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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.78 OF 2017 IN
FAMILY COURT APPEAL NO.216 OF 2015
ALONG WITH
CIVIL APPLICATION NO.178 OF 2016 IN
FAMILY COURT APPEAL NO.232 OF 2015

Udita Nabha ...Applicant
(In both applications)
vs.

Ranjeet Nabha ...Respondent
(In both applications)

Mr.Pradeep Sancheti, Senior Advocate a/w Ms Sharon Patole for the applicant
Ms Geeta Luthra, Senior Advocate a/w Mr.Jatin Sehgal
Kunal Vaishnav, Monal Dhanani & Adhirath Singh i/b Ganesh and Company for the respondent

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : APRIL 25, 2017

P.C.:

1 The submissions of the learned counsel for the parties were heard on the earlier date.

2 This is an application made by the applicant-wife seeking permission of this Court to withdraw the amount deposited by the respondent-husband in terms of the order dated 12th August 2016 passed by a Division Bench of this Court in Civil Application No.385 of 2015 taken out by the respondent-husband in Family Court Appeal No.216 of 2015. The operative part of the impugned decree of the Family Court which is the subject matter of challenge in the

Family Court Appeal preferred by the respondent-husband reads thus:

"1 Petition is partly allowed.

2 The marital tie between petitioner and the respondent took place at Dadri, Uttar Pradesh on 24-3-1995 is hereby dissolved with effect from dated of decree;

3 The minutes/consent terms took place between the petitioner and respondent before the Hon'ble Bombay High Court in contempt petition No.504 of 2014 in M.J.Petition No.A-2400 of 2011 with Civil Application No.1095 of 2014 in Writ Petition No.11099 of 2013 shall form part of the decree.

4 The respondent shall pay lumpsum permanent alimony of Rs.6 crores for petitioner and Rs.5 crores for their daughter Naia, within three months from the date of decree.

5 Out of above mentioned Rs.5 Crores, the petitioner shall keep the amount of Rs.3.5 Crores in Fixed Deposit with any nationalised Bank in the name of minor child Naia for a period of 5 years.

6 The petitioner is not entitled to withdraw above amount of Fixed Deposit of Rs.3.5 Crores in the minor daughter without prior permission of the Court during the minority of child.

7 The petitioner has liberty to utilize the amount of Rs.1.5 Crore for the expenses

of daughter.

8 Parties shall bear their own costs.

9 Decree be drawn accordingly."

3 By the order dated 12th August 2016 on Civil Application No. 385 of 2015 in Family Court appeal No.216 of 2015 made by the respondent-husband for stay of the impugned decree, the execution of clauses 4 and 5 of the operative part of the decree quoted above was stayed subject to the respondent-husband depositing 75% of the amount as directed by the Family Court. This order was challenged by the respondent-husband by preferring a Special Leave Petition before the Apex Court which has been dismissed by the order dated 28th November 2016. The Apex Court while dismissing the Special Leave Petition, extended the time to deposit granted in terms of the order dated 12th August 2016 by a period of two months.

4 The learned senior counsel for the applicant submitted that the respondent was paying interim maintenance of Rs.3,00,000/- to the applicant-wife till the end of July 2016. He pointed out that now 75% of the lumpsum permanent alimony payable to the applicant and her 14 years old daughter has been deposited. He invited our attention to the affidavits filed on record. He urged that the amount of total fees and expenses payable to the American School of Bombay where the daughter is studying for the academic year 2016-2017 was Rs.26,49,850/- and for the next academic year, the

amount of fees payable is Rs.24,96,225/-. In addition an amount of Rs.75,000/- is payable to the American School of Bombay by way of transport charges. He invited our attention to the findings recorded by the Family Court which are under challenge. He pointed out that prima facie finding recorded by the Family Court is that the monthly income of the respondent-husband is Rs.10,00,000/-. His submission is that substantial amount out of the amount deposited by the respondent-husband may be permitted to be withdrawn.

5 The learned senior counsel for the respondent-husband invited our attention to the averments made in the affidavit-in-reply filed by the wife to Civil Application No.385 of 2015. Her submission is that the pleadings of the applicant-wife who was the respondent in the said Civil Application will show that repeatedly she sought permission to withdraw the decretal amount. Her submission is that the very fact that under the order dated 12th August 2016, the Division Bench did not grant permission to withdraw the amount shows that the said prayer was rejected. She also invited our attention to the order dated 15th November 2016 passed by the Apex Court in the Special Leave Petition filed by the respondent-husband against the order dated 12th August 2016. She submitted that even this order will show that the present prayer made by the applicant was not granted by the Apex Court. Her submission is that the wife has not disclosed her income in the present application as well as in the

affidavits filed in the present application.

6 In reply to the said submissions, the learned counsel for the applicant-wife stated that in one of the affidavits filed in the present application, the applicant-wife has disclosed her income. He tendered across the bar a copy of income tax return filed by her for the assessment year 2016-2017. He also invited our attention to the findings in the impugned Judgment of the Family Court as well as the observations made in the order dated 12th August 2016 to the effect that the applicant-wife is entitled to maintain the same life style which the respondent-husband is maintaining.

7 We have given careful consideration to the submissions. We have already quoted the operative part of the impugned Decree. As pointed out earlier, the execution of the clauses 4 and 5 of the operative part of the Decree have been stayed subject to deposit of 75% of the total amount payable of Rs.11 crores. There is no dispute that within the time stipulated by the Apex Court, the requisite amount has been deposited by the respondent.

8 It is true that in the affidavit-in-reply and other affidavits filed for opposing the Civil Application for stay, the applicant-wife had sought permission to withdraw the decretal amount which may be deposited by the applicant. Perusal of the order dated 12th August 2016 shows that the said prayer was

not considered on merits. In fact, paragraph 10 of the said order makes it very clear that the learned counsel for the parties were heard only to the limited extent on the consideration for prayer for stay. The order of the Apex Court in the Special Leave Petition filed by the husband which is relied upon does not decide the issue whether the wife is entitled to withdraw the amount ordered to be deposited as per the order dated 12th August 2016.

9 Initially, the learned senior counsel for the respondent-husband challenged the action of the applicant-wife of admitting the minor daughter to American School of Bombay. In fact, it appears from the documents placed on record along with affidavits that by issuing an e-mail, the respondent-husband has stated that though the daughter was studying in a premier school in Mumbai, without his consent, the admission is secured by the applicant-wife in the American School of Bombay which charges very high fees. However, in the light of the statement made by the learned senior counsel on the instructions of the respondent-husband on 19th April 2017, this issue need not be decided by us. The respondent has agreed to pay 50% of the amount of fees and expenses as shown in the documents on record for the year academic 2017-2018. There is a further statement made by the learned counsel for the respondent-husband that in future, the respondent will continue to deposit 50% of the fees and expenses as may be claimed by the School.

10 As pointed out earlier, though the applicant-wife has not disputed that she has a source of income, she has not annexed any document to this Civil Application or to the affidavits filed therein for showing her present income. A copy of the income tax return tendered across the bar after the conclusion of submissions in the present Civil Application cannot be considered as it is not supported by any affidavit.

11 As per clauses 4 to 6 of the Decree, out of lumpsum alimony of Rs.5 crores payable to the daughter, a sum of Rs.3.5 crore was ordered to be invested in Fixed deposit with a rider that the applicant-wife will not be entitled to withdraw the amount without prior permission of the Court during the minority of the child. Under the Clause 6 of the operative part of the Decree, the applicant-wife was permitted to utilise the remaining amount of Rs.1.5 crores for the expenses of the daughter. 75% of the said amount comes to Rs.1.125 crores.

12 We propose to direct the Registry to separately invest the sum of Rs.1.125 crores in any nationalised Bank. We proposed to permit the applicant-wife to withdraw quarterly interest accrued on the said fixed deposit.

13 The amount equivalent to 75% of the sum of Rs.3.5 crores will remain invested as per clause 5 of the operative part of the Decree. In the event of any major change in circumstances, the applicant-

wife will be entitled to seek permission as per clause 6 of the operative part of the Decree. Rest of the amount deposited by the respondent-husband will have to be invested in fixed deposit in any nationalised Bank.

14 The applicant-wife has not disclosed her present income by producing any document supported by an affidavit. She has not disputed that she has a source of income, and therefore, as of today, we do not propose to permit the applicant-wife to withdraw the 75% of the amount of maintenance payable to her under the impugned decree which amount has been deposited by the respondent-husband and the interest accrued thereon.

15 Accordingly, we dispose of the application by passing the following order:

(I) We direct the Registry to invest a sum of Rs.1.125 crores in separate fixed deposit with any nationalised bank. While opening the fixed deposit account, instructions shall be given to the Bank directing the Bank to transfer the quarterly interest accrued thereon directly to the bank account of the applicant-wife. We direct the applicant-wife to furnish necessary account particulars of her Bank account to the Registrar (Judicial-I) within a period of three weeks from date on which order is uploaded;

(II) The amount equivalent to 75% of the sum of Rs.3.5 crores shall be separately invested in

fixed deposit with any nationalised Bank. In the event of any major change in circumstances, it will be open for the applicant-wife to apply to this Court for seeking permission to withdraw a part of the said amount or interest accrued thereon;

(III) Rest of the amount deposited by the respondent-husband in terms of the order dated 12th August 2016 shall be invested in fixed deposit in any nationalised bank;

(IV) All fixed deposits shall be renewed from time to time till further orders are passed by the Court in the Family Court Appeal;

(V) We accept the statements made by the learned senior counsel for the respondent which are recorded in the order dated 19th April 2017 as undertakings of the respondent-husband;

(VI) The Advocate for the applicant-wife will communicate in writing the Bank account particulars of the applicant-wife to the Advocate for the respondent at the earliest. The amounts payable in terms of the aforesaid statement for the academic year 2017-2018 shall be transferred to the account of the applicant-wife by the respondent within a period of four weeks from 19th April 2017. As and when a demand of fees and expenses in writing is made by the School for future years, the true copies thereof shall be forwarded by the applicant-wife to the respondent. Within a period of four weeks from the receipt of the copies by the respondent, 50% of the amount payable towards

school fees and expenses as claimed by the school shall be transferred by the respondent to the aforesaid account of the applicant-wife;

(VII) We make it very clear that the payment of amounts and withdrawal thereof shall be without prejudice to the rights and contentions of the parties and subject to final outcome of the Family Court Appeal.

(A.K.MENON, J.)

(A.S.OKA, J.)