

onwards and a direction was given to clear the arrears within six months from the date of the order.

2. The facts, which are relevant for the purpose of deciding the civil application, are as under:

. The Applicant-husband filed a petition for divorce in the Family Court at Bandra on the ground of desertion and other grounds. The Family Court granted the divorce on the ground of desertion. The Respondent-wife has filed appeal against the said decree of divorce, being Family Court Appeal No. 83 of 2010. Said appeal has been admitted and a stay has been granted to the judgment and decree passed by the Family Court. The Applicant-husband also has filed an appeal against the said judgment and order, which also has been admitted.

3. After the application for enhancement of maintenance filed by the Respondent-wife was allowed, the Applicant has challenged the said order by filing Family Court Appeal No. 8 of 2015 and in the said appeal, he has taken out present civil application.

4. The learned counsel appearing for the Applicant-husband submitted that the Respondent-wife is not entitled to maintenance,

firstly, because she has deserted the Applicant-husband; secondly, it is submitted that though several attempts were made by the Respondent-husband to bring her back, the Respondent refused to cohabit with the husband; thirdly, it is submitted that the Respondent-wife was not entitled to seek maintenance since she has refused to render the services to the Applicant-husband or to work for his family. It is submitted that net income of the husband was Rs. 30,000/- and therefore, even otherwise order of enhancement of maintenance was not justified. The learned counsel has invited our attention to the various observations made by the Family Court / Judge in the judgment and order passed by the Family Court in the divorce proceeding, in support of his submission.

5. On the other hand, learned counsel appearing for the Respondent-wife submitted that no reliance could be placed by the Applicant-husband on the observations made by the Judge of the Family Court in the said divorce proceeding, since this Court has granted stay to this order. Secondly, it is submitted that the Applicant-husband has not paid arrears of maintenance; and he has to pay of Rs. 1,90,000/- towards arrears of maintenance. It is submitted that

this Court on the last date had extended the time to make payment of arrears on 23.9.2015 and before that 27th August, 2015 this Court had directed the Applicant-husband to pay arrears within 4 weeks. The order dated 27th August, 2015 also mentions that if the amount is not paid, the appeal would stand dismissed for want of prosecution, and this time was extended till 29.9.2015. It is an admitted position that till today arrears of maintenance have not been deposited. The learned counsel for the Respondent-wife then submitted that the impugned order in the appeal was passed in November, 2014, and though the appeal is filed in January, 2015, the said appeal and the civil application were circulated for interim orders in August, 2015. He further submitted that the wife is not working and her son is in the 9th standard and studying in convent school. He submitted that from the salary slip which was produced today, it appears that husband is earning about Rs. 74,994/- and the statutory deduction which was made is payment of income tax viz. Rs. 5,688/-. He submitted that husband had a balance of almost Rs. 27 lakhs in the provident fund account. He submitted that therefore, Respondent-wife is entitled to get at least reasonable amount of maintenance to maintain herself and

her son.

6. After having heard the counsel for both the parties at length, and after having seen the salary slip, we are of the view that except the income-tax payment of Rs. 5,688/-, the other deductions are non-statutory deductions. The Applicant-husband is paying provident fund per month @ Rs. 12,732/- and also paying towards the loan to the Credit Society @ Rs. 14,060/- and Rs. 5,000/- towards the Credit Society shares. In our view, other deductions, therefore, are non-statutory deductions, and they cannot be taken into consideration. The Applicant-husband has sufficient balance in the provident fund and in spite of that he has failed to pay arrears of maintenance to the Respondent-wife and their son. Hence, we are not inclined to grant stay to the enhancement of maintenance, awarded by the Family Court. Even otherwise maintenance of Rs. 7,500/- each to the mother and the son is inadequate in the present times to maintain themselves. The Applicant-husband despite having means to pay maintenance from month to month, and despite several opportunities being given to him to pay arrears of maintenance, has failed to pay the arrears of maintenance to the Respondent-wife. Hence, we are not inclined to

stay impugned order. Civil application is, therefore, dismissed.

7. Time to pay arrears of maintenance is extended by one week only. If the said amount is not paid in time, appeal filed by the Applicant-husband shall stand dismissed without further reference to the Court.

Sd/-

[Dr. SHALINI PHANSALKAR-JOSHI, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath

CERTIFICATE

Certified to be true and correct copy of the original signed Order.