavit of Shri Arun A. Sonawane indicates that the act of retaining the possession of the service quarters is completely illegal. As the husband is not entitled to occupy the service quarters, surely, the wife cannot occupy the service quarters. Moreover, some other employee of the Western Railways will be entitled to occupy the service quarters.

19. Now, the only question that survives for consideration is on what terms and conditions, the time should be extended. The learned Counsel for the husband stated that the husband is willing to pay up to a sum of Rs. 60,000/- to enable the wife to pay the same as deposit for procuring accommodation. Without entering into controversy as to who is to be blamed for the non-compliance of the order of 11th October, 2013, the fact remains that period of 22 months has expired from the date of the said order. For procuring premises either in Mumbai or in the surrounding area, the wife will have to pay a substantial amount by way of deposit. We, therefore, propose to direct the husband to deposit a sum of Rs. 75,000/- in

this Court to enable the wife to obtain a premises either on leave and license basis or on rental basis. After the deposit of the said amount, we propose to grant time of two months to the wife to remove herself from the service quarters.

20. The appeals are of the year 2012. Considering the fact that the Family Court Appeals from the year 2008 onwards are pending in this Court, some allowance will have to be made to the fact that after premises are obtained for the wife on leave and license basis, there will be periodical increase in the license fees. Therefore, we propose to direct that from the date on which the wife vacates the service quarters, for period of one year, the husband will have to pay an amount @ Rs. 10,000/- per month. Thereafter, the amount of Rs. 10,000/- will be enhanced @ 20% per year till the disposal of the appeal.

21. Sum of Rs. 10,000/- deposited by the husband directly in the account of the wife on 19th September, 2014 will have to be utilized towards the payment of rent/license fee for the first month. It will be open for the wife to withdraw the amount of Rs. 10,000/- deposited by the

husband in this Court on 14th October, 2013 and the said amount can be utilized by her as shifting charges.

22. Hence, we dispose of the applications by passing the following order :

ORDER

- (i) Civil Application No. 359 of 2014 is rejected;
- (ii) Civil application No. 64 of 2014 is partly allowed;
- (iii) We direct the applicant to deposit in this Court a sum of Rs. 75,000/- within a period of one month from today. The said amount shall be utilized by the wife for making payment of deposit for securing accommodation. It is made clear that deposit of the said amount will be subject to final order passed in the appeals. In the event, the said amount is not utilized by the wife, husband will be entitled to seek refund of the amount;
- (iv) On deposit of the amount of Rs. 75,000/- by the husband, the wife will be entitled to withdraw the same;

- (v) Within a period of two months from the date on which the amount of Rs. 75,000/- is deposited by the husband in this Court, the wife shall vacate the service quarters and shall hand over possession thereof either to the husband or directly to the concerned Authorities of the Western Railways. Possession shall be handed over within a period of two months from the date on which amount of Rs. 75,000/- is deposited by the husband in this Court. Notice of the deposit of the amount of Rs. 75,000/- shall be served by the Advocate for the husband to the wife as well as to the Advocate of the wife;
- (vi) The sum of Rs. 10,000/- deposited by the husband in the bank account of the wife shall be utilized by the wife towards payment of license fee/rent for the first month;
- (vii) For a period of one year from the date on which the wife vacates the service quarters, the husband will be liable to pay Rs. 10,000/- per month to the wife towards rent/license fees. This will be inclusive of the amount specified in clause (vi) above. The said amount of Rs. 10,000/- per month shall be deposited directly in the bank account of

the wife on or before 10th day of every calendar month. In the event of any technical difficulty which prevents the husband from depositing the amount directly in the account of the wife, the said amount shall be deposited in this Court;

- (viii) After expiry of first period of one year, the amount of Rs. 10,000/- shall be increased every year by 20% of sum of Rs. 10,000/- (Rs. 2,000/- per year) till the disposal of the appeals;
- (ix) We make it clear that the aforesaid interim arrangement shall continue till the disposal of the appeals;
- (x) Sum of Rs. 10,000/- deposited by the husband in this Court on 14th October, 2013 is permitted to be withdrawn by the wife, which can be utilized by the wife towards the shifting charges.
- (xi) All concerned to act upon the authenticated copy of this order.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)