

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
CIVIL APPLICATION NO.100 OF 2013 IN
FAMILY COURT APPEAL NO.101 OF 2012

Mr.Y.M.Kanchan for the applicant
Mr.Jeevan Kuril i/b Mr.Pradip D. Gavali for the
respondent

1 Heard the learned counsel for the applicant and
the learned counsel for the respondent. The
applicant is the wife and the respondent is the
husband. The appeal is preferred by the applicant-
wife. The challenge in the appeal is to the Decree
dated 29th December 2011 passed by the learned Judge
of the Family Court, Bandra, Mumbai in a petition
filed by her. In the petition, the applicant sought
a decree of divorce on the ground of cruelty. She
also sought maintenance for herself and for her
minor daughter whose present age is approximately 10
years. The minor daughter is born on 16th May 2006.
By the impugned Decree, the prayer for divorce was
dismissed. The learned Judge directed the
respondent-husband to pay a sum of Rs.10,000/- per
month towards maintenance of minor daughter from 7th

June 2010 till she attains majority. The present application is filed by the applicant-wife seeking total interim maintenance of Rs.50,000/- per month for the minor girl.

2 In the application, the applicant has contended that she is employed and her monthly salary is about Rs.37,000/-. However, not a single document in support of the said contention is annexed. The learned counsel for the applicant today states that as of today, her salary is Rs.50,000/- per month. In paragraph 9, it is contended that during the period of 2005-2009 when the respondent-husband was employed in U.S.A, he was earning \$ 1,00,000/- per year. The applicant claimed that the annual expenses incurred on the maintenance of the minor girl are Rs.3,55,600/-, the estimated annual expenses for the next year are Rs.3,86,100/-.

3 There is a reply filed by the respondent-husband. As far as the statement made in the application regarding his income during the 2005-2009 is concerned, the same is denied. However, the respondent has not disclosed as to what was his correct income. He has stated that as he did not get a Green Card and his Visa got expired, he was transferred to Canada. He has stated that as he could not cope up with loneliness, he returned to India. In the second last paragraph of the affidavit, he has stated that at present he has no source of income. The learned counsel for the respondent on instructions states that the

respondent is unemployed but he is at present staying in Canada.

4 We have perused the averments made in paragraph 10 of the application. The amount claimed by the applicant in this application appears to be exorbitant. When the application was filed on 20th March 2013, the age of the daughter was approximately 7 years. It is not possible to believe that 7 years old daughter was attending a dance class, a drawing class, a drama class, a class for singing and craft activities, Art of Living classes etc. A sum of Rs.8,000/- is claimed on the count of visits to museum. A sum of Rs.6000/- is claimed on account of phone calls. Suffice it to say that the amounts set out in paragraph 10 of the application do not appear to be realistic.

5 As far as the respondent is concerned, it is impossible to believe that he has no source of income but still he continues to reside in Canada. He has not disputed that till November 2012, he was employed. However, he has avoided to disclose his correct income. He has not denied that he was working in USA from 2005 till 2009. He has stated that as he could not secure a Green Card, he was transferred by his employer to Canada. Therefore, the contention raised by the respondent in his reply that he is unemployed cannot be accepted for its face value especially when the learned counsel for the respondent states that though he is unemployed, he continues to reside in Canada.

6 Nevertheless, considering the standard of living of both the parties and considering the atmosphere in which the child has grown up, a sum of Rs.10,000/- per month granted by the Family Court in the year 2011 is certainly insufficient for her maintenance. The applicant-wife is also employed. She may not be getting the income on par with the income of the respondent who is abroad. But still the applicant will have to also contribute to the maintenance of the child. We, therefore, propose to fix the maintenance payable by the husband at the rate of Rs.25,000/- per month from 1st August 2016 onwards till the disposal of the appeal. From the date of filing of the application till 31st July 2016, we propose to fix the maintenance at the rate of Rs.20,000/- per month. The aforesaid amounts will be inclusive of amount of Rs.10,000/- per month payable as per the Decree of the Family Court.

7 Accordingly, we dispose of this application by passing the following order:

- (I) We direct the respondent to pay maintenance at the rate of Rs.20,000/- per month for the maintenance of his minor daughter from 20th March 2013 till 31st July 2016. From 1st August 2016 onwards, he shall pay a sum of Rs.25,000/- per month towards maintenance of the daughter till the disposal of the Appeal. The aforesaid amounts will be inclusive of amount of Rs.10,000/- per month payable as per the Decree

of the Family Court;

(II) Arrears payable up to 31st July 2016 shall be paid by the applicant to the respondent on or before 30th November 2016. The respondent shall keep on paying monthly maintenance of Rs.25,000/- from 1st August 2016 on or before 15th of every calendar month;

(III) As per the present arrangement, the aforesaid amounts shall be directly transferred online to the account of the applicant-wife;

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

(A.A.SAYED,J.)

(A.S.OKA,J.)