

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.386 OF 2015
ALONG WITH
CIVIL APPLICATION NO.27 OF 2015
IN
FAMILY COURT APPEAL NO.104 OF 2014

Sou. Aditi Abhinav Chandra. .. Applicant
Vs
1. Shri Abhinav Rajiv Chandra, &
2. State of Maharashtra. .. Respondents
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Shri Nitin Sejpal i/b ms. Pooja Bhojne for the Applicant.
Mrs. Mrunalini Deshmukh along with Ms. Devika Deshmukh and Ms.
Shreni Shetty i/b ANB Legal for the Respondent No.1 husband.

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CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 9TH AUGUST 2016

PC.

1. These Civil Applications have been taken out by the Applicant wife. The Applicant in both the Applications is the Appellant in the Family Court Appeal No.104 of 2014. By the impugned judgment and decree dated 20th January 2014, the learned Principal Judge of the Family Court at Bandra, Mumbai, dismissed the Petition for divorce filed

by the Applicant. The learned Principal Judge of the Family Court decreed the counter-claim for restitution of conjugal rights filed by the first Respondent husband under Clause (2) of the operative part of the judgment and order. As far as the custody of the minor son of the Applicant is concerned, it is ordered that for the time being, the custody will remain remain with the wife. The prayers for return of stridhan, maintenance and separate residential flat was rejected by the learned Principal Judge of the Family Court.

2. The prayer in the Civil Application No.386 of 2015 is for directing the first Respondent to pay an amount of Rs.2 lakhs per month to the Applicant towards maintenance and support of the minor child during the pendency of the Appeal.

3. It is not in dispute that the Applicant is gainfully employed and earning more than Rs.4 lakhs per month. It is also not in dispute that even the first Respondent husband is earning handsome income. During the pendency of Petition filed by the Applicant, there was an interim order dated 31st July 2008 passed by the learned Principal Judge of the Family Court directing the husband to pay maintenance of Rs.80,000/- per month to the Applicant and to the minor child.

4. There is an affidavit filed by the first Respondent-husband who is currently posted in Tokyo, Japan on 14th July 2016. In Paragraph 2 of the said affidavit, the first Respondent has stated thus:

“2. I say that the Applicant has filed the above application inter alia for support for our minor son Arjun. Pursuant to the same I place the following on record:

- a. I say that my son Arjun is presently studying in Vibgyor High School, Goregaon, Mumbai, India. I say that I am ready and willing to bear the expenditure for master Arjun's education in India and/or in Japan. This will include and be limited to the following:
 - i. Tuition fee, bus fee and all other regular fee charged directly by the school.
 - ii. Any additional fee charged directly by the school for extra classes, sports or other extracurricular activities used by my son during the academic session.
 - iii. Any additional fee for private tuitions/coaching classes availed by my son.
- b. I say that once the Applicant provides the invoice and mode of payment for an upcoming fee payment, I will promptly transfer funds directly to the bank account of the concerned institution through internet banking no later than 7 days from date of intimation.

Incase internet banking is not accepted as mode of payment for the fee, I will send a cheque in the name of the institution within 10 days.

- c. I say that once I am provided with the parent login for master Arjun on the school portal, I will directly check the payment schedule therein and pay the fee to the school, and the applicant will

not be required to share invoice details in such a scenario.

- d. I say that in addition to the above I am ready and willing to contribute Rs.10,000/- (Rupees Ten Thousand only) per month towards Arjun's living expenses and I shall be depositing the same directly to the Applicant's bank account by internet banking channels.

I say that I shall abide by the foregoing statement at all times until Arjun Attains majority.”

(Underlines supplied)

Thus, the first Respondent has undertaken the responsibility to bear the entire expenses on the education of the minor child.

5. Though in law, the Applicant and the first Respondent will have to share the expenditure of maintenance of the child as both of them are earning handsomely, the first Respondent husband has offered to take care of the education of the child apart from paying the sum of Rs.10,000/- per month in addition.

6. The interim maintenance which was payable during the pendency of the proceedings was by way of maintenance to both the Applicant and her child. While dismissing the claim for maintenance, the learned Principal Judge of the Family Court has given reasons in Paragraph 88 by recording that since October 2012, admittedly, the

Applicant has been getting the salary of Rs.32 lac per annum and had received Rs.4 lac as joining bonus. Therefore, at this stage, when the Applicant, even according to her own case, is earning more than Rs.2 lac per month, she is not entitled to maintenance. Therefore, this Application can be disposed of by accepting the aforesaid statement of the first Respondent husband as his undertaking. In addition, the learned counsel appearing for the first Respondent husband on instructions stated that in the event any major expenditure is required to be incurred on account of any ailment suffered by the minor child, the first Respondent husband is willing to bear the said expenditure. We accept the said statement.

7. The submission of the learned counsel appearing for the Applicant is that a lump sum amount be ordered to be paid towards the expenditure on education of the minor child. We are of the view that this submission is against the interests of the child. The apprehension that the first Respondent husband will commit a breach of the aforesaid statement has no basis as the Appeal is pending in this Court and in case any breach is committed by the husband, the Applicant can always take proper proceedings.

8. The learned counsel appearing for the Applicant on instructions states that the Applicant is strongly opposing the request

for sharing the parents' login of the minor son of the school portal with the first Respondent. We fail to understand how the request of the first Respondent can be opposed. He is the father of the child. If the request is accepted, he will be able to check the progress of his child as well as the payment schedule of fees and pay the fees directly to the school.

9. If the school authorities permit the parents' login to be shared with the first Respondent father, he will be entitled to be provided with the parents' login. We, therefore, propose to direct the Applicant to apply to the school for sharing the parents' login with the first Respondent father. In case, permission is refused, the first Respondent will file an Application in this Court so that appropriate directions can be issued. Needless to add that so long as the parents' login is not shared with the first Respondent husband, the Applicant will have to provide scanned copies of the bills covered by the Item Nos.(i) to (iii) of Clause (a) of Paragraph 2 of the aforesaid affidavit of the first Respondent husband to enable the first Respondent husband to release the payment.

10. Hence, we dispose of the Application by passing the following order:

ORDER :

(a) We direct the Applicant to make an Application in

writing to the school authorities within a period of 15 days from today for seeking permission to share the parents' login of the child with the first Respondent husband;

- (b) If a permission is granted by the school authorities, the Applicant shall share the parents' login of the child with the first Respondent husband.
- (c) If permission is denied by the school authorities, the Applicant shall file an affidavit placing on record the refusal of the school authorities to enable the Court to pass an appropriate order;
- (d) We accept the statements of the first Respondent-husband in his affidavit quoted in paragraph no.4 above. We clarify that the said statements of the first Respondent husband will operate for the period commencing from 1st November 2015 and will continue to operate till further orders;
- (e) The Application is disposed of on above terms;

- (f) Though the Application is disposed of, for considering the compilation regarding sharing of parents' login with the first Respondent husband, the same shall be listed on 30th September 2016.

(A.A. SAYED, J)

(A.S. OKA, J)