

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
 CIVIL APPLICATION NO.369 OF 2013
 IN
 FAMILY COURT APPEAL NO.251 OF 2013

Neha Nanda Dhopte ... Applicant

Vs.

Nanda Namdeo Dhopte ... Respondent

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Mr. Anil Pandurang Bagwe for the Applicant.

Mr. Amrut Mukund Vernekar for the Respondent.

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**CORAM : A.S.OKA &
A.A. SAYED, JJ.**

DATED : 28 SEPTEMBER 2016

P.C.:

Heard the learned Counsel appearing for the Applicant and the learned Counsel appearing for the Respondent. The Applicant is the wife and the Respondent is the husband. The Applicant-wife has preferred a Family Court Appeal for challenging the decree of divorce passed by the Family Court in a Petition filed by the Respondent-husband. The impugned decree of divorce is passed on the ground of cruelty and desertion. The custody of the minor son, whose age at present is approximately 14 years, is retained with the Applicant-mother. There is a decree directing payment of Rs.4000/- per month towards maintenance of the child. However, maintenance has been denied to the wife considering the findings recorded in the impugned judgment and considering the fact that a room in her possession was given by her on rent at Rs.2000/- per month.

2. Various salary slips of the Respondent have been placed on record. The Respondent is an employee of Mumbai Electrical and Transport Undertaking. Today, the learned Counsel appearing for the Respondent has placed on record salary slips of the Respondent showing the salary paid from November 2015 to August 2016. The opposition of the learned Counsel appearing for the Respondent-husband is firstly based on the findings on the issue of desertion and cruelty recorded against the Applicant. Secondly, he submits that though the Applicant was employed, for no reason, she gave up her employment. Thirdly, he submitted that the Respondent has to look after his mother and considering large amounts of deductions from his salary, in August 2016, the net salary received by the Respondent-husband was only Rs.20,630/-. He submitted that the agreement produced on record will show that the Applicant was receiving income by way of rent.

3. Learned Counsel appearing for the Applicant pointed out the Leave and Licence Agreement, a copy of which is produced alongwith an Affidavit by the Applicant, which shows that the licence expired on 1 October 2014. He stated that considering the fact that the Applicant's son is studying in 9th standard, the Applicant is not desirous of letting out any part of the residential premises, which has an area of about 100 sq.ft. on the ground floor and 100 sq.ft. on the upper floor.

4. By the present Application, the Applicant-wife has invoked section 24 of the Hindu Marriage Act, 1955 for grant of interim maintenance. During the pendency of the Petition before the Family Court, there was an interim order directing payment of maintenance of Rs.2000/- per month to the Applicant-wife.

5. We have perused the salary slips placed on record. The present Application has been filed in December 2013. The first salary slip, which is of August 2014 shows that the gross salary was Rs.31,060.29 and the net salary was Rs.10,990/-. However, from the said salary slip we find that there are completely unexplained deductions of Rs.2317.41, Rs.2945/- and Rs.2241/-. A deduction of Rs.7327/- is made on account of payment to the credit society. Though time was granted to the Respondent for producing a certificate of his employer explaining unexplained deductions, the Respondent has not produced the same. In our view, such unexplained deductions will have to be ignored for the purpose of calculating the income for determining the maintenance payable. Therefore, for the purpose of payment of maintenance, the net income of the Respondent on the date of filing of this Application may not be less than Rs.20,000/-. We may note here that in the impugned decree, the learned Judge of the Family Court has referred to the income of the Respondent in paragraph 42.

6. Perusal of the salary slip of August 2016 shows that the gross salary payable to the Respondent was Rs.34,817.30 and the net salary was Rs.14,187.30. Even in the said salary slip, there is an unexplained deduction of Rs.2317/-. Apart from payment of a sum of Rs.1000/- to the credit society, a sum of Rs.5682/- was deducted on account of PF Loan.

7. In view of Leave of Licence Agreement produced on record by the Applicant, she was getting income of Rs.2000/- per month from her licensee upto 1 October 2014.

8. Considering all these aspects, we propose to fix the interim maintenance at the rate of Rs.4000/- per month to the Applicant-wife and Rs.4000/- to the minor son with effect from 1 January 2014. From 1 October 2016, the maintenance payable will be Rs.5000/- each. Needless to add that in case of change in circumstances, it will be always open for the Applicant-wife to apply for enhancement.

9. Accordingly, we dispose of this Application by passing the following order:

- (i) We direct the Respondent-husband to pay interim maintenance of Rs.4000/- per month to the Applicant-wife and

Rs.4000/- per month to the minor son from 1 January 2014 till 30 September 2016. The maintenance amount payable to the son will be inclusive of the amount payable under the impugned decree;

(ii) From 1 October 2016, the Respondent shall pay interim maintenance at the rate of Rs.5000/- per month each to the Applicant and the son;

(iii) Maintenance shall be regularly paid by the Respondent on or before 15 day of every calender month from October 2016 onwards. Arrears payable in terms of this order shall be paid, by the Respondent to the Applicant and minor son, before the end of 31 March 2017;

(iv) We direct the Applicant to furnish the bank account particulars alongwith a copy of a cancelled cheque drawn on her account to the Advocate for the Respondent. The amount of maintenance and arrears payable as aforesaid shall be transferred by the Respondent directly to the said bank account of the Applicant;

10. The Application is disposed of in the above terms.

(A.A. SAYED, J.)

(A.S.OKA, J.)