

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.101 OF 2012
IN
FAMILY COURT APPEAL NO.66 OF 2012

Pravinchandra Virji Chheda. .. Applicant
Vs
Mrs. Naina Pravinchandra Chheda. .. Respondent
—
Ms. Varsha Palav i/b The Laureate for the Applicant.
Mrs. Naina Pravinchandra Chheda, the Respondent in person.
—

CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 18TH AUGUST 2016

P.C.

1. Heard learned counsel appearing for the Applicant. The prayer in this Application is for stay of the Clauses (5) and (6) of the operative part of the impugned judgment and decree. Clauses (5) and (6) of the operative part of the impugned judgment and decree read thus:

- “(5) The petitioner do pay an amount of Rs.3 lakhs as permanent alimony to the respondent within three months, failing which the respondent is entitled to recover the said amount with interest @ 6% p.a from the date of this order, till the realisation of entire amount.
- (6) The petitioner shall within six months from today provide residential accommodation to the respondent consisting of one room kitchen in Western suburb of Mumbai, failure to comply

with said direction within said time, the petitioner shall pay lumpsum amount of Rs.20 lakhs in lieu of accommodation alongwith interest thereon @ 6% p.a. from the date of this order.”

2. The learned counsel appearing for the Applicant states that the Applicant is not pressing for stay of Clause (5) of the operative part of the impugned judgment and decree as the amount covered by the said Clause (5) is already deposited.

3. In view of Clause (6), the Applicant was under an obligation to provide residential accommodation to the Respondent wife within a period of six months from 18th January 2012. On the failure of the Applicant to provide the residential accommodation within six months, he is under an obligation to pay a sum of Rs.20 lakhs together with interest at the rate of 6% per annum from the date of the decree. Admittedly, the Applicant has not provided residential accommodation within the stipulated period of six months from the date of the decree. He has also not complied with the direction to deposit the sum of Rs.20 lakhs with interest @6% p.a.

4. The order dated 16th August 2013 passed by this Court in this Application is material. Clauses (1) and (2) of the said order read thus:

- “1. Learned counsel appearing for the Applicant on instructions states that without prejudice to the rights and contentions of the Applicant in both the Appeals, the Applicant is willing to deposit a sum of Rs.9 lakhs in this Court within a period of three months from today. On instructions, the learned counsel appearing for the Applicant states that she has no instructions as to whether the Respondent has withdrawn the sum of Rs.1 lakh together with interest accrued on the amount.
2. We accept the aforesaid statement. In view of the aforesaid statement, we adjourn the hearing of the Civil Application till 25th November 2013. The ad-interim stay granted earlier will continue to operate subject to the Applicant depositing a sum of Rs.9 lakhs within a period of three months from today. If the amount is not deposited within the stipulated time, the ad-interim relief of stay shall stand vacated without further reference to the Court.”

5. Thereafter, this Application came up before this Court on 27th January 2014. Clauses (1) and (2) of the said order read thus:

- “1. In the order dated 16.8.2013, it is reflected that the learned counsel for the applicant on instructions stated that "without prejudice to the rights and contentions of the applicant in both the appeals, the applicant is willing to deposit a sum of Rs.9,00,000/- in this Court within a period of three months from today". In the said order dated 16.8.2013, it is further reflected that ad-interim stay granted earlier will continue to operate subject to the applicant depositing a sum of Rs.9,00,000/- within a period of three months from that day. After the order dated 16.8.2013 was passed, the applicant has deposited only a sum of Rs.1,50,000/- on 19.10.2013. Thus, there is balance of Rs.7,50,000/- which remains to be deposited by the applicant. The learned counsel

for the applicant on instructions from the applicant who is present in Court, states that the applicant will deposit the balance amount of Rs.7,50,000/- in this Court within a period of three months from today. Time of three months is granted to deposit amount of Rs.7,50,000/-. If the amount is not deposited within the said period, the interim relief shall stand vacated.

2. In addition to the above, the applicant who is present in Court, by way of interim measure is agreeable to pay Rs.5,000/- per month towards the rent for accommodation to the respondent-wife during the pendency of these appeals. The said amount of Rs.5,000/- shall be paid to the respondent wife on or before 10th day of every month by cheque.”

6. Admittedly, as per the statement made by the Applicant, he has not deposited the sum of Rs.9 lakhs within the extended period provided under the order dated 27th January 2014. The order dated 27th January 2014 is a self operative order which provides that if the amount of Rs.7,50,000/- is not deposited, the interim order shall stand vacated. Thus, the said order is a self operative order and as a result of non-compliance, the interim relief granted to the Applicant stood vacated. In any event, now no interim relief of stay of operation of the Clause (6) of the operative part of the impugned decree can be granted.

7. Therefore, now the Applicant will have to pay the sum of Rs.20 lakhs with interest thereon at the rate of 6% per annum from 18th January 2012 upto date. We grant time of three months to the Applicant to deposit the said amount of Rs.20 lakhs with interest

thereon at the rate of 6% per annum from the date of the impugned judgment and decree. On the failure of the Applicant to deposit the aforesaid amount of Rs.20 lakhs within the said period, the Application made by the Wife being Civil Application No.317 of 2014 praying for dismissal of the Appeal will have to be considered on merits.

8. Till the date of the Applicant depositing the said sum of Rs.20 lakhs with interest as aforesaid, he shall continue to pay a sum of Rs.5,000/- per month to the Respondent on or before the 10th day of every calender month.

9. Subject to the above directions, the Application is disposed of. We make it clear that the prayer for grant of stay of Clauses (5) and (6) of the operative part of the impugned judgment and decree dated 18th January 2012 stands rejected.

(A.A. SAYED, J)

(A.S. OKA, J)