IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.198 OF 2007

Rasila D/o. Ranchhoddas Naram (Thakkar),)
Aged about 41 years, An Indian Inhabitant)
of Bombay, residing at)
C/o. Paresh R. Thakkar, 17-C, Flat No.21,)
Vrindhavna Society, Thane.).. Appellant
(Org.Respondent)

Vs

Deepak Dhansukhlal Vanjara,)
Aged about 43 years, An Indian Inhabitant,)
residing at 21, Gujarat Bhavan, 26,)
J.V.P.D.Scheme, Andheri (West),)
Mumbai – 400 059.).. Respondent
(Org. Petitioner)

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Shri Kunal Sampat i/by Shri S.K. Jain for the Respondent.
Mrs. Sulbha Arun Dhamale for the Appellant.

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CORAM : A.S. OKA & A.S. GADKARI, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 11TH DECEMBER 2014

DATE ON WHICH JUDGMENT IS PRONOUNCED: 20TH MARCH 2015

JUDGMENT (PER A.S. OKA, J)

. Heard the learned counsel appearing for the Appellant and learned counsel appearing for the Respondent. This Appeal was disposed of finally by the judgment and order dated 25th July 2014.

Civil Application No.395 of 2011 was taken out for setting aside the said judgment and decree. The Civil Application has been allowed and, therefore, the Appeal was taken up for final hearing afresh.

2. Learned counsel appearing for the Appellant wife submitted that the Appeal is confined to that part of the decree by which the maintenance allowance of Rs.1,500/- per month was fixed by the Family Court. The Appellant is seeking enhancement of maintenance allowance. The order dated 20th November 2007 passed by this Court records a statement of the learned counsel for the Appellant that the challenge in the Appeal is restricted only to that part of the decree by which the maintenance of Rs.1,500/- per month has been fixed.

3. The learned counsel appearing for the Appellant wife invited the attention of the Court to the findings recorded by the learned Judge of the Family Court. He pointed out that even after recording a finding that the net salary of the Respondent husband was Rs.8,245/- per month, the learned Judge has come to the conclusion that the total maintenance allowance was payable to the Appellant wife at the rate of only Rs.1,500/- per month. The learned Judge of the Family Court noted that the Appellant was granted interim alimony of Rs.1,000/- per month. Therefore, the learned Judge directed that till

28th February 2007, the Appellant wife will be entitled to maintenance at the rate of Rs.1,000/- per month. He directed that from 1st March 2007, the Appellant will be entitled to the total maintenance of Rs.1,500/- per month. He submitted that considering the admitted income of the Respondent husband, the amount of maintenance is on the lower side. He invited our attention to the Civil Application No.20 of 2012 and in particular the affidavit filed by the Respondent husband. He pointed out that the salary slip annexed to the said affidavit for the month of December 2011 shows that the Respondent was drawing the net monthly salary of Rs.22,181/-. He pointed out that during the pendency of this Appeal, the Appellant lost her shelter. He stated that as the Appellant does not have any source of income, her brother was required to spend Rs.3,00,000/- on her medical treatment.

4. The learned counsel appearing for the Respondent husband pointed out that the Respondent has incurred expenditure on education and maintenance of his son. She stated that from the years 2004 to 2008, the son was doing graduation at Thakur College, Kandivali (East), Mumbai. She stated that a substantial expenditure has been incurred by the Respondent on the education and maintenance of his son. She relied upon an affidavit dated 11th December 2014 filed by the Respondent husband. She pointed that on 26th November 2010, the Respondent has got married to one Aarti, who is a divorcée. The

learned counsel appearing for the Respondent husband submitted that monthly expenses incurred by the Respondent on himself are to the tune of Rs.10,000/- and he is spending a sum of Rs.12,000/- for his wife and his aged mother. The learned counsel appearing for the Respondent relied upon the entries in the passbook of the Respondent which is annexed to the said affidavit. Her submission is that the passbook shows that there are certain credit entries in the said account. The learned counsel for the Respondent submitted that considering the fact that till the year 2010, the Respondent had to incur very heavy expenditure on the education of his son and his father's medical treatment and considering the fact that his mother and his second wife are fully dependent upon him, no interference is called for in the impugned judgment and decree.

5. The learned counsel appearing for the Appellant wife urged that the passbook on which the Respondent is relying upon shows that it is a joint account of the Appellant, her brother's wife and brother's son and few stray entries of deposits do not prove that the wife has any source of income. He stated that the passbook was forwarded by him along with his notice calling upon the Respondent to pay the maintenance.

6. We have given careful consideration to the submissions. From the affidavit tendered on 11th December 2014, it appears to be an admitted position that the Respondent is an employee of the Government of Guajrat. He has annexed photocopies of the salary slips for January 2003, January 2004, January 2005, January 2006, January 2007, January 2008, January 2009 and December 2009. He has not chosen to produce the salary slips for the other months and for the period after December 2009. He has not even produced the consolidated statement of yearly salary received by him from the year 2003 onwards. His salary as reflected from the salary slips produced by him is as under :-

Sr.Nos.	Month	Gross Salary	Net Salary
1.	January 2003	Rs. 6,956/-	Rs. 5,890/-
2.	January 2004	Rs. 7,555/-	Rs. 6,815/-
3.	January 2005	Rs. 8,019/-	Rs. 7,275/-
4.	January 2006	Rs. 9,005/-	Rs. 8,245/-
5.	January 2007	Rs. 9,863/-	Rs. 6,603/-
6.	January 2008	Rs.10,939/-	Rs.10,179/-
7.	January 2009	Rs.11,600/-	Rs.10,715/-
8.	December 2009	Rs.16,839/-	Rs.13,556/-

7. It is pertinent to note that a deduction is shown in each salary slip towards GPF contribution. In January 2006, the GPF contribution is shown as Rs.500/- per month. However, in January 2007, it is shown as Rs.3,000/- per month. For January 2008, it is shown as Rs.500/-. For January 2009, it is shown as Rs.500/-. But in

the month of December 2009, it is shown as Rs.2,883/-. As regards the salary for the subsequent period, the Respondent has stated in the said affidavit in Paragraph 2 that his net monthly salary for the year 2011 was Rs.17,500/-. His net monthly salary in December 2012 was Rs.22,000/-. His net monthly salary for the year 2013 was Rs.25,500/-. His net monthly salary for the year 2014 is Rs.28,500/-. However, he has not produced any documents alongwith the said affidavit-in-support of this claim from the year 2011. The said claim made by the Respondent in the affidavit appears to be factually incorrect.

8. Civil Application No.20 of 2012 was filed by the Appellant wife for grant of interim maintenance. A reply was filed by the Respondent husband to the said Application. The salary slip annexed by the husband of December 2011 to the said affidavit shows that he was posted to work as an Assistant Superintendent in the office of District Information Office, Rajpipla, District- Narmada, State of Gujarat. The salary slip annexed to his affidavit shows that the gross monthly salary was Rs.23,981/- and the net salary was Rs.22,181/-. Though the salary slip produced by him itself shows that his net salary was Rs.22,181/-, in the chart in Paragraph 2 of the affidavit dated 11th December 2014, he has shown his net monthly salary of the year 2011 as Rs.17,500/-. In the said chart, in Paragraph 2 of the said affidavit, he has shown his net monthly salary for the years 2012, 2013 and 2014 as

Rs.22,000/-, Rs.25,500/- and Rs.28,500/- respectively. Going by the said figures of the salary right from the year 2003 and considering the fact that the net salary of the Respondent in the month of December 2011 was Rs.22,181/-, the net monthly salary for the year 2012 cannot be less than Rs.26,000/- to 27,000/-. The net monthly salary for the year 2013 cannot be less than Rs.31,000 to 32,000/- and the net monthly salary for the year 2014 cannot be less than Rs.33,000/- to 34,000/-.

9. In the affidavit dated 11th December 2014, the Respondent has stated that he incurred the expenditure starting from Rs.3,000/- per month to Rs.5,000/- per month from 2003 to 2009 on the education of his son. The affidavit-in-lieu of the examination-in-chief was filed by the Respondent husband before the Family Court at Bandra on 29th June 2004. In the said affidavit, he has not disclosed that he has spent an amount of Rs.3,000/- per month or more on the education of his son. He was cross-examined in the year 2006. The Appellant wife filed her affidavit-in-lieu of the examination-in-chief on 1st August 2006. Her cross-examination was completed on 21st November 2006. Though in the affidavit filed on 11th December 2014, the Respondent claimed that he had spent a sum of Rs.4,000/- per month each for the years 2005 and 2006 on the expenditure of his son, there was no such specific suggestion given to his wife. The learned Trial Judge has considered

the salary slip of the Respondent for January 2006 at Exhibit -16 which shows that his net monthly salary was Rs.8,245/- per month. The learned Judge has recorded a finding that the expenses involved for the monthly maintenance of the Respondent himself and his son can be totally quantified at Rs.5,000/-. After considering the fact that the total expenditure incurred by the Respondent for himself and his son was of Rs.5,000/- per month, the learned Judge came to a conclusion that till 28th February 2007, the Appellant wife will be entitled to maintenance of Rs.1,000/- per month and from 1st March 2007, she will be entitled to Rs.1,500/- per month. This finding recorded in the judgment and decree dated 15th February 2007 is not challenged by the Respondent husband.

10. Going by the salary slips produced by the Respondent, the net income of the Respondent for the year 2006 was Rs.8,245/- per month. By relying upon the salary slip for the month of January 2007 which shows the GPF contribution of Rs.3,000/-, the Respondent wants to contend that though his gross salary for the month of January 2007 was Rs.9,863/-, his net salary was only Rs.6,603/-. As stated earlier, in case of all salary slips except the salary slip for December 2009, the GPF contribution is shown as Rs.500/- per month. If the same deduction is taken, the net monthly salary of the Respondent for the year 2007 will be Rs.9,103/-.

11. Thus, going by the figures quoted by the Respondent in his affidavit, the maintenance payable upto the year 2005 can be reasonably taken as Rs.1,000/- per month. For the years 2006 and 2007, the net monthly salary of the Respondent was Rs.8,245/- and Rs.9,103/- respectively. Considering the fact that the son was taking education in the college in Mumbai, the maintenance to the wife for these two years can be fixed at Rs.2,500/- per month. There is nothing on record that the Respondent's father was dependent upon him. The salary slips show that for the years 2008 and 2009, the net monthly salary was Rs.10,179/- and Rs.10,750/- respectively. Hence, the maintenance can be fixed at Rs.4,000/- per month. From the year 2010 onwards, the son is admittedly employed. As pointed out earlier, the salary slip of December 2009 shows that the gross salary was Rs.16,839/-. For the said month, GPF contribution is shown as Rs.2,883/-. The Respondent has omitted to produce his salary slips for the year 2010. As we have pointed out earlier, from the salary slip produced by him for December 2011, it appears that the net salary of the Respondent was Rs.22,181/-. Therefore, it can be safely concluded that in the year 2010, the net monthly salary of the Respondent was not less than Rs.16,000/- to 17,000/-. Therefore, for the year 2010, maintenance will have to be fixed at the rate of Rs.6,500/- per month. For the year 2011, the net monthly salary of the Respondent was more

than Rs.22,000/-. Therefore, for the year 2011, the maintenance will have to be fixed at Rs.10,000/-. From the year 2012 onwards, considering the net income of the Respondent, the maintenance amount will have to be fixed at Rs.12,500/-.

12. It is true that the impugned decree is of 15th February 2007. However, the Respondent himself has brought on record the details of his salary after the date of impugned judgment and decree. This Appeal is a continuation of proceedings. Therefore, this Court while deciding the Appeal can fix the maintenance payable after 2007 on the basis of the admitted salary of the Respondent for the subsequent period. The parties need not be driven to file one more proceedings.

13. A contention has been raised by the Respondent that he has re-married in the year 2010. The Respondent has re-married during the pendency of this Appeal with the full notice that he is liable to pay maintenance to his first wife at an enhanced rate as may be decided in Appeal. The subsequent event of re-marriage of the Respondent cannot take away the right of the first wife to get maintenance to which she is legitimately entitled. Therefore, the said argument of the Respondent deserves to be rejected.

14. The Respondent relied upon certain credit entries in the bank passbook of the Appellant's account in Maharashtra Gramin Bank. However, the said account is a Joint Account of the Appellant, her brother's wife and her brother's son. Hence, the stray credit entries in the bank passbook will not establish that the Appellant has a source of income.

15. As stated earlier, the Respondent was absent when the Appeal was decided earlier. Now the Appeal is required to be re-heard. Therefore, the Respondent will have to pay costs quantified at Rs.17,500/-. In the ex parte judgment, the costs was quantified at Rs.15,000/-. On application for restoration, costs have not been separately awarded.

16. Therefore, the Appellant has made out a case that her brother was required to spend a sum of Rs.3,00,000/- on her medical treatment. She has contended that though initially she had a residential premises, during the pendency of the Appeal, the Appellant has lost her shelter. As there is no evidence adduced on the said event which has allegedly taken place during the pendency of the Appeal, it will be open for the Appellant to file an Application under Sub-section (2) of Section 25 of the Hindu Marriage Act, 1955 before the

appropriate Court for seeking appropriate amount in that behalf. All contentions of the parties on such Application, if made, are kept open.

17. Hence, the Appeal must succeed in part and we pass the following order:

ORDER :

(a) The decree of maintenance passed by the learned Judge of the Family Court, Mumbai, directing payment of maintenance at the rate of Rs.1,000/- per month is partly confirmed to the extent that the monthly maintenance at the said rate shall be payable to the Appellant till 31st December 2005;

(b) We direct that the monthly maintenance payable by the Respondent to the Appellant shall be as under:-

(i)	For the calendar year 2006 and 2007	Rs.2,500/- per month
(ii)	For calendar years 2008 and 2009	Rs.4,000/- per month
(iii)	For calendar year 2010	Rs.6,500/- per month
(iv)	For calendar year 2011	Rs.10,000/- per month
(v)	From 1st January 2012 onwards.	Rs.12,500/- per month

(c) The interim maintenance shall be paid by the

Respondent to the Appellant on or before 15th day of every calendar month;

(d) The interim maintenance including the arrears and costs shall be transferred by the Respondent directly in the Bank Account of the Appellant wife;

(e) The amount paid by the Respondent on the basis of the interim order of the Family Court as well as the amount paid on the basis of the interim order passed by this Court during the pendency of the Appeal shall be adjusted towards the amount payable under the judgment and decree;

(f) Arrears of maintenance payable by the Respondent under this judgment and decree shall be paid by him to the Appellant before the end of July 2015;

(g) The Respondent shall pay costs of this Appeal quantified at Rs.17,500/- to the Appellant within a period of two months from today;

(h) It will be open for the Appellant to make an Application under Sub-section (2) of Section 25 of the Hindu Marriage Act, 1955 to the appropriate Court as indicated in this Judgment. The contention of both the parties in such Application, if made, shall remain open;

(i) The Appeal is partly allowed on above terms;

(j) The Decree be drawn accordingly.

(A.S.GADKARI, J) (A.S. OKA, J)