

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
FAMILY COURT APPEAL NO.74 OF 2016  
ALONG WITH  
CIVIL APPLICATION NO.125 OF 2015**

**Dilip Namdeo Gaikwad : Appellant/Applicant.**  
**Versus**  
**Sou.Chhaya Dilip Gaikwad : Respondent.**

**Mr. I M Khairdi for the Appellant/Applicant.**  
**Mr. S P Rajepandhare for the Respondent.**

**CORAM : R. M. SAVANT &  
SMT. SADHANA S JADHAV, JJ.**  
**DATE : 30<sup>th</sup> JUNE 2017**

**P.C.**

1           The judgment and order dated 16/10/2014 passed by the learned Principal Judge, Family Court, Solapur is taken exception to by way of the above Family Court Appeal.

2           By the said judgment and order the Petition for maintenance filed by the Respondent wife under Section 18 of the Hindu Adoption and Maintenance Act, 1956 came to be partly allowed and the maintenance came to be granted to the Respondent wife in terms of the directions contained in the operative part of the said judgment. The said operative part of the judgment and order reads thus :-

“1       The petition is partly allowed.

2       The respondent is directed to pay Rs.3000/- per month to the Petitioner towards maintenance from 11.12.2009 till 10.12.2011, Rs.4000/- per month from 11.12.2011 till 10<sup>th</sup> December 2013 and Rs.5000/- from

11.12.2013 till further order.

3 The respondent is directed to clear the arrears in 14 equal installments.

4 The first installment shall start from one month after the date of order, along with monthly maintenance.

5 The respondent is directed to deposit amount as directed above in the designated account of petitioner no.1 on or before 10<sup>th</sup> day of each month as English Calender.

6 The respondent shall bear his own cost and shall pay Rs.2000/- separately towards cost of petition within one month from today.

7 Decree be drawn up accordingly.”

3 The said directions are based on the findings which have been recorded by the learned Principal Judge of the Family Court, Solapur in the impugned order and especially in paragraphs 10, 11, 16, 17 and 18 which revolve around the findings as regards the marriage between the Appellant and the Respondent and also the financial wherewithal of the Appellant. It has come on record that the Appellant was working in the Railways and has retired on 31/05/2014. At the time of retirement, the Appellant was working as Chief Booking Supervisor at Hotagi and his last drawn salary was Rs.45,905/-, the pension drawn by the Appellant is to the tune of Rs.21050/-, the Appellant has received the retiral benefits to the tune of Rs.10,55,986/-. Since the pension of the Appellant was over Rs.20000/- the learned Principal Judge of the Family Court, Solapur deemed it appropriate to grant maintenance to the extent

granted by the directions as contained in the impugned order.

4           Having heard the learned counsel appearing on behalf of the Appellant and the learned counsel appearing on behalf of the Respondent and having perused the impugned judgment and order dated 16/10/2014, no case for interdiction in our Appellate Jurisdiction is made out. The maintenance granted to the Respondent wife in terms of the directions which have been reproduced in the earlier part of this order cannot be said to be excessive and exorbitant considering the cost of living today.

5           The learned counsel appearing for the Appellant Shri I M Khairdi states that the Appellant has filed a Petition for divorce under Section 11 of the Hindu Marriage Act, 1955 on the ground that the marriage between the Appellant and the Respondent was a nullity as the Respondent was already married. It is the submission of the learned counsel for the Appellant that the said Petition for divorce as on date stands dismissed for non-prosecution and that the Appellant would apply for restoration of the said Petition. It was therefore the submission of the learned counsel for the Appellant that payment of maintenance in terms of the impugned order should be contingent on the decision that would be rendered in the said divorce Petition.

6           In the said context, it is required to be noted that the maintenance

has been granted to the Respondent wife from the year 2009 and the same has already been recovered by the attachment of the 1/4<sup>th</sup> salary of the Appellant. The learned counsel for the Respondent wife states that as on date there are some arrears which are outstanding.

7           In the light of the above, we are unable to accept the contention of the learned counsel for the Appellant that the payment of arrears or future maintenance should be made contingent to the result of the said divorce Petition. We are of the said view having regard to the fact that the relationship continues till it is severed by a decree of the Competent Court. However, in so far as the said divorce Petition is concerned, if the Appellant applies for restoration within four weeks from date, and the said Petition is restored to file, we direct the concerned Family Court to hear and decide the said divorce Petition latest by 31/12/2017. This direction should not be construed as any expression of opinion as regards entitlement of the Appellant for restoration of the said divorce Petition. With the aforesaid directions, the above Family Court Appeal is disposed of.

8           In view of the disposal of the above Family Court Appeal, the above Civil Application No.125 of 2015 does not survive and the same to accordingly stand disposed of as such.

**[SMT. SADHANA S JADHAV, J]**

**[R.M.SAVANT, J]**