

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO. 173 OF 2015**

Priyanka Dilip Kadam

..Appellant

Vs.

Dilip Ankush Kadam

..Respondent

Mr. N. P. Bhavsar Advocate for the Appellant

**CORAM : R. M. SAVANT, J &
SMT. SADHANA S. JADHAV, J.**

DATE : 14th JUNE, 2017

P.C.

1 The above Family Court Appeal is placed for final hearing in terms of order dated 18/01/2017 passed by Division Bench of this Court [Coram : R. M. Borde & A. S. Gadkari, JJ]. None appears for the Respondent though served.

2 The above Family Court Appeal takes exception to the Judgment and Order dated 22/05/2015 passed by the learned Judge of the Family Court 7, Mumbai, by which order the Petition No. C-72 of 2012 filed by the Appellant for maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956 came to be partly allowed and the Appellant/Wife was directed to be paid monthly maintenance of Rs. 4,000/- by the Respondent from the date of the Petition.

3 The factual background to the filing of the said Petition No. C-72 of 2012 for maintenance is that the marriage between Petitioner and Respondent took place on 27/01/1992. The said marriage was registered before the Marriage Registrar under the Registration of Marriage Act on the same day. Out of the wedlock, parties have one son namely Swapnil who was born on 29/11/1992 and is therefore 25 years of age at present. The cause for filing the said Petition No. C-72 of 2012 was the fact that Respondent/Husband was not taking care of the Appellant and son. The Respondent/Husband at the relevant time was working with the Municipal Corporation, Greater Mumbai as Class III employee. It seems that at present, the Appellant has been promoted and is in the Class II cadre. The application for maintenance was founded on the fact that the Appellant/Wife has no source of income and that she was at the mercy of her parents and though the Respondent in terms of his obligation was liable to maintain the Appellant and their son, he has refused to do so.

4 To the said Petition C- 72 of 2012 Respondent/Husband filed his Written Statement. In the said Written Statement, the allegations as regards the extra marital affair which the Appellant/Wife was having with one Hasmukh was mentioned. It was stated that in spite of the Respondent impressing upon the Appellant to mend her ways, Appellant refused to do so and continued with her extra marital affair. The parties led evidence in support of their respective

cases. The Respondent/Husband deposed to the same effect as stated in the Written Statement in so far as the alleged extra marital affair that the Appellant/Wife was having. The Appellant/Wife also deposed that Respondent was also having an extra marital affair. The issue of maintenance that the Appellant/Wife was entitled to was addressed by the learned Judge of the Family Court on the basis of the financial wherewithal of the Respondent/Husband. The learned Judge of the Family Court took into consideration the fact that the deductions which are made from the salary of the Respondent/Husband are not to be taken into consideration in view of the fact that they were not statutory deductions. The learned Judge of the Family Court therefore held that the maintenance to the wife would have to be adjudicated on the basis of the salary of the Respondent/Husband of Rs. 25,000/-. In so far as the son is concerned, the learned Judge of the Family Court held that the Appellant/Wife could not claim maintenance for the Respondent/Son as he was a major and that it is for the person who has turned major to independently claim maintenance, if he so desires. In so far as, the quantum of the maintenance is concerned, the learned Judge of the Family Court held that having regard to the salary of the Respondent/Husband, it would be just and proper to fix Rs. 4,000/- as interim maintenance.

5 The Family Court observed that Appellant/Wife being legally wedded wife of the Respondent, she was entitled to stay as per lifestyle which she is

habituated to while staying with the husband.

6 Heard the learned counsel for the Petitioner Shri. N. P. Bhavsar. The learned counsel for the Petitioner contended that at the interim stage, the Appellant/Wife was granted interim maintenance in the sum of Rs. 7,000/-, however, in the same set of facts, final maintenance awarded has been reduced to Rs. 4,000/- per month. It is well settled that in so far as the grant of maintenance is concerned, the same has to be fixed having regard to the financial wherewithal of the husband and the lifestyle to which the couple is accustomed. It is required to be noted that Respondent/Husband at the relevant time was a Class III employee who is now promoted to Class II cadre, according to the learned counsel for the Appellant. Apart from meeting the maintenance, it has also come on record that Respondent/Husband is now staying with one Sonali to whom he has got married. Hence, he has to take care of two establishments.

7 In our view, therefore, it would be just and proper, that the maintenance granted by the learned Judge of the Family Court, is enhanced by Rs. 1,000/-. The impugned Judgment and Order dated 22/05/2015 is accordingly modified to the said extent. In clause (2) of the operative part of the Judgment and Order, the figure Rs. 4,000/- would accordingly stand substituted by the figure Rs. 5,000/-. The entitlement to the amount of Rs. 5,000/- would however be

from the date of the order dated 22/05/2015, the Respondent/Husband however would be liable to pay at the rate of Rs. 4,000/- up to 30/04/2015. The arrears on account of the instant order to be cleared latest by 01/09/2017.

8 The above Family Court Appeal is allowed to the aforesaid extent and is disposed of.

[SMT. SADHANA S. JADHAV, J.]

[R.M.SAVANT, J]