

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
 CIVIL APPLICATION NO.398 OF 2015
 IN
 FAMILY COURT APPEAL NO.289 OF 2014

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Anita Ravi Papadkar	...Applicant
v/s.	
Ravi Dattu Papadkar	...Respondent

...

Ms.Bhavana Yashwant Tandel for the Applicant-wife.
 Mr.A.N.Shaikh for the Respondent-husband.

...
CORAM : A.S.OKA &
A.A. SAYED, JJ.
DATED : 12 JULY 2016

P.C.:

Heard the learned Counsel appearing for the Applicant and the learned Counsel for the Respondent. The Applicant is the wife and the Respondent is the husband. The Family Court Appeals are preferred by the Applicant-wife. By the impugned judgment, the learned Judge of the Family Court decided three separate proceedings. The Petition for divorce filed by the Respondent-husband was decreed. The Petitions filed by the Applicant-wife for maintenance were dismissed. Clause (4) of the operative part of the impugned judgment reads thus:

“(4) The Petitioner is granted divorce subject to Petitioner paying alimony of Rs.10,00,000/- (Rupees ten lakhs) to the Respondent. Till the payment of alimony, the Petitioner shall pay maintenance @ Rs.5000/- per month to the Respondent with effect from 1 March 2014.”

2. The Family Court Appeal No.289 of 2014 preferred by the Applicant-wife against the decree of divorce has been admitted. In Civil Application No.279 of 2014 in Family Court Appeal No.289 of 2014, the following interim order has been passed on 10 December 2014:

“Judgment & Decree granting divorce is stayed during pendency of Family Court Appeal.”

3. The prayer in this Application made by the wife is for directing the Respondent-husband to pay a sum of Rs.5,000/- per month to her by way of interim maintenance. The present Application is filed in Family Court Appeal No.289 of 2014, wherein the challenge is to the decree of divorce granted in the Petition filed by the husband in the Family Court.

4. Learned Counsel appearing for the Applicant-wife relied upon Clause (4) of the operative part of the impugned decree passed in the Petition filed by the husband and the findings recorded by the learned Judge of the Family Court, in particular in paragraphs 21 and 22. Her submission is that as the Applicant has no income, she is entitled to maintenance as directed by the Family Court.

5. The first submission of the learned Counsel for the Respondent-husband is that the decree of the Family Court directing payment of maintenance is stayed by this Court by virtue of the aforesaid order dated 10 December 2014. Secondly, he submits that by dismissing the Petition for maintenance filed by the Applicant-wife, the Family Court has denied maintenance to the Applicant-wife. Thirdly, he submits that the Applicant-wife is employed. Fourthly, he submits that the husband has many liabilities as indicated in paragraph 11 of the Affidavit-in-Reply and that he has no fixed income as an Agent of the Life Insurance Corporation of India. Learned Counsel submitted that there is documentary evidence on record to show that the Applicant is gainfully employed.

6. We have considered the submissions. We have perused the findings recorded by the Family Court in paragraph 21 of the impugned judgment. Notwithstanding the contention raised by the Respondent that the Applicant was employed as a teacher, the learned Judge of the Family Court directed the Respondent-husband to pay maintenance at the rate of Rs.5000/- per month till alimony of Rs.10 lakhs is paid by him to the Applicant-wife. Thus, even under the impugned decree, the liability of the Respondent-husband to pay alimony to the Applicant-wife has been upheld. This part of the decree is not challenged by the Respondent. Perusal of the order dated 10

December 2014 in Civil Application No.279 of 2014 will show that what is stayed is the decree granting divorce. Even assuming that the direction to pay alimony is stayed, this Court is not powerless in view of section 24 of the Hindu Marriage Act, 1955 to grant interim alimony. On the basis of material on record, interim maintenance has been quantified by the Family Court at Rs.5000/- per month.

7. At this stage, the learned Counsel appearing for the Respondent-husband submits that the Applicant is occupying a flat of the parents of the Respondent. Even this fact is taken into consideration by the Family Court while directing the Respondent to pay maintenance at the rate of Rs.5000/- p.m. In the Reply filed by the Respondent, nothing is placed on record to show that on the date on which the present Application is made, the Applicant-wife was gainfully employed and/or that during the pendency of the Application, she was gainfully employed. The Respondent-husband has accepted that he is carrying on business as LIC Agent. In the reply, he has not denied his income by way of commission. He has, however, not disclosed particulars of his income.

7. Therefore, a case is made out for directing the Respondent-husband to pay maintenance at the rate of Rs.5000/- per month to the Applicant-wife. The present Application has been filed in March 2015. Therefore, we propose to direct the Respondent to pay maintenance with effect from 1 April 2015.

8. Accordingly, the Application is disposed of by the following order:

ORDER

- (i) We direct the Respondent-husband to pay interim maintenance to the Applicant-wife till disposal of the Appeal at the rate of Rs.5000/- per month with effect from 1 April 2015;
- (ii) The arrears payable upto 30 July 2016 shall be paid by the Respondent to the Applicant on or before 30 November 2016;
- (iii) From August 2016 onwards, the Respondent shall pay a sum of Rs.5000/- per month to the Applicant on or before 15th day of every calendar month;
- (iv) We direct the Applicant to furnish necessary account details of her bank account to the advocate for the Respondent within a period of two weeks from today. A photo-copy of the cancelled cheque of the account of the Applicant shall also be forwarded to the advocate for the Respondent;

(v) The amount of arrears as well as the amount payable every month shall be directly deposited by the Respondent in the bank account of the Applicant;

(vi) The Application is disposed of in the above terms.

(A.A. SAYED, J.)

(A.S.OKA, J.)