

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.294 OF 2014
IN
CRIMINAL WRIT PETITION NO.3071 OF 2009

Hamida Hanif Payak .. Applicant

vs.

Hanif Ibrahim Payak .. Respondents

Mr.Rakesh A. Agarwal for the applicant

Mr.Vijay A. Kesarkadi for respondent no.1

CORAM : K. K. TATED, J.
DATE : OCTOBER 25, 2016

PC.:

1 Heard the learned counsel for the parties.

2 This application is preferred by wife for enhancement of maintenance charges as fixed by this court by order dated 23.4.2010.

3 The learned counsel for the applicant submits that this court by order dated 23.4.2010 directed respondent to pay a sum of Rs.3,000/- per month by way of maintenance charges during the pendency of the present Writ Petition. He submits that petitioner is not keeping well. She has to take medical treatment from time to time. Hence, it is very difficult for her to maintain herself in the sum of Rs.3,000/- only.

4 The learned counsel for the petitioner submits that in addition to

Rs.3,000/- applicant is getting Rs.2,000/- per month from the respondent in civil matter. He submits that considering the fact that this Hon'ble Court fixed maintenance charges of Rs.3,000/- in the year 2010, respondent may be directed to pay sum of Rs.25,000/- per month. She submits that respondent is holding several properties and vehicles as stated by the applicant in her additional affidavit in support of criminal application dated 1.10.2016. In paragraph 3 applicant stated that respondent no.1 is holding 8 godowns at Ahmedabad. It is also stated that respondent is also holding additional 14 godowns at Bhurabai Market, Opp.Ujwal Hotel Highway Road, Gandhi Nagar. Paragraph 3 of the said affidavit reads thus:

“3. I say that the Respondent No.1's current financial status is as follows:

(a) The Respondent No.1 is holding 8 godowns at Aman Estate, Sarkhej Highway Road, Ahmedabad which are given on leave and licence and which fetches income of Rs.1,75,000/- per month;

(b) 14 godowns at Bhurabai Market, Opp.Ujwal Hotel, Highway road, Gandhi Nagar – which is given on leave and license and income is not known to the applicant.

(c) 8 godowns in Saurashtra Estate, High way road, Ahmedabad – which is given on leave and license and income is not known to the applicant.

(d) 2 motor repairing garages – which may be fetching income not less than 1,50,000/- per month.”

5 The learned counsel for the applicant placed on record property card, photographs as well as Registration Certification books of vehicles standing in the name of respondent. The learned counsel for the

applicant submits that even in Civil matters though the court directed respondent to pay maintenance charges of Rs.2,000/- per month, Respondent failed to comply that order also. Hence, applicant filed Execution Application. He submits that in Execution Application civil court issued bailable warrant against the respondent and that matter is kept today at 2.45 p.m.in Bombay City Civil Court, Mumbai. He submits that as on today, applicant have to recover sum of Rs.2,00,000/-. He submits that on the last occasion, civil court directed respondent to pay sum of Rs.1,00,000/- as on today. That also he has not complied. He submits that though respondent is holding several properties at Ahmedabad and on his own he is earning more than Rs.20,000/- per month. Actually that is not correct. Because as per the applicant's knowledge respondent is earning more than Rs.1,75,000/- per month. Considering these facts, this Hon'ble Court be pleased to direct respondent to pay maintenance charges @ Rs.25,000/- per month.

6 On the other hand, the learned counsel for the respondent vehemently opposed the present application. Respondent filed their Affidavit-in-Reply dated 18.10.2016. Respondent denied whatever is stated by the applicant in her additional affidavit dated 1.10.2016 about several properties. Advocate for respondent submits that all those properties were jointly held by respondent along with other family members. He submits that at present, respondent is earning only Rs.20,000/- per month and out of that he has to maintain his 2nd wife Mrs.Rehana Banoo. Respondent in his Affidavit-in-Reply in paragraph 13(ii) stated that he purchased property in the name of Ms.Rehanna Banu for her residence. He submits that as on today applicant is getting monthly maintenance charges of Rs.5,000/- i.e.

more than sufficient to maintain herself. He submits that respondent husband has already provided her flat at Ahmedabad which is in her possession only. He submits that considering the present financial condition of respondent it is not possible for him to pay any additional maintenance charges to the applicant. Hence, there is no substance in the present applicant and same be dismissed with costs.

7 I have heard both the sides. It is to be noted that in the present proceedings, this court by order dated 23.4.2010 directed respondent to pay maintenance charges @ Rs.3,000/- per month. Applicant is also getting sum of Rs.2,000/- per month in civil proceeding. Considering the properties held by the respondent as stated in paragraph 3 of additional affidavit dated 1.10.2016 filed by applicant and as applicant required additional amount for her medical expenses, I am of the opinion that applicant made out a case for additional maintenance charges, but not @ Rs.25,000/- per month. As applicant is getting sum of Rs.2,000/- per month in civil matter, I am of the opinion that she must get maintenance @ Rs.13,000/- per month in the present proceeding. Hence, following order is passed:

- a) Civil Application is partly allowed.
- b) Respondent Hanif Ibrahim Payak is directed to pay monthly maintenance charges @ Rs.13,000/- per month to the applicant from 1.1.2017 on or before 10th of each month.
- c) Civil application stands disposed off accordingly.

JUDGE