IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO. 48 OF 2016
WITH
CIVIL APPLICATION NO.71 OF 2016

Mr. Sukhjeet Singh Nirmal Singh Saini ..Appellant
Vs.
Roma Sukhjeet Singh Saini ..Respondent

Mr. Ashutosh Gole for the Appellant
None for the Respondent

CORAM :R. M. SAVANT, &
SMT. SADHANA S JADHAV JJ
DATE : 17th JULY, 2017

P.C.

1 The above Family Court Appeal takes exception to the judgment and order dated 8-7-2015 passed by the Learned Judge of the Family Court, Thane. By the said order, the Marriage Petition No.A-141 of 2010 (418/2006), came to be allowed and the decree of judicial separation, came to be passed from the date of the order. The Respondent-wife had in the said Marriage Petition filed a counter claim. The said counter claim also came to be allowed and the Appellant was directed to pay maintenance @ Rs.10,000/- per month to the Respondent-wife from the date of the order. The Appellant was the original Petitioner in the said Marriage Petition No.A-141 of 2010. The judgment and order passed by the Learned Judge of the Family Court, is therefore challenged to the extent that it grants maintenance of Rs.10,000/- to the Respondent-wife.

2 As indicated above in the said Marriage Petition, the Respondent-wife filed her counter claim and in the said counter claim, it was her case that the Appellant/ original Petitioner was earning Rs.1 lacs per month as he was based at Microsoft India Pvt Ltd., Bangalore. It was her case that the Appellant-husband also held shares of Microsoft and other companies as also bank deposits with Citi Bank and other banks. It was her case that he has 3 to 4 Life Insurance Corporation for over Rs.10 lakhs and he has a share in flat No.703, Cosmos Regency, Ghodbunder Road, Thane. It was further the case of the Respondent that presently the Petitioner was working with Mphasis at Pune. It was her case that there is no one dependent on the Appellant and she is dependent on her parents and two brothers. It was her case that she requires Rs.30,000/- per month for renting a suitable flat and living independently from her parents. She therefore claimed Rs. 30 lakhs as permanent alimony and in the alternative Rs.30,000/- per month as permanent maintenance.

3 The Appellant-husband herein who was the original Petitioner filed his Written Statement. It was his case that the conduct of the Respondent-wife with his parents was not good and had turned very bad and worse on account of some health issues. It was his case that she always picked up quarrels and insulted them using bad words. It was his case that in November 2004 he has secured a job with Microsoft India (R & D) Pvt Ltd. at

Bangalore. The Respondent at the said time joined him and also got a job in Bangalore. It was his case that they resided there till March 2006, even in Bangalore the Respondent-wife continued to quarrel with him. It was his case that on account of the dispute between him and the Respondent-wife that the family members were roped in to settle the dispute. It was his case that the conduct of the Respondent-wife was such that he cannot continue to stay with her.

4 In so far as the claim for maintenance is concerned, the factum of the Respondent was working in the year 2003-2004 has come on record. It has also come on record that she worked as Surveyor and Data Entry Operator as also Account Assistant with private concerned. It has come on record that she has completed her teacher training course from Mahatma Education Society at Chembur in June 2014. In her cross-examination, it has come on record that she requires Rs.200/- per day for her mobile recharge and that she drinks 10 glasses of milk every day. She denied the case put to her that she does no require any amount towards her maintenance. The Trial Court has considered the material which has come on record and especially the fact that the Appellant-husband was working with Microsoft India Ltd and Mphasis at Pune. Whilst working in Mphasis his salary was Rs.50,000/- to Rs.60,000/- per month, after leaving Mphasis, he has joined IBM India at Delhi on salary of Rs.70,000/- to Rs.80,000/- per month. He has left IBM in February 2014.

He has admitted that he has a flat at Ghodbunder Road, Thane. It has also come on record the fact of the Appellant withdrawing amount of Rs.20,000 to 40,000/- on a single day which was attributed by the wife to lavish spending by the Appellant and also supportive of her case that the Appellant was earning a handsome salary. The Trial Court considered the said aspect. The Trial Court was of the view that the Respondent-wife cannot claim Rs.70,000/- for herself just by sitting idle in the house without doing any work. The Trial Court observed that the Respondent-wife has nowhere given the bifurcation of the amount of Rs.70,000/- sought by her. The Trial Court was of the view that just because the Appellant had gone to a restaurant it would not mean he is leading a luxurious life style and that the luxurious life would mean according to the Trial Court have items like, high end mobile phones, branded clothes, shoes etc. The Trial Court was of the view that since the Respondent-wife is equally competent, she would be entitled to maintenance of Rs.10,000/- per month. This was on the basis that the Respondent-wife by an interim order was directed to be paid interim maintenance at the said rate pending the proceedings. As indicated above, it is the said part of the order that is awarding interim maintenance to the Respondent-wife @ Rs.10,000/- per month which is taken exception to by way of the above Family Court Appeal.

5 It was the submission of the Learned Counsel appearing on behalf of the Appellant that the Respondent being well qualified and capable of

working cannot claim maintenance from the Appellant-husband. In our view, it is not possible to accept the said contention though the same can be relevant consideration in a given case. In the facts and circumstances of the case, where the maintenance granted is only Rs.10,000/-, we are of the view that merely because the Respondent-wife is qualified to be teacher would not dis-entitled her to claim maintenance from the Appellant-husband. It is not a case where the Respondent-wife was employed as a teacher and had given up her job so as to support her case and claim maintenance from the Appellant-husband and that the Respondent wife has not made any attempts to get employment. In our view, the same would not make any difference in so far as the grant of maintenance to the extent granted by the Trial Court is concerned, which can be said to reasonable considering the cost of living at present.

6 It is pertinent to note that the Respondent-wife was granted interim maintenance in the same amount pending the proceedings. In our view, therefore, the maintenance granted by the Trial Court by allowing the counter claim filed by the Respondent-wife does not merit any interference in the Appellate Jurisdiction of this Court. The above Family Court Appeal is accordingly dismissed.

7 However, it is made clear that in the event the Respondent-wife

secures a job and her income is such as would sustain her, then the Appellant-husband would be at liberty to file an application for modification of the order dated 8-7-2015. If any such application is made, needless to state that the same would be considered by the Family Court, Thane, on its own merits and in accordance with law.

8 In view of the dismissal of the above Family Court Appeal, the above Civil Application No.71 of 2016 does not survive and to stand accordingly disposed of as such.

[SMT SADHANA JADHAV, J] **[R.M.SAVANT, J]**