

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.131 OF 2014
IN
FAMILY COURT APPEAL NO.85 OF 2014

Sunilkumar Bechanram Gupta. .. Appellant
Vs
Mrs. Poonam Sunil Gupta. .. Respondent

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Shri R.R. Varma i/b Shri Ashok M. Saraogi for the Applicant.
Ms. Rohini Dandekar for the Respondent.
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CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 24TH AUGUST 2016

PC.

1. Heard learned counsel appearing for the Applicant. The Applicant husband has taken an exception to the decree of maintenance passed by the Family Court at Bandra. The Family Court directed the Applicant husband to pay maintenance at the rate of Rs.7,000/- per month to the Respondent wife from the date of the decree. The Family Court also directed the Applicant to provide to the Respondent wife alternate accommodation of one room kitchen in Bhayandar area. It was further directed that on his failure to provide alternate accommodation, the Applicant husband shall pay Rs.4,000/- per month towards the rent for availing alternate accommodation to the Respondent.

2. The submission of the learned counsel appearing for the Applicant is that the Applicant has no income and he is only assisting his father in the business conducted by his father. He submitted that as per the ad-interim order, he is required to pay maintenance by taking amount from his father and other relatives. He would, therefore, urge that the decree be stayed.

3. We have considered the submission. We have perused the findings recorded by the Family Court. We have also perused the notes of evidence. On the basis of the evidence on record, the Family Court found that the Respondent wife has no place of residence and she was residing with one of her relatives. The husband stepped into the witness box. In the cross-examination, he was confronted with a copy of the Application for anticipatory bail filed by him. In the said Application, the Applicant had disclosed that he was working with the Shipping Corporation of India. After he was confronted with the copy of the Application, he stated before the Court in the cross-examination that though he had written in the Application for anticipatory bail that he was working for the Shipping Corporation of India, he was in fact not working there. He also accepted in the cross-examination that in a non-cognizable case filed by him, he has shown his occupation as service. We may note here that in Paragraph 24 of the examination-in-

chief, he stated that he was unemployed and he was searching a job for his livelihood.

4. The matter does not rest here. In Paragraph 11 of his cross-examination, the Applicant accepted that there was a family business of a General Store and that on his marriage invitation card, the names of their two establishments as Mahavir Steel Emporium at Mankhurd, Mumbai and Mamta General Stores at Shivaji Nagar, Govandi have been specifically mentioned. He accepted in Paragraph 11 that at Shivaji Nagar, there is a house above the shop. He accepted that the joint family has a house at Village Sadoganj, District Varanasi, Uttar Pradesh.

5. The learned counsel appearing for the Applicant submitted that though the Applicant was working as a Seaman in the Shipping Corporation of India, it was a job on contract basis. He stated that the Applicant has examined his father who has stated that he was owner of the said two shops.

6. As observed earlier, the Applicant came out with a case in his examination-in-chief that he was unemployed and he was searching a job. He stated that he was unable to maintain his parents and he has no source of income. In the cross-examination, he accepted that in the

Application for anticipatory bail, he had stated that he was working with the Shipping Corporation of India. In the cross-examination, he did not give explanation that he was working on contract basis. He merely stated thus:

“Witness volunteers though it has been written in that application that I am working in Shipping Corporation of India but I am not working there. I have filed copy of non-cognizable case bearing No.2774 of 2006 dated 13-11-2006. In said non-cognizable case I had shown my occupation as service.”

(Underlines supplied)

7. In Paragraph 11 of the cross-examination, the Applicant stated thus:

“I stay in joint family consisting of my parents and my brother. We have family business of General Store. In my marriage card our two establishments were named as Mahavir Steel Emporium at Mankhurd, Mumbai and Mamta General Stores at Shivaji Nagar, Govandi. At Shivaji Nagar there is our house above the shop. It is true to say that my joint family has house at village Sadoganj, District Varanasi, Uttar Pradesh. I do not have agricultural land at that place. I is not true to say that there is one flat in my name at Mankhurd, Mumbai.”

(Underline supplied)

8. Hence, it is obvious that the version of the Applicant in his examination-in-chief is not a truthful version at all. He has not disclosed the income which he received from the Shipping Corporation of India. Moreover, he admitted that the business of Mamta General Stores is a

family business. Apart from the name of the said business, even the business of Mahavir Steel Emporium at Mankhurd has been mentioned on his marriage invitation cards. He admitted that at Shivaji Nagar in Govandi, Mumbai, his family has a house above the shop. Moreover, he has a joint family house in District – Varanasi, Uttar Pradesh. Thus, in the deposition, the Applicant had made a false statement on oath that he has no source of income and that he has no income.

9. Perhaps, to get over from what is stated in Paragraph 11 of the cross-examination that the Applicant examined his father. When his father denied in the cross-examination that the Applicant was working in the Shipping Corporation of India, he was shown a copy of the Application for anticipatory bail. He accepted that the Application bears his signature. He claimed that he has two shops named as “Mahavir Steel Emporium” at Mankhurd and “Mamta General Stores” at Shivaji Nagar, Govandi.

10. Notwithstanding the fact that the father of the Applicant has signed the Application for anticipatory bail in which it was stated that the Applicant was working in the Shipping Corporation of India, he denied that the Applicant was working with the Shipping Corporation of India. Therefore, prima facie, it is impossible to believe the version of the father of the Applicant.

11. The only prima facie conclusion which can be drawn that the Applicant and his witness have not stated the truth before this Court. The income tax return of the Assessment Year 2006-2007 is placed on record wherein his income is shown as Rs.96,000/-. We may note here that the maintenance and the rent amount is made payable under the impugned decree from the date of the impugned decree i.e. 29th January 2014.

12. Therefore, in our prima facie view, the amount granted under the impugned judgment and decree is very reasonable and no case is made out for grant of stay of the money decree. The Application for grant of stay is rejected.

(A.A. SAYED, J)

(A.S. OKA, J)