

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7327 OF 2017

Harsh Chandrakant Kudal .. Petitioner
Vs.
Ms.Trupti Harsh Kudal .. Respondent

Mr.Hitesh P. Vyas for the petitioner.
Mr.Ashok B. Tajane for the respondent.

**ALONG WITH
WRIT PETITION NO.9446 OF 2017**

Ms.Trupti Harsh Kudal & Ors. .. Petitioners
Vs.
Harsh Chandrakant Kudal .. Respondent

Mr.Ashok B. Tajane for the petitioners.
Mr.Hitesh P. Vyas for the respondent.

**CORAM : R.D. DHANUKA, J.
DATE : 4th December 2017**

P.C.:

. Both the parties have impugned the order of interim maintenance granted by the Family Court No.1, Pune on 3rd May 2017 directing the petitioner Mr.Harsh Cahandrakant Kudal to pay interim maintenance of Rs.20,000/- per month to the wife and further Rs.20,000/- per month towards interim maintenance to her daughter Ridhima from the date of the application till the decision of the petition and a sum of Rs.15,000/- per month towards rent in addition to the interim maintenance from the date of the order. Wife has impugned the said order contending that the interim maintenance awarded by the Family Court is on lower side.

2. With the assistance of the learned counsel appearing for the parties, I have perused the impugned order passed by the Family Court and also some of the annexures to the writ petition. A perusal of the order passed by the Family Court indicates that it is not in dispute that the wife is working as a teacher and has been earning salary about Rs.19,000/- per month whereas the income tax returns produced on record by the husband showed that he was earning an amount of Rs.23,000/- per month. The present salary of the husband is around Rs.30,000/- per month. He is the only son of his parents and has been working in a company which has taken over the business of erstwhile partnership firm.

3. Learned counsel for the husband invited my attention to the observations made by the Family Court and submits that though there was no prayer for grant of rent in the application filed by the wife, learned Family Court has awarded rent in favour of the wife from the date of order passed by the Family Court. He submits that the amount of interim maintenance granted by the Family Court in favour of the wife and daughter is much more than the salary earned by his client.

4. Learned counsel placed reliance on the judgment of the Supreme Court in the case of ***Manish Jain Vs. Akanksha Jain, reported in AIR 2017 SC 1640*** in support of his submission that Section 24 does not use the word 'maintenance,' but the word 'support.' He submits that the wife has been independently earning almost equal to his client's income and thus the order passed by the Family Court mainly on the premise that the family members of the husband have large number

of business and several properties, the standard of living of the wife is also required to be maintained equally is perverse. He submits that the family business and properties of the parents of the husband cannot be considered by the Family Court while considering the application for interim maintenance.

5. Mr.Tajane, learned counsel for the wife, on the other hand, submits that the impugned order passed by the Family Court granting maintenance to the wife only in the sum of Rs.20,000/- per month and Rs.20,000/- per month to the daughter is on lower side. She demanded maintenance for much higher amount. He submits that the husband has not disputed that his family members are having large business and having large number of properties. The husband has been staying in a Bungalow with his family members. He submits that the family Court has power to grant higher maintenance in favour of the wife and child after considering the higher standard of living of the husband and his family.

6. In so far as the direction of the family Court to pay Rs.15,000/- per month towards rent is concerned, it is submitted by the learned counsel that the learned family Court has rightly considered the payment of rent from the date of order in view of the fact that the husband has not made any provision of accommodation for his wife and child.

7. It is not in dispute that the wife has been staying with her family members since last three years and has been working in a school. Her net salary placed on record is Rs.19,000/- per month. The wife has

also produced the proof of various expenses incurred by her on her daughter such as payment of school van fees, fee receipt of Pawar Public School etc.

8. In my prima facie, it is difficult to accept that the husband who is the only son of the parents would be getting salary of Rs.23,000/- for last several years and must be getting Rs.30,000/- now though he is working as an administrative in the said company. At the same time, I am not inclined to uphold the order in so far as the direction to pay rent @Rs.15,000/- by the family Court in favour of the wife is concerned.

9. In so far as the maintenance awarded to the daughter in the sum of Rs.20,000/- is concerned, in my view, if the wife is also having independent income, a joint maintenance of Rs.40,000/- awarded by the family Court in favour of the wife and daughter would be on the higher side. In my view, interest of justice would be met with if the interim maintenance of Rs.40,000/- jointly awarded to the wife and daughter is reduced to Rs.30,000/- per month from the date of application till the decision of the divorce proceedings pending before the family Court.

10. In so far as the judgment of the Supreme Court in the case of ***Manish Jain Vs. Akanksha Jain (supra)*** relying upon by the learned counsel for the husband is concerned, there is no dispute about the principles laid down by the Supreme Court that the Court has to see and consider the facts of each case and ultimate income of both the parties while considering the application for interim maintenance. I am not inclined to entertain the petition filed by the wife for enhancement of maintenance further.

11. I therefore pass the following order :-

- (i) The petitioner is directed to pay interim maintenance of Rs.15,000/- to wife and Rs.15,000/- to the daughter from the date of application during the pendency of the divorce proceedings.
- (ii) In so far as the order of payment of Rs.15,000/- towards rent is concerned, the said part of the order stands deleted.
- (iii) The petitioner shall deposit the arrears of maintenance of the aforesaid amount in two installments i.e. 50% amount shall be deposited within four weeks from today and the balance 50% amount shall be deposited within eight weeks from today without fail in the family Court.
- (iv) It is made clear that upon such deposit, the wife and the daughter would be entitled to withdraw the said amount unconditionally.
- (v) In the event of the husband committing any default in clearing the arrears of interim maintenance, the impugned order passed by the Family Court No.1, Pune on 3rd May 2017 to stand restored.
- (vi) It is made clear that divorce proceedings between the parties shall be decided by the Family Court on its own merits without being influenced by the observations made by the Family Court in the impugned order and by this Court in the aforesaid order.
- (vii) Both the writ petitions are disposed of in aforesaid terms.
- (viii) There shall be no order as to costs.

R.D. DHANUKA, J.