

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.1 OF 2016
IN
CIVIL APPLICATION NO.193 OF 2015
IN
FAMILY COURT APPEAL NO.16 OF 2011**

Sumangal Govind Dhepe Petitioner.

V/s

Smt. Anita Sumangal Dhepe Respondent.

Ms. Shubhada S. Gokhale for the Petitioner.

Mr. Sudhir N. Deshpande alongwith Ms. S.P. Munshi for the Respondent.

**CORAM: V. M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

**DATE: 2nd March, 2016
(In Chamber at 2.35 P.M.)**

P.C.:-

1. Heard the learned Counsel appearing on behalf of the Petitioner/husband and the learned Counsel appearing on behalf of the Respondent/wife.

2. The learned Counsel appearing on behalf of the Petitioner/husband submitted that no reply could be filed to the maintenance application filed by the Respondent/wife. It

is submitted that an opportunity may be given to the Petitioner/husband to file reply. It is submitted that the medical and educational expenses incurred by the Respondent/wife as shown in the Chart are exorbitant and not supported by any documentary evidence. It is further submitted that income of the Petitioner is Rs 32,000/- per month and he has an aged mother who is suffering from Cancer and he has to bear expenses of her medical treatment. It is therefore submitted that the amount of maintenance which has been awarded to the son of the Petitioner and Respondent is on the higher side.

3. The learned Counsel for the Petitioner/husband submitted that the Petitioner/husband is willing to increase the monthly expenses which are awarded to the son. Secondly, she submitted that Respondent/wife is not entitled for maintenance since the Petition for divorce filed by the Respondent/wife was dismissed. She has placed reliance on the Judgment of the Apex Court in *Chand Dhawan vs. Jawaharlal Dhanwan*¹. Thirdly, she submitted that earnings of the Respondent/wife are sufficient and she relied upon the Chart submitted by her in the Trial Court. She has also submitted that Respondent/wife did not file any application for four years during the pendency of the appeal and that itself indicates that she does not require any independent maintenance.

¹ 11 (1993) DMC 110

4. On the other hand, the learned Counsel appearing on behalf of the Respondent/wife has submitted that the total annual expenses of the son are to the tune of Rs 1,22,305/-. He has relied upon the documentary evidence in support of the said contention. He then submitted that so far as the maintenance which is payable to the wife is concerned, in view of the judgment of the Andhra Pradesh High Court in *Jalasutram Annapurnamma vs. Jalasutram Ramakrishna Sastry*¹, appeal being continuation of the suit, wife is entitled to claim maintenance under section 24 during pendency of the appeal.

5. After having heard both the Counsel, we are of the view that the submission made by the learned Counsel for the Petitioner/husband that the wife is not entitled to get maintenance is without any substance. It is a well settled position in law that though the Petition for divorce is dismissed, if an appeal is filed wife is entitled to file an application for maintenance under section 24 of the Hindu Marriage Act and, as such, it cannot be said that she is not entitled to maintenance. Secondly, we are of the view that the son of the Petitioner was getting expenses of Rs 1000/- per month towards maintenance. This order of maintenance was passed in 2007. More than 8 years have passed after the said order was passed. The son is now in 3rd Standard. The expenses incurred for education, tuition fees have also

1 AIR 1959 AP 49

been consequently increased. We are therefore of the view that no case is made out for reducing the said maintenance.

6. So far as the maintenance which is payable to the wife is concerned, since no reply was filed by the Petitioner/husband, we permit the Petitioner/husband to file his reply and then seek modification of the order from the Regular Court.

7. We do not see any reason to review our order for grant of maintenance of Rs 5000/- per month from the date of our order. Petitioner/husband to pay Rs. 5000/- per month to the Respondent/wife from the date of our order till the application is heard again and the order is modified.

8. With the aforesaid observations, Review Petition is dismissed. The order under review shall be complied with by the Petitioner/husband within four weeks.

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(V.M. KANADE, J.)