

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

**CIVIL APPLICATION NO. 270 OF 2013
WITH
CIVIL APPLICATION NO. 271 OF 2013
IN
FAMILY COURT APPEAL NO. 181 OF 2013
IN
FAMILY COURT PETITION NO. A-2313 OF 2006**

Malay Girish Gandhi .. Applicant
v/s.
Tajal Malay Gandhi ..Respondent

**WITH
CIVIL APPLICATION NO. 28 OF 2015
IN
CROSS OBJECTION NO. 2368 OF 2015
IN
FAMILY COURT APPEAL NO. 182 OF 2013**

Tejal Malay Gandhi .. Applicant
In the matter between
Malay Girish Gandhi .. Appellant
v/s.
Tejal Malay Gandhi .. Respondent

Mr. R.J. Cama i/b Mrs. Armaity Khushrushahi for the applicant in
CAM 270/13 and 271 of 2013
Mrs. T.F. Irani, for the applicant in CAO 28/15.

**CORAM: RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 24th APRIL, 2015.

P.C.

1. The applicant in Civil Application Nos.270 of 2013 and 271 of 2013 is the husband and the applicant in Civil Application No.28 of 2015 is the wife. The husband had filed Divorce Petition being Petition No.A-2313 of 2006 and the wife had filed Petition No.A-489 of 2007 for restitution of conjugal rights. By the judgment and decree dated 15th July, 2013, both the petitions were disposed of by common order. The operative part of the order reads thus:-

“1. The divorce petition No.A-2313/2006 filed by the husband-petitioner is hereby dismissed.

2. His relief claiming permanent custody over his son and permanent injunction against the respondent is also hereby dismissed.

3. The respondent-wife's petition No.A-489/2007 claiming restitution of conjugal rights is hereby granted as under.

4. The petitioner-husband is hereby directed that he shall take the respondent-wife in his company within three months from the date of this judgment and order.

5. The petitioner-husband shall pay Rs.40,000/- per month to the respondent-wife, as permanent maintenance

from the date of filing the restitution of conjugal rights petition i.e. from 03.02.2007 till he takes her for cohabitation.

6. *The petitioner-husband shall deposit an arrears of maintenance in equal ten installments in the account of the respondent-wife and respondent-wife is directed to provide him her account number. The first installment shall become due on 10th August, 2013 and he shall deposit each installment on or before 10th day of each English month.*

7. *The respondent-wife shall make adjustment of the interim maintenance already received from the petitioner-husband, while recovering the maintenance arrears as per this judgment and order.*

8. *The petitioner-husband shall allow her to stay in the matrimonial home bearing Flat No.906, Giriraj CHS, Neelkanth Valley, Ghatkopar-East, Mumbai and if he fails then he shall pay Rs.15,000/- per month as rent for accommodation from the date of filing the restitution petition i.e. 03.02.2007 till he takes her back for cohabitation.*

9. *The respondent has right to get access of her son once in every month i.e. on Sunday from 10.00 a.m. to 4.000 p.m. till he becomes major.*

10. *The respondent's claim of stridhan property is hereby*

dismissed.

11. The respondent's Civil Miscellaneous Application No.31/2008 for contempt of Court is hereby dismissed.

12. The petitioner shall pay Rs.30,000/- to respondent-wife as litigation expenses.

13. A decree be drawn accordingly.”

2. The F.C.A. No.181 of 2013 is filed by the husband challenging the dismissal of his Petition for decree of divorce and F.C.A. No.182 of 2013 is filed for challenging the decree of restitution. The wife has filed cross-objection in Family Court Appeal No.182 of 2013.

3. Mr. Cama, learned Counsel for the applicant-husband makes a statement that the arrears of maintenance as per the impugned order from the date of decree, is already paid over to the wife. This statement was not disputed by the learned Counsel for the wife. So far as the arrears of the maintenance @ Rs.40,000/- as per clause 5 of the operative part of the order is concerned, he submitted that the arrears are worked out to the extent of

Rs.15,40,000/- and the husband will deposit the same in this Court in three equal installments every month. Statement is accepted. The wife is at liberty to withdraw 50% of this amount. The deposit and withdrawal is without any rights and prejudice to the respective parties.

4. So far as clause 8 of the operative part of the order is concerned, directions are given to the husband to allow the wife to stay in matrimonial house and if he fails then, he is directed to pay an amount of Rs.15,000/- per month as rent for accommodation from the date of filing the restitution Petition i.e. 03.02.2007. In our *prima-facie* view, the husband could not have been directed to pay this amount retrospectively i.e. from the date of filing of the restitution petition. Therefore, we direct the husband to pay this amount from the date of the judgment and impugned decree. Mr. Cama makes a statement that he is paying the same to the wife without prejudice to his rights. In this view of the matter, the operation of clause 8 of the impugned order so far it directs husband to pay the amount of Rs.15,000/-

retrospectively, shall remained stayed.

4. So far the clause 4 of the operative part of the order is concerned, same required to be stayed. As the refusal of the stay will render the petitioner's Appeal No.182 of 2013 infructuous, the operation of the said clause is accordingly stayed.

5. So far as clauses 5 and 6 of the operative part of the order are concerned, we do not wish to pass any order at this interim stage.

6. This takes us to consider the Application No.28 of 2015. The said application is filed in the Cross-objection, filed by the wife in Family Court Appeal No.182 of 2013. The applicant by this application has sought direction to allow her to reside in the matrimonial house, referred to in clause 8 of the operative part of the impugned order. The applicant in Application No.28 of 2015 has sought following reliefs :-

- (a) This Hon'ble Court be pleased to allow the Applicant to reside in her matrimonial / co-owned flat at 906, Giriraj CHS, Neelkanth Valley, Ghatkopar (E), Mumbai –77;*
- (b) This Hon'ble Court be pleased to direct the Court Receiver to enter into an Agreement with the applicant instead on the appellant.*
- (c) This Hon'ble Court be pleased to grant an amount of Rs.5 lakhs as and by way of maintenance to the applicant till the appellant cohabits with the applicant u/s 25 of the Hindu Marriage Act, 1955;*
- (d) This Hon'ble Court be pleased to direct the appellant to restore the stridhan of the applicant u/s 27 of the Hindu Marriage Act, 1955;*
- (e) This Hon'ble Court be pleased to direct the appellant to clear the arrears of maintenance;”*

So far as reliefs claimed in the above civil application are concerned, the Receiver is already appointed by this Court in respect of the flat in question by an order dated 28th November, 2014 passed in Civil Application No.418 of 2014 and the husband is appointed as an agent of the Receiver.

7. Be that as it may, an option is given to the husband under the impugned order either to allow wife to reside in the said flat or in the alternative to pay Rs.15,000/- towards the rent. Granting the relief claimed by the wife in this application will amount to setting aside the impugned order at this interim stage. We are, therefore, not inclined to entertain this application.

7. The Civil Applications are disposed of in the above terms. Having taken into consideration the nature of the dispute, in our considered view, the Appeals deserve to be heard expeditiously. Parties are directed to file private paper book within a period of six months from today. The Registry is thereafter directed to place the appeals for final hearing expeditiously.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)