

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.260 OF 2015
IN
FAMILY COURT APPEAL NO.59 OF 2016

Vaibhav Subhash Bhagwat. .. Applicant
Vs
Arati Vaibhav Bhagwat. .. Respondent
—

ALONG WITH
CIVIL APPLICATION NO.15 OF 2016
IN
FAMILY COURT APPEAL NO.76 OF 2015

Arati Vaibhav Bhagwat. .. Appellant
Vs
Vaibhav Subhash Bhagwat. .. Respondent
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Shri Suhas Shivaji Deokar for the Applicant in CA No.260 of 2015 and for the Respondent in CA No.15 of 2016.
Mrs. Uma K. Wagle for the Applicant in CA No.15 of 2016 and for the Respondent in CA No.260 of 2015.
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CORAM : A.S. OKA & P. D. NAIK, JJ
DATED : 7TH APRIL 2016

PC.

1. Heard the learned counsel appearing for the Applicant.
The Civil Application No.260 of 2015 is filed by the husband in Family Court Appeal No.59 of 2016 and the Civil Application No.15 of 2016 is filed by the wife in Family Court Appeal No.76 of 2015.

2. Both the Appeals take an exception to the decree passed by the Family Court in a Petition filed by the husband. The decree of divorce has been passed. The only issue which arises in these two Civil Applications is as regards the Clause (2) of the operative part of the decree which reads thus:

“2. The Petitioner shall pay Rs.6000/- per month to the child Aditya from the date of this Judgment and he shall bear 2/3rd legal educational expenses.”

3. The contention of the learned counsel appearing for the husband in support of his prayer for stay of Clause 2 is that without consulting him, the Respondent wife has put the child in a school. He pointed out that the school fees payable per year are to the tune of Rs.1,60,000/- or more. His submission is that considering his income, it is impossible for him to pay 2/3rd amount towards educational expenses. He relied upon the reply filed in the Civil Application No.15 of 2016. He also tendered across the bar a salary slip issued by A5E Consulting Private Limited. His submission is that the husband is SAP Consultant and is not employed throughout the year. His submission is that whenever there is a project available, he is able to get an employment. He submitted that the wife ought to have put the child in a school where the fees payable are reasonable.

4. We have considered the submissions. To the reply filed by the husband to the Civil Application No.15 of 2016, copies of his Income-tax Returns for the Assessment Years 2011-2012, 2013-2014, 2014-2015 and 2015-2016 have been annexed. From the Returns, it appears that the gross income of the husband in the Assessment Year 2011-2012 was Rs.5,45,194/-, the gross income in the Assessment Year 2014-2015 was Rs.7,77,954/- and the gross income in the Assessment Year 2015-2016 was Rs.5,73,615/-.

5. In the affidavit-in-reply, he has stated that he is working as SAP Consultant and his last drawn monthly salary is Rs.75,000/-. The contention of the husband is that though his father is a Pensioner, he has a responsibility of his mother and sister.

6. By the impugned decree, the husband was directed to contribute an amount equivalent to $\frac{2}{3}^{\text{rd}}$ of the education expenses incurred on the child. Considering the fact that the husband is SAP Consultant and considering his Income Tax Returns which are placed on record, it is not possible to accept the contention of the husband that he is not in a position to pay $\frac{2}{3}^{\text{rd}}$ amount towards the educational expenses.

7. Therefore, the Clause 2 of the operative part of the impugned judgment and decree cannot be stayed.

8. The Civil Application No.15 of 2016 shows that the husband is in arrears. Reasonable time deserves to be granted to the husband to clear the arrears.

9. Hence, we pass the following order:

ORDER :

- (a) Civil Application No.260 of 2015 is rejected;
- (b) Civil Application No.15 of 2016 is allowed in terms of prayer clause (a). We grant time of eight weeks to the husband to pay the requisite amount to the wife;
- (c) Needless to state that it will be the responsibility of the wife to keep the husband informed about the progress made by the child in education;

- (d) If any major decision is to be taken as regards the education of the child, the wife will have to consult the husband;
- (e) As the prayer for stay of the Clause (2) of the operative part of the impugned judgment and decree has been rejected, till disposal of the Appeal, the husband will have to comply with that part of the decree.

(P. D. NAIK, J)

(A.S. OKA, J)