

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 23 OF 2016
ALONG WITH
CIVIL APPLICATION NO.200 OF 2016
IN
FAMILY COURT APPEAL NO. 18 OF 2016

Snehal Milind Gurav. .. Applicant
Vs
Milind Sakharam Gurav. .. Respondent
—
Dr. Laxmi P. Rao for the Applicant.
Shri Uday P. Warunjikar for the Respondent.
—

CORAM : A.S. OKA & A.M. BADAR, JJ
DATED : 24TH NOVEMBER 2016

PC.

1. These two Civil Applications have been taken out by the Applicant wife who is the Appellant. The Applicant wife filed a Petition against the Respondent husband in the Family Court at Bandra, Mumbai, for various reliefs. The first relief was of dissolution of marriage. Relief of grant of maintenance for herself and her daughters was also incorporated in the Petition. There is a relief sought in respect of the immovable properties including the flat and shop in respect of which the prayer has been made in the Civil Application No.23 of 2016.

2. By the impugned judgment and decree, the learned Judge of the Family Court dissolved the marriage between the Applicant and

the Respondent. The custody of minor daughter was granted to the Applicant wife. The prayer for maintenance to the Applicant was rejected. However, a decree was passed directing the payment of maintenance to the minor daughter. Relief sought in respect of the properties was rejected. The Appeal preferred by the Appellant has been admitted for final hearing.

3. In Prayer Clause (a) of both the Applications, interim relief has been sought in respect of Flat No.104, Mahalaxmi Apartment, Vasant Leela, Ghodbunder Road, Thane. It is not in dispute that the Applicant wife is in exclusive possession of the said flat and she is staying in the said flat along with her two daughters. One of the two daughters has attained the majority. The other daughter is approximately 16 years old for whom maintenance has been granted.

4. In Prayer Clause (a) of the Civil Application No.23 of 2016, there is also a prayer made in respect of Shop No.9, more particularly described therein, which is admittedly in possession of the Respondent husband.

5. The prayer clause (b) in Civil Application No.200 of 2016 is for directing the payment of interim maintenance of Rs.10,000/- per month to the Applicant wife from the date of the impugned decree. The

learned counsel appearing for the Applicant in support of the said prayer relied upon the interim order dated 8th September 2010 passed by the Family Court during the pendency of the Petition under which the interim maintenance of Rs.10,000/- was granted. The submission is that even going by what is brought on record in the cross-examination of the wife, at highest, she may be receiving income of Rs.2,000/- per month which is not sufficient to maintain herself as the two daughters are staying with her.

6. The submission of the learned counsel appearing for the Respondent husband based on a compilation of documents tendered across the bar is that the Applicant is a qualified Pharmacist. She is having a partnership in the medical shops. His second submission is that by an order dated 8th September 2010 passed by the learned Judge of the Family Court, the interim order to the extent of granting maintenance to the wife was stayed. His submission is that the wife has a substantial income which has been suppressed by her. He submits that the Applicant wife is occupying a flat which is owned by the Respondent husband without payment of any consideration.

7. We have carefully considered the submissions. By the interim order dated 8th September 2010, the interim maintenance of Rs.10,000/- was ordered to be paid to the Applicant wife from 12th

October 2009. An Application dated 8th May 2014 was made by the husband before the Family Court where a prayer was for cancellation/modification of the order dated 8th September 2010 and for granting refund. On 31st July 2014, the following order was passed by the learned Judge of the Family Court which reads thus:

“Heard both parties.

An evidence is necessary to decide this application on merit. Hence this application will be heard with main petition and the respondent is directed to keep paying maintenance to children as per earlier orders.”

8. On plain reading of the said order, we do not agree with the submission of the learned counsel appearing for the Respondent husband that the order of payment of interim maintenance dated 8th September 2010 passed in favour of the Applicant wife was stayed by the said order.

9. We have perused the findings recorded in the impugned judgment on the issue of grant of maintenance to the wife. Based on the admission in the cross-examination of the wife that she is holding a Diploma in Pharmacy and on the ground that she has wrongly mentioned in the pleadings that she does not have independent source, the learned Judge of the Family Court held that the Applicant has sufficient independent income to support herself. There is no finding

recorded that she has a particular income. The learned Judge of the Family Court noted that the elder daughter is drawing a take home salary of Rs.5,000/- per month.

10. We have perused the cross-examination of the Applicant wife made by the Respondent husband. We find that there is no specific suggestion given to the wife that she was earning a particular income. Taking the statements in the cross-examination made by the Applicant wife as correct, at highest, it is brought on record the fact that from 12th October 2009, she is getting the income of Rs.2,000/-.

11. On a query being made by the Court, the learned counsel appearing for the Respondent husband on instructions of the Respondent husband states that he is employed with the Life Insurance Corporation and his take home salary is Rs.46,000/- per month.

12. Paragraph 56 of the impugned judgment and decree records that as of July 2012, the gross salary of the Respondent husband was Rs.62,891/- and take home salary in July 2012 was Rs.38,755/-. As observed by the learned Judge of the Family Court, the salary of the husband must have been substantially increased.

13. Thus, going by the evidence on record, at highest, it can be said that the Applicant has income of Rs.2,000/- per month and by no stretch of imagination, the same is sufficient to maintain herself. Therefore, in our view, the Applicant is entitled to interim maintenance at the rate of Rs.10,000/- per month from the date of filing of this Application. The Application has been filed on 8th July 2016. Therefore, we propose to direct the husband to pay maintenance with effect from 1st July 2016.

14. Before we deal with the prayer regarding flats and shops, we deal with the prayer clause (c) of Civil Application No.200 of 2016. The prayer clause (c) is made for grant of the sum of Rs.1,00,000/- being the expenses incurred on the education of the minor daughter Pranjali. However, not a single document in support thereof is filed. Therefore, we propose to permit the Applicant wife to take out a separate Application in accordance with law in that behalf.

15. As far as the Flat No.104 and Shop No.9 are concerned, the learned counsel appearing for the Respondent on instructions of the Respondent husband makes a statement that without seeking leave of the Court, the Respondent will not transfer and/or create any third party interests in respect of the Shop No.9 and the said flat. Admittedly, the Applicant wife is in possession of the Flat No.104. Therefore, if the

Respondent husband wants to disturb the possession of the Applicant wife, he can do so only by adopting due process of law.

16. As far as the prayer clause (a) in Civil Application No.200 of 2016 is concerned, so long as the Applicant wife and her two daughters are in possession of the Flat No.104, the Respondent cannot disturb the possession of the Applicant and her two daughters.

17. Accordingly, we dispose of the Applications by passing the following order:

ORDER :

- (a) We direct the Respondent husband to pay maintenance @ Rs.10,000/- per month to the Applicant wife from 1st July 2016 on or before the 15th day of every calender month;
- (b) We direct the Applicant wife to furnish full particulars of her bank account to the Respondent husband or to his Advocate. The amount of maintenance shall be directly transferred by the Respondent husband to the bank account of the

Applicant wife. The details of the bank account shall be furnished by the end of this month;

- (c) We grant time to the Respondent husband to pay arrears of maintenance upto 30th November 2016 till 31st March 2017. However, the interim maintenance shall be regularly paid by the Respondent husband to the Applicant wife on or before the 15th day of every calender month from December 2016 onwards;
- (d) We accept the statement made by the learned counsel appearing for the Respondent husband on instructions that the Respondent husband will not transfer and/or create any third party rights in respect of the Flat No.104 and Shop No.9 subject matter of Civil Application No.23 of 2016 without seeking leave of this Court. This statement is accepted as undertaking of the Respondent husband;
- (e) The learned counsel appearing for the Respondent, at this stage, states on instructions of the Respondent husband that he will not disturb the possession of the Applicant and her daughters in Flat No.104 with a

rider that he intends to adopt due process of law for seeking possession of the said flat. We accept the said statement as his undertaking;

- (f) We make it clear that pendency of the Appeal will not preclude the Respondent husband from taking out appropriate proceedings for seeking possession of the Flat No.104 subject matter of the Civil Application No.23 of 2016;
- (g) As far as the prayer clause (c) of the Civil Application No.200 of 2016 is concerned, we grant liberty to the Applicant wife to take out a separate Application in respect of the said prayer subject to condition that all supporting documents shall be annexed to the fresh Application;
- (h) All contentions in that behalf of the parties are kept open;
- (i) For the time being, we direct the Respondent husband to pay an amount of Rs.25,000/- to the Applicant wife towards the cost of the proceedings of

the Family Court Appeal. The said amount shall be paid by way of transfer to the account of the Applicant wife by the end of December 2016;

- (j) We make it clear that the observations made in this order are only prima facie and tentative observations which are made only for the purposes of deciding these two Civil Applications and all contentions on merits are expressly kept open.

(A.M. BADAR, J)

(A.S. OKA, J)