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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 206 OF 2013

Mrs. Nayana S. Gobbur,
R/at A-704, Aagan CHS, Thakur
Village, Kandivli (East),
Mumbai-400101.

..Appellant
(Original Petitioner)

Versus

Mr. Sudhir S. Gobbur,
R/at B1/7, Aditya Breeze Park,
Balewadi, Pune,
Walchandnagar- 413114
And
A-704, Aagan CHS, Thakur
Village, Kandivli (E) Mumbai

..Respondent
(Original Respondent)

Mr. Mandar Soman, for the Appellant.
Ms. Vibhuti Desai i/b Mr. Atul G. Damle, for Respondent.

**CORAM: A.S. OKA AND
A.S. GADKARI, JJ.**

**Reserved On: 9th December 2014.
Pronounced On: 3rd February 2015.**

JUDGMENT (PER A.S. GADKARI, J.):-

1 The Appellant-wife has questioned the correctness of the judgment and decree dated 2nd September 2013 passed by the Family

Court No.3, Mumbai in Petition No.A-115 of 2007 and Petition No.B-1 of 2008 to the extent of quantum of maintenance awarded to her minor daughter namely Revati on the ground that the same is inadequate and not in consonance with the earnings of the Respondent-husband. The Appellant-wife had filed a petition before the Family Court at Bandra bearing M.J.Petition No.A-115 of 2007 against the Respondent-husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 for decree of divorce on the ground of cruelty, for maintenance for herself and her daughter Revati and for future expenses of the Appellant and towards education and marriage expenses of their daughter. The Respondent-husband has also preferred a petition bearing No.B-1 of 2008 against the Appellant/Petitioner for declaration of ownership in two properties and also claimed injunction of various sorts

2 It is to be noted here that the Respondent-husband has not challenged the judgment and decree passed by the learned Family Court No.3, Mumbai dated 2nd September 2013. In other words it can safely be said that the Respondent has accepted the same. The learned Family Court passed a decree of divorce. Maintenance of Rs.10,000/- per month was directed to be paid by the Respondent to the minor daughter Revati while retaining the custody of her with the wife. Visitation right were granted to

the Respondent. A decree of partition was passed as regards certain properties by holding that the appellant has 50% share in the same.

3 As stated hereinabove, the Appellant-wife has challenged the impugned judgment and decree dated 2nd September 2013 to the extent of quantum of the maintenance awarded to her minor daughter Revati by the present Appeal on the ground that the same is inadequate and not in consonance with the earnings of the husband. As the Respondent-husband has not challenged the correctness of the judgment and decree passed by the Trial Court, we are refraining ourselves from narrating the facts which deals with the aspect of divorce of the parties as per Section 13(1) (ia) of the Hindu Marriage Act, 1955 and are restricting ourselves to the extent of challenge to the quantum of the maintenance granted to the minor daughter by the impugned order.

4 The brief facts which lead to file the present appeal can be stated as under:

(i) The Appellant-wife in her petition before the Trial Court has stated that the Appellant and Respondent married each other on 11th December 2000 at Aurangabad. The daughter Revati was born on 19th April 2003 at Aurangabad. In her petition, the Appellant-wife has stated various incidents of cruelty on the part of the Respondent-husband. As per

the Appellant-wife, culmination of said various incidents which were amounting to cruelty led her to file the said petition for divorce under Section 13(1) (ia) of the Hindu Marriage Act, 1955.

(ii) In paragraph no.23 of the petition, the Appellant has stated the Respondent's income was to the tune of rupees one lac and above per month. That the Respondent had not been contributing to the expenses of the house. The Appellant was incurring the entire expenses for maintaining the house and herself and to meet the expenses of their daughter. That the salary of the Appellant was not sufficient to meet the expenses of the Appellant and her daughter and therefore, the Appellant had claimed maintenance of minimum amount of Rs.25,000/- per month from the Respondent towards maintenance of the Appellant and their daughter. The said petition was filed on 3rd January 2007. In the said petition, the Appellant had prayed before the Family Court that the Respondent be directed to pay to the Appellant the interim maintenance of Rs.30,000/- per month from the date of filing of the said petition and suitable permanent maintenance/alimony for the Appellant and her daughter Revati so as to meet the future expenses of the Appellant and her daughter towards her education and marriage expenses which amount the Appellant cannot ascertain on that relevant stage.

(iii) The Respondent-husband filed a detailed written statement dated 15th May 2007 dealing with the contentions raised by the Appellant. As far as the contention raised by the Appellant-wife with respect to the monthly earning of the Respondent is concerned, as was raised in para-23 of her petition, in para-31 of the Written Statement the Respondent-husband has denied the same in its totality and had put the Appellant to the strict proof thereof. The Respondent has stated that during the years of their co-habitation, the Respondent had given access to the bank accounts to the Appellant and the Appellant had withdrawn moneys from the said accounts. He had further stated that he had also made bank transfers to remit the amounts to the account of the Appellant. The Respondent further contended that the Appellant had already siphoned of amounts to the tune of Rs.6 lacs from the bank.

(iv) The learned Trial Court thereafter framed issues at Exhibit-25 in Petition No.A-115 of 2007 filed by the Appellant-wife and at Exhibit-14 in Petition No.B-1 of 2008 filed by the Respondent-husband.

(v) The Appellant-wife filed her affidavit in lieu of examination in chief and produced various documents. It appears from the record that the Appellant-wife had also annexed her salary slip issued by her employer. The said salary slip for the month of February 2007 is annexed at page-

161 of the compilation of the documents submitted by the Appellant-wife. As per the said salary slip, the Appellant-wife was drawing a net salary of Rs.18,194/-per month in February 2007. The affidavit of evidence filed by the Appellant-wife is the repetition of her pleadings in her petition. What is important here to note that the Appellant-wife did not suppress her monthly income from the Court. The Appellant was cross-examined at length by the Respondent.

(vi) A bare perusal of the cross-examination of the Appellant-wife discloses that, with respect to the contention raised by the Appellant in paragraph 23 of her petition about the monthly income of the husband, there is no cross-examination on that particular point which gives rise to a legal inference that the Respondent-husband has admitted the contention of the Appellant with respect to his income as was stated in paragraph 23 on 3rd January 2007 i.e. the date of filing of the petition by the Appellant.

(vii) The Respondent filed his affidavit in lieu of examination in chief on 22nd July 2013. It appears from his examination in chief that he has nowhere disclosed his precise monthly income. The Respondent was cross-examined at length. In his cross-examination which was conducted on 25th July 2013 in paragraph 91, he has admitted that currently he is

employed with WIPRO for last thirteen and half years. He joined WIPRO in 1999 as Senior Software Engineer and at present, his designation is Technical Consultant. In paragraph 92 of the cross-examination, he has further admitted that he worked for the WIPRO at Berlin from November 2002 to October 2005. That again he worked for WIPRO from 2009 to 2011. He served for WIPRO at South Africa in 2012 to 2013. He has further admitted that he has been deputed to serve for WIPRO at Ireland. He denied the suggestion that his monthly income is Rs.15 lacs. He has further stated that he would not get salary while at Ireland. The Respondent further admitted that the WIPRO would pay him allowance to the tune of approximately Rs.12000/- to Rs.15000/- per day. He stated that he can produce his salary slip to show his salary. In the further cross-examination which was conducted on 26th July 2013, in paragraph 101, the Respondent has admitted that in December 2005 he was getting monthly salary of Rs.69,860/- in WIPRO in India. He has further admitted that he was currently earning a salary of rupees one lakh per month. He has further admitted in October 2005 he was posted at Berlin and at that time he was getting salary approximately Rs.2 lacs per month in Indian currency. He has further admitted that while he was posted at South Africa, he was getting salary of Rs.3.5 lacs per month. He has denied the

suggestion that he earns Rs.15 lacs as monthly salary. He has denied the suggestion that as he is getting fabulous salary, he has not produced the salary slip.

(viii) The record discloses that the Appellant-wife examined herself and the Respondent-husband has examined himself and both the parties have not examined any other witnesses in support of their claims.

(ix) The learned Trial Court after recording the evidence and after hearing the parties to the said Petitions proceeded to pass the impugned judgment and decree.

5 The Appellant-wife has preferred the present appeal against the said impugned judgment and decree dated 2nd September 2013 as stated in the forgoing paragraphs.

6 The learned Family Court in the impugned judgment and decree has quantified the contribution of the husband towards the maintenance of the daughter on the basis of his conclusion that the amount required for the maintenance of daughter Revati was to the tune of Rs.20,000/- per month and thereafter Respondent-husband's contribution was 50% of that amount i.e. to the tune of Rs.10,000/- per month. The Respondent-husband in his cross-examination which was conducted on 26th July 2013 in paragraph 102 has admitted that the age of his child Revati was 10 years. He has

further admitted that there is substantial increase in educational expenses of his child since 2007. The Respondent-husband in his cross-examination in paragraph 101 has admitted that in December 2005, he was taking salary of Rs.69,860/- per month. That he is earning salary of Rs.1 lac per month currently. That in October 2005, he was posted at Berlin and at that time he was getting salary approximately of Rs.2 lacs per month in Indian currency. That while he was posted at South Africa he was getting salary of Rs.2.5 lacs per month.

7 The learned Counsel appearing for the Appellant urged before us that in view of the fact that the minor daughter needs more amount for her maintenance which includes the education, clothing and her extra-curriculum activities. He further submitted that the contribution of the Respondent-husband should be commensurate with his degree of earning. He further submitted that the Respondent cannot take a plea as the wife is also earning, the wife should take care of daughter. He further submitted that it is established from the cross-examination of the Respondent-husband that he is having substantial monthly income which is undoubtedly at least four-times more than the income of the Appellant-wife. He, therefore, urged that the contribution of the Respondent-husband may be enhanced to the tune of Rs.50,000/- per month. Per contra, the

learned Counsel appearing for the Respondent supported the impugned judgment and decree and urged before this Court that the present Appeal may be dismissed by confirming the judgment and decree passed by the Family Court.

8 It is not disputed position that the minor daughter needs maintenance for her educational purposes and for her extra curricular activities, clothes, medicine, travelling and other related and miscellaneous expenses. As stated above, the Respondent has admitted in his cross-examination that the expenses on the minor child are ever-growing. Though, the Appellant had also sought a prayer for permanent alimony for herself to the tune of Rs.30,000/- per month, the learned Trial Court after taking into consideration the fact that the Appellant is herself employed and is earning sufficient salary for herself, rejected the claim of the Appellant for maintenance.

9 However, after taking into consideration the growing needs of the minor child Revati, in our considered opinion, monthly maintenance awarded by the learned Trial Court to the tune of Rs.10,000/- per month as the share of the Respondent-husband is certainly inadequate. The Appellant and her daughter are entitled to maintain their life style considering the status of the Respondent. The contribution of the

Respondent towards maintenance of Rs.10,000/- is not at all commensurate with the growing needs of the minor daughter.

10 We, therefore, quantify the monthly maintenance to be paid by the Respondent at Rs.25,000/- per month as the contribution/share of the Respondent to his daughter Revati from the date of this judgment and from the impugned decree, till today, the amount will have to be fixed at Rs.15,000/- per month. It is needless to mention that the minor daughter Revati is entitled for the maintenance till she become legally disentitled for the same.

11 Hence, by partly allowing the appeal, we pass the following order:

- (i) The Respondent is ordered and decreed to pay maintenance at the rate of Rs.10,000/- per month to the minor daughter Revati from the date of filing of the Petition i.e. from 3rd January 2007 till date of passing of the impugned judgment and decree i.e. upto to 2nd September 2013;
- (ii) The Respondent is ordered and decreed to pay maintenance at the rate of Rs.15,000/- per month from the date of decree i.e, 2nd September 2013 till today;
- (iii) The Respondent is hereby ordered and decreed to pay the maintenance at the rate of Rs.25,000/- per month to minor daughter Revati

from the date of this judgment and decree in the present appeal;

(iv) The arrears of maintenance payable in terms of this judgment till 31st January 2015 shall be paid on or before 31st May 2015. From February 2015, the Respondent shall pay maintenance of Rs.25,000/- to the Appellant on or before 10th day of every calender month;

(v) The Appellant shall supply particulars of her bank account to the Advocate for Respondent by 28th February 2015. The aforesaid amount shall be transferred by the Respondent to the Bank Account of the Appellant;

(vi) In the event of change in circumstances, both the parties will be entitled to apply for appropriate relief before the Family Court;

(vii) Appeal is allowed in the above terms;

(viii) The Respondent shall pay costs of this Appeal quantified at Rs.15,000/- to the Appellant within 6 weeks.

(A.S. GADKARI, J.)

(A.S. OKA, J.)