

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

**WRIT PETITION NO.6409 OF 2014
IN
M.J. PETITION NO.A-1836 of 2013
WITH
CIVIL APPLICATION NO.1071 OF 2015**

Mr. Anil Gunvantraai Bhatt
Age 50 years, occ. Professional,
residing at Flat No.A/201, Shriram
Apartment, Behind Milap Theatre,
S.V. Road, Kandivali (West),
Mumbai-400 067 and Flat No.A/303,
West View Co-op Housing Society
Ltd., Sector-II, Plot No.6, RSC-6,
Charkop, Kandivali (West),
Mumbai-400 067.

.. Petitioner.
(Org. Respondent)

V/s

Mrs. Alpa Anil Bhatt
Age 43 years, occ. Housewife,
residing at A/303, West View
Co-operative Housing Society
Ltd., Sector-II, Plot No.6, RSC-6,
Charkop, Kandivali (West),
Mumbai-400 067.

.. Respondent.
(Org. Plaintiff)

Mr. H.T. Pawar, for the Petitioner.
Mr. L.C. Joshi a/w Ms Nisha Shah, for the Respondent.

**Coram : Smt. R.P. SondurBaldota, J.
Date : 22nd April, 2015**

P.C.

1. This petition challenges the order dated 19th May, 2014, passed by the Family Court on the applications at Exhibits 6 and 18 filed for maintenance and for access to the residential premises at Shriram Apartments respectively. The impugned order directs the petitioner to pay the interim maintenance @ Rs.5000/- per month to the respondent. It also directs him to provide an alternative accommodation to the respondent by providing one room kitchen flat either on ownership basis or on leave and license basis, in the vicinity where her parental house is situate within 60 days from the date of the order. On failure to do so, the petitioner is directed to pay a sum of Rs.5,000/- per month to enable the respondent to avail a house on rent. The direction sought by the respondent for handing over the keys of the flat at A/201, Shriram Apartment, Kandivali (West) was refused to her.

2. The respondent had alleged in the application that the petitioner earns Rs.40,000/- per month. However, his

income-tax returns for the period 2013-2014, 2012-2013, 2011-2012 and 2010-2011 disclose his average gross income as Rs.20,000/- per month. The respondent herself earns about Rs.600/- per month by taking tuitions. Admittedly, the petitioner owns the flat at Shriram Apartment. He also has a share in Flat No.1/303, West View Co-operative Housing Society, which belongs to his father. On the above material on record, the Family Court gave directions for payment of maintenance and also for provision of a house to the respondent.

3. The Family Court noted that except the admission, that the respondent takes tuitions and earns Rs.600/- per month, there is no material on record to believe that she earns substantial amount and need not be granted any maintenance. The observation of the Family Court is seen to be justified. Mr. Pawar, the learned advocate for the petitioner however submits that the respondent had suppressed the fact of her earnings from the Court. He argues that the respondent did not disclose in the application that she takes the tuitions and hence will not

be entitled to relief from the court. Undoubtedly, the respondent did not disclose in her application that she earns a paltry amount of Rs.600/- per month by taking tuitions. But an order of award of maintenance is not a discretionary relief to be denied to the respondent for suppression of material fact. It is a matter of sustenance for the respondent and non-disclosure would affect only the quantum of maintenance. By taking overall evidence of the income of the parties, the Family Court awarded a reasonable amount of maintenance @ Rs.5,000/- per month to the respondent, which cannot be disturbed.

4. Mr. Pawar next submits that the real concern of the petitioner is about direction to provide residence to the respondent and payment of amount of Rs.5,000/- per month in lieu of residence. He submits that it is beyond the means of the petitioner to provide the residence to the respondent. He also submits that no direction regarding providing the residence to her ought to have been made by the Court because the respondent has been residing with her parents since the time she

left the matrimonial house. It is his argument that order of residence could have been justified only if the respondent were to have no shelter whatsoever. This argument needs to be rejected outright. If merely, because the respondent is fortunate enough to have roof of her father over her head, it does not mean that she will not be entitled for the residence to be provided by the petitioner. Hence, there is no infirmity in the order as regards the provision of residence to the respondent also. The Writ Petition is dismissed.

5. In view of dismissal of the writ petition, the Civil Application is disposed off, as does not survive.

(Smt. R.P. SondurBaldota, J.)