IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8825 OF 2014

Mrs. Amee Sharan Desai, Age 35 years, Occupation : Housewife C/o. 11, Sherman Building Narayan Dabholkar Marg, Mumbai – 400006.	]	..Petitioner.

Versus

Mr. Sharan Sanjeev Desai, Age : 35 years Occupation : Business R/o. 62 Sunder Nagar, New Delhi-110 003.	]	..Respondent.

Coram : RANJIT MORE, J.
Date on arguments were concluded : **4th May, 2016**.
Date on which Judgment is pronounced : **23rd August, 2016**.

Mr. Rohan J. Cama i/b. Ms. Sapna Rachure, advocate for the Petitioner.
Mrs. Manjula Rao, advocate for the Respondent.

Oral Judgment :

1. This writ petition arises from an interim maintenance proceedings under section 18 of the Hindu Adoptions and Maintenance Act, 1956. By the application at Exhibit-17 filed in MJ Petition No.C-4 of 2013, the Petitioner–wife claimed interim maintenance @ Rs.2,50,000/- per month for herself and @ Rs.1,50,000/- per month for the minor daughter of

the couple. By the order impugned in the petition, the Family Court, Mumbai at Bandra has refused to grant any interim maintenance to the Petitioner–wife, however, daughter of the couple is granted interim maintenance @Rs15,000/- per month.

2. Briefly, the facts are that the Petitioner and the Respondent got married on 25th November 2005. During the wedlock, on 31st December 2008 daughter Samara was born to Petitioner and Respondent. It is the case of the Petitioner that on 15th November 2012 she was constrained to leave her matrimonial home and come to reside at Mumbai with her mother. The Petitioner thereafter on 30th November 2012 filed a petition being MJ Petition No.C-04 of 2013 in the family Court seeking maintenance for herself and daughter–Samara and permanent custody of Samara. On 27th December 2012 the Petitioner also filed a proceeding under sections 12, 18, 20, 22 and 23 of the Protection of Women From Domestic Violence Act, 2005 before the Court of Additional Chief Metropolitan Magistrate, 40th Court at Girgaum, Mumbai being CC No.637/SS/2012, [hereinafter referred to as *"DV Act*

proceedings"]. It is the case of the Petitioner that in this DV Act proceedings, the Respondent by filing reply showed his willingness to pay to the Petitioner an amount of Rs.50,000/- per month towards the interim maintenance in addition to the payment of rent for separate residence and for any unforseen expenses of Samara and / or the Petitioner. The Petitioner was, however, advised to withdraw the DV Act proceedings and accordingly she withdrew the same on 26th August 2013 and thereafter on 8th October 2013 in MJ Petition No. C-04 of 2013, filed an application at Exhibit-17 seeking interim maintenance for herself @ Rs.2,50,000/- p.m. and for daughter Samara @Rs.1,50,000/- p.m.. The Family Court granted interim maintenance to daughter – Samara @ Rs.15,000/- per month but interim maintenance to the Petitioner – wife is refused on the ground that she has independent source of income. This order is challenged by filing present petition under Articles 226 & 227 of the Constitution of India.

3. The Petitioner–wife contends that she has no independent source of income. The business which is shown to

be carried on by her is in fact that of her mother. At any rate, the Income Tax Returns which are relied upon by the Respondent and Family Court reflect very meagre purported income of the Respondent which is not at all commensurate with the status of the parties and is not sufficient to lead the standard of living to which parties were accustomed during their cohabitation. It was also contended that income referred to in the Income Tax Returns of the Petitioner is in fact the income of the Petitioner's mother, the small portion of which was deposited in a joint account held by the Petitioner and her mother. It is contended that the said money / income has not been used by the Petitioner at all and the record reveals that the amount in the said bank account is withdrawn by the Petitioner's mother. The Petitioner also contended that the Respondent suppressed his income. The documents relied upon before the Family Court and this Court demonstrate that the Respondent has significant income. It also discloses the high spending power and high standard of living of the parties during the time of their cohabitation. The Petitioner contended that taking into consideration the high income and high spending power of the Respondent, coupled with the lifestyle which parties led during their cohabitation, she is entitled to interim maintenance @ Rs.2,50,000/- per month. So far as daughter–Samara is concerned, she is taking education in Mumbai in highly reputed school. The Petitioner has given chart of expenses for daughter Samara under various heads. Based on the details of expenses given in the said chart, the Petitioner claims interim maintenance for Samara @ Rs.1,50,000/- per month.

4. Mrs. Manjula Rao, the learned Counsel appearing for the Respondent very vehemently contested the petition. She submitted that the Petitioner wife has independent source of income and this fact was concealed by the Petitioner from the Family Court while claiming interim maintenance. She submitted that the business and properties which are being referred to by the Petitioner as a source of income for the Respondent, in fact belong to the Respondent's father and brother. She also submitted that there was no justification for the Petitioner wife to withdraw from the company of Respondent and therefore she is not entitled for any maintenance much less the interim

maintenance. She submitted that Family Court has rightly refused maintenance to the Petitioner wife. She also referred to various documents annexed to the petition and the Respondent's reply to buttress her contentions. She lastly submitted that this Court in exercise of writ jurisdiction is not expected to interfere with the impugned order and prayed for the dismissal of the writ petition.

5. The law regarding grant and quantum of maintenance to the wife is now fairly settled. The Apex Court in *Jasbir Kaur Sehgal v. District Judge Dehradun [(1997) 7 SCC 7]* has held thus :

> "The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

6. Recently, the Apex Court in *Bhuwan Mohan Singh v.*

Meena [(2015) 6 SCC 353], while dealing with the issue of maintenance to the wife made following observations :

> "Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds."

7. In the light of above principles laid down by the

Apex Court, let us consider the rival submissions of the parties in the present case. The Petitioner heavily relied upon the reply affidavit filed by the Respondent–husband in the DV Act proceedings. The Petitioner-wife contends that though in this reply affidavit the Respondent has shown his income of Rs.2,25,000/-, Rs.1,74,615/- and Rs.1,40,626/- respectively for the financial years 2010-11, 2011-12 and 2012-13, in the very affidavit he has expressly shown his willingness to pay to the Petitioner an amount of Rs.50,000/- per month for her maintenance over and above the rental charges for the alternate accommodation and for any other unforseen and/or unexpected expenditure required to be borne for the Petitioner or daughter Samara. According to the Petitioner, the statement itself shows that the income disclosed by the Respondent was patently false. The Petitioner also contended that the Respondent is co-owner of the ancestral property worth hundreds of crores. She submitted that the Respondent though held 4 to 5 bank accounts, has disclosed only one and the statement of the disclosed account reveal that there have been huge deposits and withdrawals. The Petitioner wife also contended that the Respondent holds 4 to 5 debit / credit cards but he has disclosed only one debit card and the disclosed debit card itself shows that the Respondent is making payments to the tune of several lakhs on routine basis. She also relied upon the lifestyle she enjoyed with the Respondent during cohabitation. She submitted that they on many occasions undertook foreign tours, travelled by business class and stayed only in 5 star hotels. The Respondent, on the contrary, relied upon the Income Tax Returns of the Petitioner which according to him disclose that the Petitioner has independent income. As discussed earlier, the Respondent also contended that the property and business on which the Petitioner relied, are ancestral property and business is of his father which cannot be considered as his independent source of income at this stage of grant of interim maintenance.

8. At Exhibit-B to the petition, the Petitioner has annexed Respondent's reply in the DV Act proceedings. In paragraph 13(ii) and 13(iii) of his reply, the Respondent has made following averments :

"(ii) In response to prayer (b) of the Applicant, seeking residential orders under section 19(f) of the D. V. Act 2005 the Respondent submits that this prayer of the Applicant has to be taken into consideration in the light the suit which the Respondent has filed against the Applicant in the Family Court at New Delhi seeking conjugal rights. Subject to participation in the said proceeding by the Applicant if the said Court passes an order directing such restitution of conjugal rights between the Applicant and the Respondent, then the Applicant would be obliged to returned to her matrimonial home at New Delhi, in which case the Applicant would be treated as sufficiently secure having the same level of accommodation which the Respondent presently enjoys. The Respondent says and submits that he being a resident of Delhi, in the event of the Applicant not being ready and willing to return to her matrimonial home, and insist upon an alternate accommodation on rent, the Respondent is ready and willing to provide the same to the Applicant in New Delhi.

(iii) In response to prayer (c) of the Applicant, seeking monetary relief under section 20(1)(b)(d) and 20(2) and section 20(3) of the D. V. Act 2005, the Respondent denies that the Applicant has been subjected to any expense or loss suffered in monetary terms. The Respondent submits that he is ready and willing to provide to the Applicant and his minor daughter, adequate monetary relief in the form of maintenance per month consistent with the standard of his income. The

Respondent submits that he is aware that the said monetary relief in the form of maintenance per month should be adequate, fair and reasonable. However, the same is required to be consistent with the income of the Respondent. The Respondent submits that taking into consideration his income generated from his business, and also taking into consideration that the Respondent has willingly agreed to accept the Applicant back into her matrimonial home in New Delhi, or in the alternative provide her with alternative accommodation on rent in New Delhi, for which the Respondent will be required to pay not only a deposit but also pay the monthly rent to the landlord of the said premises, the Respondent is ready and willing to pay a sum of Rs.50,000/- to the Applicant per month which he shall deposit directly into her bank account as desired by the Applicant. The Respondent in all fairness, places on record that apart from the said maintenance of Rs.50,000/- per month, in the event of any untoward, unforseen and unexpected expenditure is required to be incurred by the Applicant, either towards her or his daughter's medical expenses, he is ready and willing to pay the same as and when the circumstances so requires. The Respondent submits that the expected claim of the Applicant that the maintenance should be consistent with the standard of living that the Respondent enjoys cannot be become the base for fixing the said maintenance inasmuch as the Respondent is personally liable and responsible to maintain his wife and child and cannot expect the said burden to be borne by his parents and other family members. The Respondent submits that since he does not have a household of his own, he lives in the house of his parents, with his brother and family. The business wherefrom the Respondent generates his income is different and distinct from that of his father. <u>Consequently the offer of Rs.50,000/- per month made by the Respondent is in the light of his financial capabilities based on his annual income.</u> The Respondent submits that the monetary relief of Rs.2,50,000/- per month as claimed by the Applicant for herself and Rs.1,50,000/- per month for their minor daughter is not only exorbitant but beyond the reach and means of the Respondent. The Respondent submits that such exorbitant figures have been deliberately demanded by the Applicant only to exert pressure on the Respondent to succumb to her extortive demands. The Respondent submits that the filing of a complaint on 1st March 2013 and pursuing the same with resourceful connection of the Applicant's family amongst high ranking police officials to ensure registration of an FIR against the Respondent and his parents is nothing but an attempt by the Applicant to pressurise the Respondent to succumb to her demands as expressed in her application under reply."

9. The above averments made in the reply affidavit by the Respondent, *prima facie*, in my opinion, do show that the

Respondent has suppressed his real income. The averments make it clear that the said offer towards maintenance was made by the Respondent in the light of his financial capacity, based on his annual income. The Respondent not only showed willingness to pay to the Petitioner an amount of Rs.50,000/- per month towards the maintenance but also agreed to bear rental charges for the alternate accommodation and pay for any untoward, unforseen and unexpected expenditure of the Petitioner and daughter Samara. The Respondent in this regard claimed that this offer was made with a view to continue the marriage and since he was not aware about the independent source of income of the Petitioner. It was also contended that offer for payment of rental charges for alternate accommodation for the Petitioner was an offer for the accommodation at New Delhi and not in Mumbai. This submission, I find is without any substance. What is required to be considered is that the status of the parties and their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance. The offer of Rs.50,000/- towards maintenance and offer of alternate accommodation, may be at New Delhi, do reveal strong financial position of the Respondent.

10. The documents annexed at page nos. 103 to 112 are the statements of Bank Account No.04841600000236 of HDFC Bank, Sundar Nagar, Delhi held by the Respondent. The Petitioner has made summary of these statements and annexed at Annexure-I to the written submissions. The summary shows that during the financial year 2007-08 the Respondent deposited Rs.13,75,000/- in this bank account and withdrew Rs.10,22,942/- from this bank account, during the financial year 2008–09, the Respondent deposited Rs.5,15,000/- and withdrew Rs.5,67,400/- from this bank account, during the financial year 2009–10, the Respondent deposited Rs.55,27,353/- and withdrew Rs.26,46,440/- from this bank account, during the financial year 2010–11, the Respondent deposited Rs.7,36,595/- and withdrew Rs.20,51,653/- from this bank account, during the financial year 2011–12, the Respondent deposited Rs.7,41,178/- and withdrew Rs.21,00,000/- from this bank account and during the financial year 2012–13, the Respondent deposited Rs.27,96,679/- and withdrew Rs.28,73,000/- from this bank account. Contents of

bank statement at page 108 show that the Respondent has paid an amount of Rs. 2 lakh towards income tax installation. This statement also shows that the Petitioner holds 4 debit / credit cards. These statements reflect huge deposits and withdrawals of several lakhs of rupees by the Respondent.

11. Page 102 is the tax invoice for purchase of the cut and polished diamonds issued by AMC Diamonds India Pvt Ltd in the name of the Respondent, which goes to show that the Respondent has purchased diamonds worth Rs.7,44,000/- on 30th October 2009. Statement at page 109 shows that the Respondent has spent approximately Rs.1 lakh while he was on vacation with his friends at Macau during the span of two days between 8th October 2010 to 9th October 2010.

12. The Petitioner has also relied upon the credit card statement at page Nos.113 to 195 of the Respondent's Citi Bank Credit Card. The summary of the statements is annexed at annexure-II to the written submissions of the Petitioner. During the financial year 2007-08, purchases worth Rs.2,75,457/- and

payments to the tune of Rs.3,30,000/- were made by the Respondent, during the financial year 2008-09, the Respondent made purchases worth Rs.5,38,208/- and payments to the tune of Rs.1,88,500/-, during the financial year 2009-10, the Respondent made purchases worth Rs.4,11,562/- and payments to the tune of Rs.5,62,000/-, during the financial year 2010-11, the Respondent made purchases worth Rs. 8,19,889/- and payments to the tune of Rs.9,82,000/-, during the financial year 2011-12, the Respondent made purchases worth Rs.11,20,362/- and payments to the tune of Rs.11,25,306/-, during the financial year 2012-13, the Respondent made purchases worth Rs.3,30,659/- and payments to the tune of Rs.4,31,500/- and during the financial year 2013-14, the Respondent made purchases worth Rs.1,11,949/- and payments to the tune of Rs.1,40,000/-. The expenses in Citi Bank Credit Card statement reflect that the Petitioner and the Respondent enjoyed a very high standard of living and stayed only in the finest five star hotels, travelled business class and shopped at high end boutiques. It further reveals that the Petitioner and the Respondent frequently travelled domestically and stayed only at five star hotels. It also reveals that they travelled only in business class or first class. Reference needs to be made to the photocopy of the passport of the Respondent at page Nos.319 to 350. This passport and visa stamp thereon show that the Respondent routinely took foreign trips and has gone on foreign holidays.

13. The averments of the Respondent made in the reply to DV Act proceedings coupled with the bank statements and credit card statements as well as document regarding hotel stay and purchase voucher demonstrate significant income, high spending power and high standard of living of the parties during their cohabitation. The parties are from the highest strata of the society and have enjoyed status as such.

14. The Respondent contended that the Petitioner was running the business carried on by her mother and relied upon the Petitioner's income tax returns for this purpose. It is however case of the Petitioner that business is owned by her mother and purported income referred to is in fact income of her mother, a small portion of which was deposited in a joint account held by

the Petitioner and her mother. The Petitioner in this regard during the course of argument handed over compilation of cheques to support her contention that bank account is managed by her mother. The compilation shows that out of 83 cheques issued from the said income from the joint account, only four cheques have been signed by the Petitioner in a period spanning over 8-9 years. *Prima facie*, I find substance in the Petitioner's contention that the said business is owned by the Petitioner's mother. In any case, income shown in the Petitioner's income tax returns reflect very meagre income which in no way commensurate with the status and standard of living of the parties during their cohabitation.

15. The Respondent in his written submissions has explained some of the entries in his bank statements and credit card statements. It is the submission of the Respondent that an amount of Rs.52 lakh is received at the time of one time sale of the property and therefore it cannot be considered as his income. With regard to diamond ring, he has submitted that it was in fact purchased for the Petitioner–wife. It is also case of the

Respondent that some of the expenses referred to in the said statements are incurred for the Petitioner-wife. It is stated that monies were expended when foreign tours were undertaken by both Petitioner and Respondent. This explanation, in my view, however does not take the Respondent's case any further. The fact remains that the Petitioner while living with the Respondent was leading high standard of life.

16. It is also contended by the Respondent that the Petitioner-wife has deserted the Respondent without any justification and her acts amount to cruelty and therefore she is not entitled to maintenance. The Respondent in this regard relies upon various decisions of the Apex Court. On the contrary, it is the case of the Petitioner that she was constrained to leave the matrimonial home due to cruelty caused by her by the Respondent and in her laws. In any case, what I find is that this issue was not raised before the Family Court. The Respondent opposed the application before the family Court on the ground that the Petitioner has independent source of income which she has concealed. The trial Court also accepted the Respondent's

contention that the Petitioner has independent source of income and on that ground refused to grant interim maintenance to the Petitioner. Whether the Petitioner was justified in withdrawing from the the Respondent's company or which party is guilty of cruelty will have to be decided at the final stage of the proceedings before the family Court after giving an opportunity to the parties to lead evidence.

17. The trial Court in paragraph 20 of the impugned order has held that voluminous documents relied upon by the Petitioner–wife with respect to the value of property worth multiple crores cannot be considered at this interim stage as they are not shown to be generating income. It was also observed by the family Court that documents relied upon by the Petitioner wife namely Credit Card Statements of the Respondent which show considerably high lifestyle apparently enjoyed by the Respondent are not relevant. It is further observed that list of holidays taken by the Petitioner and the Respondent abroad including the boarding passes of those flights and passports, bills of various 5 star hotel, and bank statements of the Respondent

are not relevant for the purpose of ordering interim maintenance to the Petitioner and her minor daughter. In my considered view, the approach adopted by the Family Court is erroneous. What is required to be seen is that the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law. Undoubtedly, the documents relied upon by the Petitioner-wife show very strong financial capacity of the Respondent which could not have been ignored by the family Court while considering the grant of interim maintenance. Even assuming for the sake of moment, income tax returns of the Petitioner wife disclose that she is having independent source of income, the same is not commensurate with that of the husband. The Petitioner wife is entitled to lead the standard of life similar to that of the husband.

18. Taking totality of the facts and circumstances of the case into consideration especially the deposits and withdrawals of amounts by the Respondent as disclosed from the bank statement and debit card statements and statement made by the

Respondent in his reply in the DV Act proceedings, in my opinion, the ends of justice would be met if the Respondent is directed to pay to the Petitioner interim maintenance @ Rs.1 lac per month from the date of the impugned order.

19. So far as the interim maintenance to daughter – Samara is concerned, the family Court has granted it @ Rs.15,000/- per month. The record reveals that she is taking education in very reputed school in South Mumbai. The Petitioner wife has submitted the Chart of Expenses towards the education of Samara. On the basis of the same she is claiming interim maintenance @ Rs.1,50,000/- per month. I am however of the opinion that taking into consideration the lifestyle of the parties and standard of education which Samara is taking, the amount of interim maintenance should be fixed at Rs.25,000/- per month.

20. In the light of above discussion, writ petition is allowed. The impugned order is quashed and set aside. The Respondent is directed to pay during the pendency and till he disposal of main MJ petition, interim maintenance to the

Petitioner - wife @ Rs.1,00,000/- per month and to daughter – Samra @ Rs.25,000/- per month. Interim maintenance shall be paid from the date of order impugned in this petition, i.e., 11th April 2014. The Respondent shall pay arrears of interim maintenance within eight weeks from today and shall pay regular interim maintenance on or before 10th day of each month.

21. In view of the disposal of the writ petition, civil applications if any, will not survive for consideration and the same are also disposed of.

[RANJIT MORE, J.]

At this stage, Mrs. Rao seeks stay of this order in order to enable the Respondent to approach the Apex Court. Since this Court has granted eight weeks' time to the Respondent to pay the arrears of interim maintenance, this request is rejected.

[RANJIT MORE, J.]