

Rane

* 1/8 *

CAM-239-2016
CAM-324-2016
Monday, 18.12.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 239 OF 2016
IN
FAMILY COURT APPEAL NO. 148 OF 2016

Mr. Prasad Jankiram JawajiApplicant/Appellant/
Orig. Petitioner

IN THE MATTER BETWEEN :-

Mr. Prasad Jankiram JawajiApplicant/Appellant/
Orig. Petitioner

V/s.

Mrs. Ashwini Prasad JawajiRespondent/Orig. Resp.

CIVIL APPLICATION NO. 324 OF 2016
IN
FAMILY COURT APPEAL NO. 175 OF 2016

Mrs. Ashwini Prasad Jawaji ...Appellant (Orig.Resp)

V/s.

Mr. Prasad Jankiram JawajiRespondent/(Orig.App)

* * * * *

Ms. Seema Sarnaik, Advocate for the applicant in C.A.-
239-2016 and for respondent in C.A.-324-2016.

Rane

* 2/8 *

CAM-239-2016
CAM-324-2016
Monday, 18.12.2017

Mr. S.S. Lanke, Advocate for the respondent in C.A.-239-2016 and for applicant in C.A.-324-2016.

CORAM :-

R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :-

18TH DECEMBER, 2017.

P.C. :-

1. The above Civil Application being 239 of 2016 has been filed by the applicant-husband for stay of the impugned judgment and order dated 31st May, 2016 passed by the Learned Judge of the Family Court, Pune in Petition No.A-1184 of 2013 and more specifically Clauses- 5, 6, 7, 8, 10 and 12 thereof. Civil Application No. 324 of 2016 has been filed by the applicant-wife for grant of custody of the minor son, Advait and minor daughter, Anushka and for enhancement of the maintenance to herself and the two children. The enhancement sought is in the sum of Rs.1,50,000/- and for children in the sum of Rs.1,00,000/- each. The parties i.e. the husband and wife are in Appeal against the decrees passed in the respective

Marriage Petitions filed by them. In so far as, the husband is concerned, his petition for divorce on the ground of cruelty came to be dismissed whereas the counter-claim filed by the wife for restitution of conjugal rights came to be dismissed. Both the above Appeals have been admitted on 28th April, 2017. In so far as, maintenance and the custody of the two minor children are concerned, the same was regulated by an order dated 4th December, 2015 passed by a Learned Single Judge of this Court, M.S. Sonak, J in Writ Petition No. 6575 of 2016. Clause-4 and Clause-7 of the said order are material in the context of the maintenance and access of the children. The same are therefore reproduced hereunder for the sake of ready reference :

“4. Accordingly, considering the material on record, it would be appropriate if interim maintenance is reduced to Rs.25,000/- per month instead of Rs.50,000/- per month awarded by the Family Court, Pune. Notwithstanding the reduction as aforesaid, it is made clear that, such reduction shall not at all be the consideration at the stage of final

disposal of petition and determination of the final maintenance amount. At that stage, the Family Court shall take into consideration the entire material on record including the material which is already on record and which may have been taken into consideration for the purpose of determination of interim maintenance.

7. There are certain issues with regard to access of Advait and Anushka by way of interim arrangement during the pendency of the petition before the Family Court, Pune, parties have agreed that once a month i.e. one of the weekends, the petitioner shall reach the two children to the respondent at Pune. The respondent will have access from Saturday 10.00 a.m. to Sunday 4.00 p.m. Similarly, respondent shall be entitled to access once a month to the said children on Saturday between 10.00 a.m. and 6.00 p.m. at Mumbai. Such access shall be availed at In-orbit Mall at Vashi because the children reside at Vashi with the petitioner. This arrangement shall operate during pendency of the petition in the Family Court.”

2. As indicated above, the relief sought by the applicant-wife before the Family Court as regards the Row-House, which was her matrimonial home till she left the same, has been rejected by the Family Court. However, the Family Court has by the final judgment and order directed payment of Rs.45,000/- as maintenance to

her and has directed the husband to look out for an accommodation commensurate with the accommodation which she was occupying prior to her leaving the matrimonial house and in the alternative to pay Rs.20,000/- compensation so as to enable her to make alternate arrangements.

3. We have heard the Learned Counsel appearing for the parties. The Learned Counsel for the applicant, wife in Civil Application No. 239 of 2016 Ms. Sarnaik, would contend that, notwithstanding the rejection of the relief sought by the applicant, wife by the Family Court, the applicant, husband is continuing to pay Rs.40,000/- per month towards maintenance and rent. It was the submission of the Learned Counsel that, since the applicant, wife is now alone she would not require the premises of the dimensions as the row-house in Indrani Nagar, Bhosari, Pune as the said row-house consists of three bedrooms. It was also the submission of the Learned Counsel, that the maintenance granted to the

applicant, wife in the sum of Rs.45,000/- is exorbitant.

4. Per-contra, the Learned Counsel Mr. Lanke appearing for the applicant, wife would submit that the applicant, husband is an Executive with a Multinational Company and is drawing handsome salary which is in the region of Rs.1 crore annually.

5. It was the submission of Mr. Lanke that, since the Family Court has by the final judgment and order, deemed it appropriate to grant maintenance of Rs.45,000/- and make provision for her accommodation, or in the alternative to pay the applicant, wife Rs.20,000/-. The said order need not be interfered with.

6. Having heard the Learned Counsel for the parties, as also considering the status of the applicant, husband, as also, considering the interim order passed by the Learned Single Judge of this Court in the said Writ Petition No. 6575 of 2015, in our view, the interest of justice would be met by issuing the following directions :-

(i)that pending the hearing and final disposal of

the above Family Court Appeals, the applicant-husband to pay a sum of Rs.35,000/- as maintenance to the applicant, wife.

(ii)the applicant-husband to pay a sum of Rs.15,000/- to the applicant, wife so as to enable her to make arrangements for her accommodation either in Pune or wherever she deems it fit to reside.

(iii)Since the applicant-husband has already paid at the rate of Rs.40,000/- per month, the amount payable in terms of the above directions and the arrears on account of the difference to be cleared within 12 weeks from date in 3 installments.

(iv)It is made clear that, the applicant-wife would be entitled to the payment of Rs.35,000/- as maintenance plus Rs.15,000/- towards accommodation from the date of the decree.

(v)In so far as, the access of the children is concerned, the son being in the tenth standard his

exam is scheduled in February, 2018 and the daughter's exam being in March, 2018 till 30th April, 2018, it would be just and proper that the applicant, wife has access of the children once a month on any Saturday from 10.00 a.m. to 6.00 p.m. in the Inorbit Mall at Vashi by giving prior intimation to the applicant, husband.

(vi) The applicant would intimate the husband as regards the access three days prior to the Saturday on which she desires to take access.

(vii) The aforesaid position regarding access would be reviewed after 30th April, 2018 when an application for access could be filed by the applicant, wife in the changed circumstances.

(viii) In terms of the aforesaid, the above Civil Applications to stand disposed of.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)