

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.138 OF 2014
IN
FAMILY COURT APPEAL NO.9 OF 2014

Sou. Jyostna Nitin Bankar Applicant

V/s

Mr. Nitin Bhausahab Bankar Respondent

Mr. Girish R. Agrawal for the Applicant-wife.

Mr. Sudam S. Kale for the Respondent-husband.

CORAM : A.S. OKA &
A.A. SAYED, JJ.

DATED : 08 AUGUST 2016

ORDER:

1 This is an Application filed by the Applicant wife for grant of interim alimony for herself and her 12 years old son.

2 This Application has been filed in Family Court Appeal No.9 of 2014 filed by the Respondent husband. The Applicant wife filed a Petition for restitution of conjugal rights and the Respondent husband filed a Petition for divorce. By the impugned common judgment dated 21 October 2013, the Petition for divorce was dismissed and the Petition for restitution of conjugal rights filed by the Applicant wife was decreed. The

Family Court Appeal no.9 of 2014 takes an exception to the decree of dismissal passed in the divorce petition filed by the Respondent husband.

3 The Family Court Appeal No.10 of 2014 filed by the Respondent husband takes an exception to the decree of restitution of conjugal rights passed by the Family Court on the Petition filed by the Applicant wife.

4. During the pendency of the Petition filed by the Respondent husband, by an order dated 27 August 2007, the learned joint Civil Judge Senior Division, Nashik fixed the maintenance amount of Rs.2,000/- per month. A prima facie finding was recorded that the Applicant wife has no source of income. The Respondent husband challenged the said order by filing Writ Petition No.7798 of 2007. By an order dated 10 November 2008, the learned Single Judge rejected the said Petition. The learned Single Judge while confirming the order noted that salary slips show that the Respondent husband is paying a sum of Rs.7,500/- towards repayment of loans. This Court observed that after the impugned order was passed by the learned Civil Judge, the Respondent husband has requested HDFC Limited from whom he had obtained Housing loan, to increase the amount of installment to Rs.5,000/- per month from Rs.3,908/- per month. This Court observed that the malafides on the part

of Respondent husband are obvious.

6 In terms of the order passed by this Court, the Respondent-husband has produced salary slips. The salary slips from November 2014 till May 2016 show that the gross monthly salary is between Rs.25,000/- to Rs.34,000/-. The deduction made from the said salary is also different every month in the range of Rs.5,000/- to Rs.14,000/-. From the said salary slips, we can easily infer that the average gross monthly emoluments payable to the Respondent husband are approximately Rs.30,000/- or more. The deductions as reflected from the salary slips are mainly on account of subscription of the society. There is a substantial deduction every month towards the repayment of the loan taken by the Respondent husband. Taking into consideration of the said salary slips, it can be safely held that the average net income of the Respondent husband can be taken Rs.19,000/- to Rs.20,000/- per month.

7 We must also note here that in paragraph 2 of the Additional Affidavit of the Respondent husband filed on 30 June 2016, he has stated that his take home salary after deductions on an average is Rs.20,000/- per month. It is the contention of the Respondent husband that at one point of time, the Applicant wife was employed and that she

has given-up the employment only for securing an order of maintenance. The present Application for maintenance has been filed on 29 March 2014. There is nothing placed on record by the Respondent husband to show that at least on the said date, the Applicant wife was having any income.

8 The learned Counsel appearing for the Applicant wife has placed on record a copy of the Petition No.D-16 of 2016 filed by the Respondent husband in the Family Court at Nashik on 20 April 2016. The said Application is filed for custody of minor child. In the said Application, he has stated that he has capacity to look after the child. He has specifically stated that the Applicant wife has no source of earnings and she is not capable of looking after the minor child.

9 Hence, the Respondent husband cannot dispute his liability to maintain the Applicant wife and the child especially when the Family Court has passed a decree of restitution of conjugal rights and the Petition for divorce has been dismissed.

10 Taking over all view of the matter, we direct the Respondent husband to pay total monthly maintenance of Rs.7,500/- to the Applicant wife and to the minor child from 1 April 2014. Sufficient time deserves to be granted to deposit the arrears.

11 The learned Counsel appearing for the Respondent husband states that the Application for maintenance filed by the Applicant in the proceedings under the Domestic Violence Act is pending for passing orders. While passing the order, the learned Magistrate will have to take into consideration the effect of this order.

12 Hence, we dispose of the Application by passing following order:

- i) We direct the Respondent husband to pay total monthly maintenance of Rs.7,500/- for the benefit of the Applicant wife and the minor son with effect from 1 April 2014;
- ii) The Respondent husband shall deposit the amount towards the arrears payable up to 31 August 2016 on or before 31 January 2017. The amount payable from September 2016 onwards shall be paid by the Respondent husband on or before 15th day of every calendar month;
- iii) We direct the Applicant wife to supply her bank account particulars along with a copy of cancelled cheque of her bank account to the Advocate for the Respondent husband within a period of three weeks from today;
- iv) The monthly maintenance shall be transferred directly by the Respondent husband to the said account of the Applicant wife. Even the arrears payable shall be transferred by the Respondent

husband to the said account of the Applicant wife;

- v) Needless to add that in the pending proceedings under the Domestic Violence Act, the maintenance granted under this order shall be taken into consideration by the learned Magistrate;
- vi) We make it clear that the prima facie findings recorded in this order are for only the purposes of deciding this Application and all contentions of the parties in the Petition No.D-16 of 2016 pending before the Family Court at Nashik are expressly kept open;
- vii) The Civil Application is disposed of in the above terms.

(A.A. SAYED, J.)

(A.S. OKA, J.)

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