

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.32 OF 2016
IN
FAMILY COURT APPEAL NO.20 OF 2016**

DEEPAK GUKULCHAND AGGARWAL)...APPLICANT

V/s.

MRS.MEGHANA DEEPAK AGGARWAL)...RESPONDENT

Ms.Arati Bhide, Advocate for the Applicant.

Mr.Ashok M. Saraogi a/w. Ms.Sneha Singh, Advocate for the Respondent.

**CORAM : A. S. OKA, J. &
A. M. BADAR, J.**

DATE : 23rd NOVEMBER 2016.

P.C. :

1 Heard the learned counsel appearing for the applicant / husband and the learned counsel appearing for the respondent / wife. The applicant is the appellant in the Family court appeal wherein the challenge is to the decree passed by the learned Judge of the Family court No.3, Mumbai, dated 24th August 2015. By the said decree, the prayer made by the applicant for grant of decree of divorce was rejected. The learned Judge of the Family court rejected the claim of the respondent /

wife for grant of permanent alimony and return of Streedhan articles. However, in terms of Clause (3) of the operative part of the decree, the learned Judge directed the applicant /husband to pay maintenance of Rs.15,000/- per month from the date of filing of the written statement for the benefit of the minor child. Clause (3) of the impugned order reads thus :

“The petitioner is directed to pay maintenance to the child @ Rs.15,000/- per month from the date of filing of written statement. If the interim maintenance is paid by the petitioner for child in the past, then it shall be deducted from the arrears of maintenance calculated @ Rs.15,000/- per month.”

The minor child is born on 25th December 2007. The applicant / husband is a Chartered Accountant by profession. The present application is for the stay of the aforesaid part of the decree pending the final disposal of the appeal.

2 The first submission of the learned counsel appearing for the applicant is that during the pendency of the petition before the Family court, the applicant has regularly paid maintenance for the benefit of the child. Her submission is that there was no occasion for the Family court to pass an order directing payment of maintenance from the date of filing the written statement. Her

submission is at the highest, maintenance could have been ordered to be paid from the date on which the application for maintenance was made by the respondent / wife.

3 We have considered the submissions. As far as maintenance allegedly paid by the applicant during the pendency of the petition is concerned, Clause (3) of the operative part of the decree takes care of that. The applicant will be entitled to the adjustment of the said amount.

4 Paragraph 121 of the impugned judgment refers to Memorandum of Understanding arrived at between the parties which is at Exhibit 56 before the Family court. It provides that maintenance of Rs.12,000/- per month will be paid by the applicant to the child. The learned Judge of the Family court observed that the said figure was agreed in the year 2013.

5 As far as date from which maintenance is made payable is concerned, we must note that powers of the Court under Section 26 of the Hindu Marriage Act, 1955, are very wide. Section 26 has been enacted to protect the children when there is a matrimonial dispute between their parents. There is a wide power conferred on the Court to pass interim as well as final orders for taking care of maintenance and education of children.

6 Considering the financial status of the applicant / husband, we find nothing wrong in the quantum of maintenance amount fixed by the Family court.

7 Hence, we find no merit in the prayer for stay of the decree of maintenance.

8 The second prayer in the application is for modification of the final decree. The said prayer can be entertained only at the time of final hearing of the appeal.

9 The application is rejected.

(A. M. BADAR, J.)

(A. S. OKA, J.)