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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
CIVIL APPLICATION NO.25 OF 2013 IN
FAMILY COURT APPEAL NO.86 OF 2012

Mrs.Jyoti Vilas Rathod ...Applicant
vs.
Mr.Vilas Mangilal Rathod ...Respondent

Mr.S.N.Chandrachud for the applicant
Mr.Ashok Tajane for the respondent

CORAM : A.S.OKA, &
A.A.SAYED, JJ.
DATE : AUGUST 26, 2016

P.C.:

1 Heard the learned counsel for the applicant and the learned counsel for the respondent. In this application, the learned counsel for the applicant has pressed only prayer clause (b). By the prayer clause (b), the applicant-wife is seeking interim relief directing the respondent-husband to pay a requisite amount for maintenance of the minor children, their education, clothing and food requirements. The applicant is the appellant in the Family Court Appeal No.86 of 2012. The challenge in the appeal is to the common Judgment dated 30th April 2012 passed by the learned Judge of the Family Court at Pune. By the common Judgment, the learned Judge of the Family Court at Pune decided the petition for divorce filed by the husband and petition for permanent custody of the minor sons. The decree of divorce has been passed by the learned Judge of the

Family Court. Today, there is no dispute that the custody of the minor sons is with the applicant-wife. In the present application, which was filed on 23rd January 2013 it is disclosed that the age of the elder son Yash is 14 years and the age of the younger son Sahil is 12 years. Therefore, as of today, their respective ages can be taken as 17 and 15 years respectively. When the application was filed, the elder son was studying in VIII standard and the younger son was studying in VI standard in the school of Bharati Vidyapeeth. There is an additional affidavit filed by the applicant giving break up of expenses incurred on the minor children. It is stated that the total monthly expenditure incurred on the minor children is Rs.23,717/-. Out of the said expenses, school fees are of Rs.2,500/- and Rs.2,400/- respectively, Transport charges are quantified at Rs.2500/-, tuition fees have been quantified at Rs.3000/- and other expenses such as sports activities, stationary and material for school activities are stated to be of Rs.2000/- each.

2 In the application, it is stated that though the respondent claimed before the Family Court that he has no source of income, he is an affluent person. It is pointed out that the respondent is holding a land bearing Gat No.766 admeasuring 25824 sq ft together with factory and office. It is stated that the respondent is carrying on business on the said property in a partnership with his father under the name and style of M/s.Kailash

Engineering Works, at Pawar Vasti, Kudale Wadi, Chikhali, Bhosari, Pune. It is stated that the said property has been transferred subsequently by the respondent in the name of his father. It is further alleged that another land bearing Gat No.785 of Chikhali at Pawar Vasti was held by the respondent on which there was a factory of the private limited company of which the respondent was a Director. The name of the company is Massyv Steel Fittings Private Limited. Thirdly, it is pointed out that there is a land bearing Gat No.71/3A/0 where there is a shed standing in which business of Laxmi Engineering was earlier carried out. It is stated that the said shed has been transferred by the respondent during the pendency of the Family Court proceedings. It is alleged that out of the income received from the business of Kailash Engineering Works, another property is purchased in the year 2008 which is more particularly described in paragraph 14 of the Civil Application. Paragraphs 15 and 16 also give particulars of the properties allegedly held by the respondent.

3 A copy of the Partnership Deed of M/s.Kailash Engineering Works dated 19th January 2006 is annexed to the affidavit which shows that the business is being carried on in partnership by the respondent and his father on the land bearing Gat No.785 of Chikhali, Pawar Vasti, Pune. It records that the partnership business commenced on 1st December 2005. There is a clause in the partnership deed which records that profits will be equally shared. In the

affidavit in reply, the respondent claimed that the said property on which the business of Laxmi Engineering was being carried out has been transferred as per the order of the Court. Though he has placed reliance on the order of the Court, no such order has been produced. Along with the additional affidavit, only a notice is produced in respect of the said land on which the partners of Kailash Engineering Works including the respondent have been called upon by a co-operative Bank to pay the amount stated in the notice failing which the property will be auctioned. There is nothing placed on record to show that the said property was auctioned. To the additional affidavit, another notice under the Maharashtra Co-operative Societies Act, 1960 has been annexed which shows that the property bearing Survey No. 142/1/6 and 142/2/2 at Village Welhane, Taluka and District Dhule was sought to be attached by a Co-operative bank. However, there is nothing on record to show that the said property was sold. Certain documents have been produced to show that the company in which the petitioner was a director is under liquidation. The said company was running business in Gala No. 785, Pawarwadi, Chikhali, Pune.

4 We must note here that under the order dated 20th July 2016, in paragraph 2, this Court has observed thus:

"2 If according to the case of the husband, he is paying maintenance to the minor

children, he shall be filed a specific affidavit, setting out the amount of maintenance paid by him from the date of filing of the present application along with all material particulars and documents. Such affidavit shall be filed by the husband within a period of 2 weeks from today. Place the application for hearing on 10th August 2016."

5 Notwithstanding the said order, the respondent has not filed any affidavit and he has not appeared before the Court. Therefore, by order dated 10th August 2016, the respondent was directed to personally remain present in the Court. The learned counsel for the respondent states that though the order is communicated to the respondent, he is not present.

6 The learned counsel for the applicant fairly stated that though on some occasions, the respondent has paid certain amounts to the applicant for maintenance of the minor children, but he is not prepared to pay amount regularly unless there is an order of the Court to that effect. The learned counsel for the respondent opposed the application by pointing out that the respondent has no source of income.

7 We have carefully considered the submissions. We have referred to the application and the affidavit as regards properties held by the

respondent. The documents produced by the applicant and the respondent himself show that the respondent is a partner of M/s. Kailash Engineering Works, and the only other partner is his father. The said firm is carrying business on two properties which are held by the respondent. Though he has alleged that the property bearing No.Gat 766 having area of 24Rs at village Chikhali, was sold under the order of the Court, no documents have been produced to prove the said fact. The respondent-husband has huge properties and bad stroke in the business.

8 The respondent in his affidavit has claimed that he has no source of income. The said statement cannot be accepted as correct. The respondent has not disclosed his true income. There is no specific affidavit filed by the respondent dealing with the figures set out by the applicant in her affidavit dated 8th February 2013. The said figures are of the expenditure incurred by her on the education of minor sons. The amount is quantified at Rs.29,770/- per month.

9 Considering what is stated in the said affidavit, by making a conservative estimate on the basis of figures set out in the affidavit dated 9th February 2013, for the period commencing from February 2013, the respondent will have to pay total maintenance including the expenses on education of both the children quantified at Rs.12,500/- per month. From 1st September 2016, the respondent will have to pay a sum of Rs.17,000/- per month

considering the present ages of the minor sons.

10 If the respondent has paid any specific amount towards expenses on education of the children, he can claim adjustment only by filing an affidavit in this Court setting out all the particulars of the amounts paid by him from time to time.

11 Hence, we pass the following order:

- (I) We direct the respondent to pay total maintenance of Rs.12,500/- per month towards the maintenance of the minor children from 1st February 2013 till 31st August 2016. From 1st September 2016 onwards, till the disposal of the Appeal, he shall pay total maintenance amount of Rs.17,000/- per month;
- (II) We direct the applicant to furnish all the particulars of her bank account with a cancelled cheque to the respondent ;
- (III) Arrears payable up to 31st August 2016 shall be paid by the respondent to the applicant by 31st December 2016;
- (IV) The amount payable from September 2016 onwards shall be deposited by the respondent in the bank account of the applicant on or before 15th day of every calendar month. The arrears of maintenance shall be paid by the respondent by transferring the amount directly to the bank account of the applicant;
- (V) If the respondent wants to claim on the basis of the amount paid by him towards

maintenance of the minor children, he will have to establish the said case by filing an affidavit to that effect in this Court and by supporting documents;

(VI) Needless to add that in case of increase in expenses on education of the minor children, the applicant can always apply for enhancement of the maintenance amount;

(VII) We however make it clear that if permissible in law, it will be open for the applicant to claim relief in terms of prayer clause (a) at the time of final hearing of the Family Court Appeal;

(VIII) Civil application is disposed of on above terms.

(A.A.SAYED,J.)

(A.S.OKA,J.)