

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
 CIVIL APPLICATION NO.153 OF 2015
 IN
 FAMILY COURT APPEAL NO.283 OF 2014

...
 Jayprakash Kamlakar Kotkar ...Applicant
 v/s.
 Mrs.Anuradha Jayprakash Kotkar ...Respondent
 ...
 Mr.Ganesh Krishnaji Sovani for the Applicant.
 Mr.A.H.Kane i/b W.S.Kane & Co. for the Respondent.

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

DATED : 2 AUGUST 2016

P.C.:

Heard the learned Counsel appearing for the Applicant and the learned Counsel appearing for the Respondent. This Application was repeatedly adjourned as the parties had exchanged a draft of the consent terms without prejudice to their rights and contentions. In fact, at one stage the Application was heard in Chamber at length. However, the parties could not arrive at settlement.

2. Our attention is invited to the order dated 27 April 2016 passed by this Court. It is an admitted position that now the maintenance payable in terms of the impugned decree has been paid by the Applicant-husband till the end of July 2016.

3. The prayer in this Application is for stay of the impugned decree. The impugned decree has been passed by the learned Judge of the Family Court at Mumbai on a Petition for divorce filed by the Respondent-wife. Apart from passing a decree of divorce, the Family Court has directed the Applicant-husband to pay monthly maintenance of Rs.6,000/- to the elder daughter Nikita and Rs.7,000/- to the younger daughter Sanika. The custody of the daughters is retained with the Respondent-mother. Injunction has been granted against the Applicant restraining him from creating third party interests in respect of the matrimonial home.

4. The submission of the learned Counsel appearing for the Applicant-husband is that the Applicant is unable to pay the maintenance, as he receiving meager income of approximately Rs.4,000/- p.m. by way of pension. It is brought on record that the Applicant-husband was employed in Unit Trust of India as a Data Entry Operator. After working for substantially long time, the Applicant has taken voluntary retirement.

5. The elder daughter Nikita is born on 4 December 1992 and the younger daughter Sanika is born on 28 September 1998. Both daughters are taking education. In paragraph 45 of the impugned judgment, the learned Judge of the Family Court has recorded that the Applicant has

shown readiness and willingness to maintain the daughters. Total maintenance of Rs.26,000/- was sought by the Respondent-wife. However, the learned Judge came to the conclusion that it is the joint responsibility of the husband and wife to maintain daughters especially when both of them are earning. That is the reason why the maintenance is ordered to be paid to the daughters at the rate of Rs.6,000/- and Rs.7,000/- per month respectively. The Applicant-husband was employed for substantially long time. It is obvious that he must be having investments made out of his earnings. Therefore, we are not inclined to stay the decree directing payment of maintenance to the daughters, considering the respective ages of the daughters. There is also no reason to stay the injunction order restraining the Applicant from creating third party interests in respect of the matrimonial home.

6. Considering the respective ages of the daughters, there is no question of disturbing the custody of the mother. Therefore, no case is made out to grant stay, save and except stay of clause (2) of the operative part of the impugned decree, by which the marriage between the Applicant and the Respondent has been dissolved by a decree of divorce.

7. Needless to add that if the Applicant commits any default in payment of maintenance amount, the Respondent-wife can always file

appropriate proceeding including an Application to this Court for dismissing the Appeal preferred by the Applicant.

8. Subject to what is observed above, we pass the following order:

- (i) There will be stay of execution and operation of clause (2) of the operative part of the impugned decree dated 30 July 2014;
- (ii) The prayer for stay of rest of the operative part of the decree is rejected;
- (iii) The Application is disposed of in the above terms;

9. At this stage, the learned Counsel appearing for the Applicant states that he may be permitted to pay maintenance in terms of the impugned decree on or before 15th day of every month in stead of 10th day of every month as directed by the Family Court.

10. The said request deserves to be accepted. Accordingly, we permit the Applicant to pay maintenance as per clauses (3) & (4) of the operative part of the decree on or before 15th day of every calender month.

(A.A. SAYED, J.)

(A.S.OKA, J.)