

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

FAMILY COURT APPEAL NO. 302 OF 2014
WITH
CIVIL APPLICATION NO. 346 OF 2014
IN
FAMILY COURT APPEAL NO. 302 OF 2014

Smt. Sheetal M. Chavan

..Appellant

v/s.

Shri Mahendra P. Chavan

..Respondent

Mrs. Anjali N. Helekar for the Appellant.

Mr.A.V.Bedekar for the Respondent.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : JUNE 11, 2015.**

P.C.

1. By the present appeal the appellant has challenged the order dated 15th March, 2014 passed below Exhibit 1 in Civil Misc. Application No.216 of 2013 in Petition No.A-420 of 2008 by the Principal Judge, Family Court, Mumbai.
2. Petition No.A-420 of 2008 was filed by the appellant against the respondent for divorce. By judgment and Order dated 28th April, 2010, the learned Principal Judge, Family Court, Mumbai granted divorce by mutual consent. The issue of maintenance however was contested by the parties. The learned Principal Judge of the family

court after recording the evidence and after hearing the parties directed the respondent to pay maintenance to the appellant and her daughter at an amount of Rs.3000/- each (total Rs.6000/-) per month. The respondent, till 21st June, 2012 paid the amount of maintenance in accordance with this judgment and order. However, thereafter the respondent stopped the payment and filed a review application being Civil Misc. Application No.216 of 2013 for review of the judgment and order dated 28th April, 2010 passed in Petition No.A-420 of 2008. As stated above, by impugned order, the learned Principal Judge, Family Court allowed this review application, modified the maintenance order and directed the respondent to pay to the appellant and her daughter amount of Rs.1000/- each (total Rs.2000/-) per month from March 2014.

3. The judgment and decree in Petition No.A-420 of 2008 was passed on 28th April, 2010 and the misc. application for review of the order was filed in August 2013. Though the review application was filed after lapse of three years, the application for condonation of delay was not filed along with the application. The appellant contested the review application on the ground that it is barred by limitation and there being no application for condonation of delay the same is not maintainable. Though the learned Principal Judge referred the defence of the appellant in para 5 of the impugned order, no finding is given in the impugned order. We, therefore, are of the view that the respondent's application for review of the order dated 28th April, 2010 was barred by limitation and was therefore not

maintainable, and on that ground alone the same deserves to be dismissed.

4. The learned Judge reduced the maintenance amount on the basis of salary certificate produced by the respondent with the written arguments. The authenticity of this certificate was not examined and the appellant was also not given an opportunity to challenge the veracity of the salary certificate. In any case, the salary shown in this certificate is less than the minimum wages and appears to be fabricated. In these circumstances, we are of the opinion that the learned Principal Judge could not have relied upon this certificate in order to reduce the amount of maintenance.

5. The respondent is an able bodied person, aged about 38 years. It is his responsibility to maintain his wife and the minor school going child. The respondent has not paid the maintenance amount to the appellant from 21st June, 2012. The conduct of the respondent itself shows that he is avoiding the payment of the maintenance to the appellant and his minor daughter. In the circumstances the impugned order cannot be sustained. Same is accordingly quashed and set aside. The respondent is directed to comply with the order of the Family Court dated 28.4.2010 passed in Petition No.A-420 of 2008.

6. The appellant shall intimate her bank account details to the respondent or the advocate for the respondent within one week from today. The respondent shall deposit the arrears of maintenance in the account of the appellant within two weeks from today, and shall

go on depositing the monthly maintenance as per the order dated 28th April, 2010, before 10th of every month.

7. The appeal is allowed in above terms.

8. In view of disposal of the appeal, civil application does not survive and the same is also disposed of.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)