IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6056 OF 2014

Mrs. Jayshree Sanjay Vora & Anr. Petitioners
Vs
Mr. Sanjay Vishanji Vora .. Respondent

Ms. Firdaus Bhatia i/b Ms Purnima G. Bhatia, Advocate for Petitioners.

Mr. Milan Desai i/b Ashwini Milan Desai, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
RESERVED ON : 23.02.2015
PRONOUNCED ON : 13.03,2015.

PC:

1. Heard Ms. Purnima Bhatia, learned counsel for the petitioners and Mr. Milan Desai, learned counsel for the respondent at length.

2. Rule. Mr. Desai waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this petition under Article 227 of the Constitution of India, the petitioner-wife has challenged the Judgment and order dated 6.6.2014 passed by the learned Judge, Family Court No.3, Mumbai, in Interim Application No.233 of 2013, below Exhibit-6, in Petition No.C-95 of 2013. By that order, the Family Court directed the respondent-husband to pay an amount of Rs.25000/-

per month as interim maintenance to the petitioner from the date of the application, i.e. 28.8.2013 till the disposal of the main petition. The respondent was directed to pay an amount of Rs.20,000/- per month as interim maintenance to his son Meghansh from the date of the application, ie. 28.8.2013 till the disposal of the main petition. The respondent was directed to clear the arrears of maintenance within three months and to deposit the amount of maintenance in the Bank Account of the petitioner on or before 10th day of each month.

4. The petitioner had filed that application for grant of interim maintenance for herself and her minor son-Meghansh claiming maintenance and other expenses of Rs.1,40,017/- per month for herself and Rs.32,788/- for her minor son. As against this, the Family Court awarded Rs.45,000/- for the petitioner and for her son.

5. In support of this petition, Ms.Bhatia submitted that the petitioner has instituted proceedings under sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 (for short, “Act”) against the respondent for directing him to pay Rs.89,767/- and Rs.50,250/- for household expenses and for her personal expenses and to pay Rs.32,788/- per month by way of maintenance for the minor child; for perpetual injunction restraining the respondent from interfering with the petitioner's possession over the Flat at A/1603, Aditya Tower, Chandavarkar

Road, Borivali (W), Mumbai-400092 (for short, 'suit flat') as also interfering with the petitioner’s ingress into and/or egress out of the said flat at Aditya Tower, among other prayers. She submitted that pending that petition, the petitioner filed application for interim maintenance on 28.8.2013 claiming maintenance for the household expenses and for herself Rs.89,767/- plus Rs.50,250/- (Total Rs.1,40,017/-) and Rs.32,788/- for her minor son. In paragraph 5, it was submitted that the petitioner was given more than Rs. One lac for expenses just to run the house every month by the respondent. The school and tuition fees of the minor and the society maintenance, petrol, electricity, telephone, milk, grocery, entertainment were all paid separately by the respondent. Apart from that, the respondent used to give any amount between Rs.25,000/- and Rs.50,000/- depending on her requirements separately for her personal expenses. The respondent used to buy designer clothes, accessories etc and take the petitioner on international holiday and outings. In paragraph 7, the petitioner contended that the respondent belongs to a very affluent family and maintains a luxurious life style. The suit flat ad-measures approximately 1100 sq.feet valued at Rs.2,25,00,000/-. The respondent has his own business of stock and trading, money laundering, real estate and investments and is director/partner of various companies/partnership firms, namely Piyush Manoj and

Company, Dhanvijay Investments Pvt Ltd, Ravji Keshavji Properties Pvt Ltd and Avani Housing Pvt Ltd. The respondent has also business interest and share in SDK Securities Pvt. Ltd, HS & PM Advisory Services, LLP and Piyush Maoj Advisory Pvt Ltd. It is her case that the respondent's share per month from the family income is not less than Rs. 4 to 5 lacs. The respondent's total monthly earning/income is approximately Rs.14,00,000/- to 15,00,000/- per month. All his income is in cash and that is the reason an enquiry was conducted by CBI on him and his family. The respondent is having country club membership. He owns 3 luxurious cars. The respondent has gifted a sony play station-3 to the minor for his birthday on 2.6.2013 which costs approximately Rs.34,000/-. Recently, the respondent's company Piyush Manoj Advisory Pvt Ltd had given approximately Rs.15 lacs as donation to Sheth Dhanji Devshi K.V.O Kelvani fund.

6. Ms. Bhatia submitted that Form No.16 of the respondent shows that for the period from 1.4.2013 to 31.3.2014, income chargeable under the head salary shown was Rs. 14,00000/-. Income tax Return for the assessment year 2013 -2014 showed gross total income of the respondent Rs.12,51,067/- He had paid advance tax of Rs.15000/- and Rs.1,78,710/- TDS was deducted. She submitted that if at all the respondent claims to be an employee of Piyush Manjoj Advisory Pvt Ltd, there is no explanation for paying advance tax to the tune of Rs.15000/-.

She further submitted that in paragraph 26 of the impugned order, the Family Court considered the reply filed by the respondent wherein it is stated by him his monthly income as Rs.1,30,000/- from salary, interest income, PPF saving interest and dividend income. The Family Court disbelieved his claim of his permanent expenses to the tune of Rs.63,000/- per month by observing that the respondent had given inflated figures of his own expenses. After considering the monthly income of Rs. 1,30,000/-, the Family Court awarded maintenance of Rs.45,000/- in all to her and her minor son. She, therefore, submitted that the interim maintenance deserves to be increased.

7. On the other hand, Mr. Desai supported the impugned order. He submitted that at present the respondent is working in Piyush Manoj Advisory Pvt Ltd and is getting annual salary package of Rs.10,50,000/- (Rs.87,500/- monthly). He has produced the salary certificate. He submitted that in the past he used to do personal share trading in stock market. He is also not presently director of various companies/partnership firms. So far as Piyush Manoj & Company, a partnership firm, is concerned, he was partner in that firm but the said firm is closed in March, 2010. The respondent had resigned and left from Dhanvijay Investments Pvt Ltd and Ravji Keshavji Properties Pvt Ltd and Devji Keshavji Finstock Pvt Ltd in September, 2008. The respondent had resigned and left from Avani Housing Pvt Ltd in

November, 2011. The respondent has no concern with HS & PM Advisory Services LLP. He submitted that the petitioner is a commerce graduate and has ability and experience of working. She used to work in father's company K.K. Oil Company as Sales Executive. Her father runs a big "K.K. Oil" brand and has huge business in local market. He has invited my attention to the reply filed by the respondent to the interim application as also explanation furnished on ownership of alleged properties of the respondent. He further submitted that the respondent is driven out from the suit flat by the petitioner and presently he is residing on leave and licence basis.

8. Mr. Desai further submitted that under section 18(2) of the Act, a Hindu wife is entitled to live separately from her husband without forfeiting her claim of maintenance subject to clauses (a) to (g) thereof. Section 23 lays down that it shall be in the discretion of the Court to determine what maintenance is to be awarded and in doing so, the Court shall have due regard to the considerations set out in subsection (2) or (3). After considering the material on record, the Family Court has exercised discretion which is informed with reason, equity and good conscience. He, therefore, submitted that no case is made out for interfering with the impugned order which is discretionary in nature. In support of his submissions, he relied upon the following decisions:-

1. Om Prakash Puri Vs. Nandita Puri, Writ Petition No.2921 of

2014 decided on 14.10.2014 (Coram : M.S.Sonak, J.), to contend that while deciding the application for interim maintenance, wide discretion is conferred on the Court. Although, the discretion conferred is wide, nevertheless the same is a judicial discretion and, therefore, has to be informed with reason, equity and good conscience. The order of interim maintenance by its very nature is temporary and, therefore, a detailed or elaborate exercise by the court may neither be necessary nor feasible. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to when she lived with her husband.

2. Pushpa alias Chahabai Bhausaheb Vs Bhausaheb Ranuji Gade, Criminal Writ Petition No.352 of 2002 decided on 19.9.2008 (Coram : V.R.Kingaonkar, J.) to contend that it is well settled that ordinarily, 1/5th of the income of the husband could be charged for separate maintenance allowance to the wife.

9. Mr.Desai further submitted that in paragraph 24 the Family Court observed that the petitioner has claimed exaggerated figures in the name of expenses. She even went to the extent of claiming expenses for mobile phone of maid servants. He submitted that having regard to the reasonable wants of the petitioner, the Family Court has justly awarded Rs.45,000/- in all, to her and her minor son. He, therefore, submitted that no interference is called for in exercise of the powers under Article

227 of the Constitution of India.

10. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the petitioner has claimed in all Rs.1,17,805/- from the respondent as against that the Family Court has awarded Rs.45,000/- to her and her minor son. The short question is whether the petitioner is entitled to claim higher maintenance than the one awarded by the Family Court. In paragraph 17, the Family Court rightly observed that while determining the quantum of maintenance, it is necessary to take into consideration the following factors:

1. Status of the parties.
2. Reasonable wants of the claimant.
3. Independent income and property of the claimant.
4. Number of persons the non-applicant has to maintain.
5. The amount to aid the applicant tolive in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities.
7. Provision for food, clothing, shelter, education, medical attendance, treatment etc.
8. Payment capacity of the non-applicant.
9. Guess work when income not truly disclosed.
10. The cost to defray the cost of litigation.

11. Perusal of the material on record, prima facie, indicates that the parties belong to a very affluent family. The parties belong to Kachhi community which is a business community. It is the case of the petitioner that the respondent maintains a luxurious life style. The respondent has his own business of stock and trading, money laundering, real estate and investments and its director/partner of various companies/partnership firms, namely (1) Piyush Manoj and Company, (2) Dhanvijay Investments Pvt Ltd (3) Ravji Keshavji Propertie Pvt Ltd and (4) Avani Housing Pvt Ltd. The respondent has also a business interest and share in (1) SDK Securities Pvt Ltd, (2) HS & PM Advisory Services LLP and (3) Piyush Manoj Advisory Pvt Ltd. He has made one of his cousins Amit Vora as Director/partner of these companies, viz. (1) SDK Securities Pvt Ltd (2) HS & PM Advisory Services LLP and (3) Piyush Manoj Advisory Pvt Ltd. Amit vora's name as a director is for name sake to protect the respondent's business interest and to save him from legal complications. In realty, the respondent is behind the scene looking into the operations and day-to-day affairs of these companies along with other directors. Pertinently, all these companies/partnership firms were incorporated when the respondent started having matrimonial issues on account of his affair with Ms Bhavika. It is her further case that the respondent has made investments in several immovable

properties, viz. Units at Laxmi Chhayya building, 2 offices at Matunga admeasuring approximately 500 sq.ft each, two flats at Mahur Towers and one flat at Haveli which is a 3 BHK. The respondent has his offices at Matunga and Borivali. The suit flat is purchased by the respondent. The house where the respondent is presently residing, is purchased in the name of one of his companies. The respondent earns income of approximately Rs. 10,00000/- per month from his own business and investments made. The respondent's share per month from the family income is not less than Rs. 4 to 5 lacs. The total monthly income/earning is approximately Rs.14 to 15 lacs per month. All his income is in cash and that is the reason an inquiry was conducted by CBI on him and his family. The respondent is having country club membership. The respondent's family runs joint family business of wholesale of food grains, real estate/construction under the name and style of various companies, partnership firms namely (1) D.K Corporation (2) D.K. Stock Consultant (3) Devji Keshavji Finstock Pvt Ltd in which the respondent has a beneficial interest and share in it, being a joint family business. The Joint family is landlord of four storied building known as “D.K.House”.

12. In paragraph 20, the Family Court recorded that the respondent is trying to conceal his real income. It appears that the respondent has much more income than the income revealed by him. He is a man of status and spirit. He has to maintain his

wife and son as per his own standard. In paragraph 26, the Family Court considered the reply of the respondent wherein he stated that his monthly income is Rs.1,30,000/-. The break-up of his expenses were disbelieved on the ground that he gave inflated figures of his own expenses.

13. Mr. Desai undoubtedly submitted that earlier the respondent was a partner of Piyush Manoj & Company, a partnership firm but the same firm is closed in March 2010. The respondent had resigned and left from (1) Dhanvijay Investments Pvt Ltd (2) Ravji Keshavji Properties Pvt Ltd and (3) Devji Keshavji Finstock Pvt Ltd in September, 2008. The respondent had resigned and left from Avani Housing Pvt Ltd in November, 2011. He also denied that he has any concern with HS & PM Advisory Services LLP. It is, however, material to note that in paragraph 10 of his reply to the interim application he admitted that he has business interest and share in SDK Securities Ltd. However, the respondent has not disclosed his business interest and share in that concern. Prima facie, the respondent has not explained payment of advance tax of Rs.15000/- in the assessment year 2013-14 when he claims to be a salaried person.

14. Taking over all view of the matter, in my opinion, the Family Court ought to have awarded maintenance of Rs.80,000/- per month to the petitioner and her son. Having regard to the fact

that the monthly income even as per the case of the respondent is Rs.1,30,000/-. Having regard to the fact that the respondent was giving Rs. One lac per month as claimed by the petitioner in paragraph 5 of her interim application just to run the house every month as also having regard to status of the parties as also for providing food, clothing, education, medical attendance and treatment as also paying capacity of the respondent as also guess work when income is not truly disclosed by the respondent, the respondent should be ordered to pay Rs.80000/- per month towards maintenance for both petitioner and her son. The respondent has business interest and share in SDK Securities Ltd as is evident from paragraph 10 of his reply to interim application for maintenance. It is material to note that the respondent does not dispute that at least in the past he was actively concerned with the various concerns referred to herein above. Mr. Desai relied upon the decision of this Court in the case of Om Prakash Puri. In that case, the decision of the Apex Court in the case of Jasbir Kaur Sehgal Vs. District Judge, Dehradun II (1997) DMC 338 (SC) was considered. In that case, it was held that the amount of maintenance fixed for the wife should be such as she can live in reasonable comforts considering her status and mode of life which she was used to when she lived with her husband. Mr. Desai also contended that in the case of Pushpa alias Chahabai Bhausaheb Gade (supra) in paragraph 9, the learned Single Judge observed that ordinarily, 1/5th of the income of the husband could be charged for separate maintenance allowance to the wife. In that case, the Court was considering proceedings under section 125 of Cr.P.C. In the present case, the petitioner had filed proceedings under sections 18 and 20 of the Act. In view thereof, this decision does not advance the case of the respondent.

15. In view thereof, the impugned order deserves to be modified in the following terms.

(i) The respondent shall pay an amount of Rs. 80,000/- per month as interim maintenance to the petitioner and her son from the date of the application, i.e. 28.8.2013 till the disposal of the main petition.

(ii) The respondent shall clear the arrears of maintenance within three months subject to adjustment of payments made in pursuance of the impugned order.

(iii) The respondent shall deposit the amount of maintenance in the Bank Account of the petitioner on or before 10th day of each month.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)