

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.85 OF 2008**

Milind Hari Londhe ... Appellant

Versus

Mrs. Vidya Milind Londhe ... Respondent

Ms. Smita Gaidhani for the Appellant.

None for the Respondent.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 10th FEBRUARY, 2017

ORAL JUDGMENT (Per A.S.Oka, J.)

1 Heard the learned counsel appearing for the appellant. The appellant is the husband who filed a Petition seeking a decree of divorce against the respondent on the ground of cruelty. The said Petition was contested by the respondent – wife. In the written statement, the respondent – wife contended that income of the appellant who was admittedly in police service was more than Rs.10,000/- per month including allowances and, therefore, she was entitled to receive minimum maintenance of Rs.5,000/- pm. She also claimed travelling expenses of Rs.150/- per day for attending the proceedings before the

Family Court.

2 By the impugned judgment and decree, the prayer made by the appellant for grant of decree of divorce was accepted by the learned Judge of the Family Court and the marriage between the appellant and the respondent was ordered to be dissolved by a decree of divorce. Apart from decree of divorce, the learned Judge of the Family Court directed the appellant to pay permanent alimony of Rs.5,000/- to the respondent from 25th April, 2003 which is the date of filing of the Petition by the appellant – husband.

3 In this appeal, the challenge is confined to the decree for maintenance. The first submission of the learned counsel appearing for the appellant is that there was absolutely no evidence adduced regarding income of the appellant. She submitted that what is recorded in paragraph 15 of the judgment is factually incorrect. She invited our attention to the cross-examination of the respondent – wife. She submitted that the respondent – wife admitted that though she was gainfully employed, she gave up the employment. She, therefore, submitted that even assuming that the respondent had no source of income, this situation is of her creation. She submitted that this admission shows that the respondent had earning capacity. She

submitted that in fact at the relevant time, the net salary of the appellant was only Rs.6,614/- and therefore, amount of maintenance fixed is excessive. None appears for the respondent.

4 We have considered the submissions. It is not in dispute that on the date of filing of the Petition, the appellant – husband was working as a Police Constable in the Maharashtra Police Service. In the written statement filed by the respondent – wife to the Petition for divorce, she specifically contended that the income of the appellant who was working as a Police Constable was more than Rs.10,000/- including the allowances. The same was the statement made in the affidavit in lieu of examination in chief of the respondent – wife.

5 In the affidavit in lieu of examination in chief, the appellant did not disclose as to what was his income. Though in the written statement of the respondent - wife and the affidavit in lieu filed by her there is a specific assertion that the appellant who is in police service was drawing a sum of Rs.10,000/- as well as perquisites, While cross-examining the respondent – wife, the Advocate for the appellant did not give a specific suggestion that the said statement was factually incorrect. There is no specific suggestion given as to what was the exact salary of the appellant.

6 Most importantly, in the impugned judgment, in paragraph 15, the learned Judge of the Family Court has observed thus :-

“15. The husband is working as a Police Constable and admittedly getting salary for more than Rs.14,000/- per month. There are no dependents upon him. Hence, wife should be given maintenance commensurate to his income. I, therefore, pass the following order :-”

(underline supplied)

7 What is recorded in paragraph 15 is the concession that the appellant was working as a Constable and was getting a salary of more than Rs.14,000/- pm. The contention that no such concession was made on behalf of the appellant or by the appellant before the Family Court is not open in this Appeal. What is recorded in paragraph 15 by the learned Judge is what transpired during the course of hearing. Therefore, if the appellant was aggrieved by the concession recorded in paragraph 15, the remedy of the appellant was to file appropriate proceedings before the learned Judge of the Family Court. It is now too late in the day to do that.

8 Considering the aforesaid discussion and considering the fact that the appellant at the relevant time was a Police Constable working with Maharashtra Police, we do not find any fault with the

order of maintenance at the rate of Rs.5,000/- per month. In fact, considering the status of the appellant, the amount is bare minimum.

9 Hence, there is no merit in the appeal and the same is accordingly dismissed with no order as to costs.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)