

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 305 OF 2016
IN
FAMILY COURT APPEAL NO. 76 OF 2014**

Sonia Kunwar Singh Bedi	..Applicant/Respondent
Vs	
Kunwar Singh Bedi	..Respondent

Mr. Robin Jaisinghani a/w. Mr. Nirman Sharma i/b M/s. Dastur Kalambi & Associates for Mrs. Sonia Kunwar Singh Bedi.
Mr. J. Joseph for Mr.Kunwar Singh Bedi.

**CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.
DATE : JULY 19, 2017.**

P.C. :

. Heard learned counsel for the parties.

2] The Family Court Appeal No. 76 of 2014 instituted by the husband, takes exception to the judgment and decree dated 10th December 2013, allowing wife's petition for divorce and directing husband to pay maintenance of Rs.10,000/- per month to each of the two daughters and Rs.10,000/- per month towards accommodation for the wife and the two daughters. In all, the impugned judgment and decree, awards maintenance of Rs.30,000/- per month.

3] On 11th June 2014 though, no stay was granted to the decree, the husband was directed to deposit arrears of maintenance at the rate of Rs.15,000/- per month from the date of the petition till December 2013. 50% of this amount was directed to be deposited by 10th July 2014 and balance 50% within six weeks from 10th July 2014.

4] The wife instituted a special leave petition questioning the order dated 11th June 2014. This was disposed of by the order dated 19th August 2014. The order dated 11th June 2014 was not interfered with, since, the matter was due to be heard on 27th August 2014. The wife was also granted liberty to apply for withdrawal of certain arrears deposited by the husband in this court.

5] The wife, took out Civil Application No. 383 of 2014 seeking following reliefs:

a] The Hon'ble Court be pleased to direct the Respondent to fully comply with the direction contained in the Judgment and decree dated 10-12-2013 passed by the Family Court to pay Maintenance to the Applicant.

b] The Hon'ble Court be pleased to direct the Respondent to pay the total amount of Rs. 11,25,000 being the total outstanding amount towards maintenance

c] The Hon'ble Court be pleased to direct the Respondent to deposit Rs.30,000 continuously in the beginning of every month towards Maintenance

d] The Hon'ble Court be pleased to allow the Applicant to withdraw the amounts already deposited in this Hon'ble Court pursuant to the directions contained in order dated 11-6-2014 passed by this Hon'ble Court.....”

6] By order dated 13th November 2014, Civil Application NO. 383 of 2014 was disposed of, making it abundantly clear that the wife was pressing for reliefs in terms of prayer clause (d) alone and further, the wife was granted liberty to take out a separate application in respect of remaining prayers as aforesaid. This is quite clear from reading of paragraph '2' of the order dated 13th November 2014, by which, this Court, disposed of Civil Application No. 383 of 2014. This Court, by its order dated 13 November 2014, permitted the wife to withdraw 50% of the amount of arrears deposited by the husband without security and rest of the amount after providing adequate security.

7] By order dated 10th December 2014 made in Civil application No. 427 of 2014, this Court, stayed the judgment and decree granting divorce until further orders. It is pertinent to note that there was no stay granted to the execution and operation of the judgment and decree, which had awarded maintenance of Rs.30,000/- to the wife and two daughters. This, it appears, was by way of ad-interim relief in Civil Application No. 427 of 2014.

8] Civil Application No. 427 of 2014 was disposed of by order dated 17th March 2016, which reads thus:

“1 The applicant appearing in person states that in this Civil Application, he is seeking stay to the execution and operation of that part of the impugned Judgment and Decree dated 10th December 2013 by which the marriage between him and the respondent has been dissolved by Decree of Divorce. He states that he is not seeking any other relief in this application. The substantive appeal is against the Decree of Divorce and therefore, operation and execution of the Decree of Divorce will have to be stayed. By ad-interim order dated 10th December 2014 this relief has been already granted.

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

. Till the final disposal of the Appeal, there will be stay to the execution and operation of the impugned Judgment of Decree of Divorce passed by the Family Court at Mumbai in a petition No.A849 of 2011”.

9] The husband took out Review Petition (St) No. 12442 of 2016 seeing review of the order dated 17th March 2016 urging that even the portion of the impugned judgment and decree awarding maintenance of Rs.30,000/- per month was required to be stayed.

10] By order dated 24th August 2016, this review petition was dismissed. The order dated 24th August 2016 reads thus:

“1 Heard the petitioner appearing in person. The order dated 17th March 2016 records a statement of the petitioner appearing in person that except for the stay of that part of the impugned Judgment and Decree which grants Decree of Divorce, he was not

seeking any other relief in Civil Application No.427 of 2014. The relief of stay of operation of the decree of divorce was accordingly granted. Therefore, prayer made in this Review Petition to consider the prayer for stay of maintenance made in the said application cannot be granted. Hence, no case is made out for review of the order dated 17th March 2016.

2 We, however, make it clear that we have not disposed of the prayer for stay of maintenance on merits.”

11] In Civil Application No. 305 of 2016, the wife has applied for the following reliefs:

“(a) That this Hon'ble Court be pleased to direct the Respondent/Appellant to fully comply with the directions of the Hon'ble Family Court contained in the said Judgment and Decree in respect of payment of an aggregate amount of Rs.30,000/- (Rupees Thirty Thousand Only) per month towards the maintenance of the two daughters, and accommodation of the Applicant and the two daughters, before the 5th day of every month;

(b) That this Hon'ble Court be pleased to direct the Respondent/Appellant to pay the Applicant Rs.3,60,000/- (Rupees Three Lakhs Sixty Thousand Only) being the arrears of maintenance for the period of August, 2014 till date;

(c) That this Hon'ble Court be pleased to modify its Order dated 13th November, 2014 (Exhibit “D” hereto) by permitting the Applicant to withdraw the balance amount of Rs.2,47,500/- (Rupees Two Lakhs Forty Seven Thousand Five Hundred Only) deposited by the Respondent/Appellant in this Hon'ble Court, without providing any security for the same;

(d) That this Hon'ble Court be pleased to direct the Respondent to forthwith pay the Applicant an amount of Rs.60,000/- (Rupees Sixty Thousand Only) per month towards the daughters maintenance, and accommodation of the Applicant and the two daughters;

(e) Any other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case;

(f) For costs of this Application.”

12] Since, learned counsel for the husband, submits that the husband would like to file a detailed reply in order to oppose prayer clause (d) seeking interim maintenance of Rs.60,000/- per month, we make it clear that we are not taking up for consideration the relief in terms of prayer clause (d) for the present. Instead, we grant the husband six weeks time to file his reply and once such reply is filed, we will take up for consideration the relief in terms of prayer clause (d) for enhancement of interim maintenance.

13] Insofar as prayer clause (c) of this civil application is concerned, we see no reason not to permit the wife to withdraw the balance amount of Rs.2,47,500/- along with accrued interest, if any, without, necessity of furnishing any security.

14] Mr. Joseph, learned counsel for the husband, submits that grant of any such relief might render the husband's appeal, on the issue of quantum of maintenance, infructuous. We are unable to agree with the submission of learned counsel for the husband.

15] As it is, the husband, was directed to deposit only 50% of the arrears by order dated 11th June 2014. The amount now referred to, therefore, in effect corresponds to hardly 25% of the arrears. By order dated 13th November 2014, the wife, was in fact permitted to withdraw half of the amount deposited by the husband without security and the amount now referred to in prayer clause (c) corresponds to the balance half.

16] At this point of time, taking into consideration the financial needs of the wife and the two daughters who are studying, we see no reason to deny relief in terms of prayer clause (c) of the civil application. Such withdrawal, will no doubt be subject to final orders that will be passed in the appeal and therefore, the apprehension that the reliefs in the appeal might be rendered infructuous, is quite baseless. Accordingly, we allow the civil application and grant relief in terms of prayer clause (c). The Registry to do the needful within two weeks from today.

17] Insofar as relief in terms of prayer clause (a) is concerned, upon careful consideration of the orders passed upto now, we find that

there is no stay order granted by this Court, insofar as direction of the Family Court for payment of maintenance of Rs.30,000/- is concerned. We do not agree with the submission of learned counsel for the husband that the order dated 11th June 2014 is itself to be construed as an order granting stay for payment of maintenance at least to the extent of 50%. The order dated 11th June 2014 only deals with the issue of payment/deposit of arrears of maintenance.

18] Mr. Joseph, learned counsel for the respondent-husband, however contends that the wife, in her Civil Application No. 383 of 2014 in prayer clauses (a),(b) and (c) , had specifically applied for same relief, but the same was not granted by this Court whilst disposing of Civil Application NO. 383 of 2014 vide order dated 13th November 2014.

19] From the plain reading of the order dated 13th Noveber 2014, it is quite clear that submission of Mr. Joseph, learned counsel for the husband, is quite misconceived. This Court, in its order dated 13th November 2014 only dealt with prayer clause (d) of Civil Application No. 383 of 2014 and specific liberty was granted to the wife to take

out a separate application insofar as reliefs in terms of remaining prayer clauses were concerned.

20] Further, the order dated 24th August 2016 in Review Petition (St) No. 12442 of 2016 taken out by the husband, makes it very clear that there is no stay operating on the direction in the impugned judgment and decree for payment of maintenance at the rate of Rs.30,000/- per month. It is true that in paragraph '2' of the order dated 24th August 2016, it is noted that this Court has not disposed of prayer for stay of maintenance on merits. However, this Court, in its order dated 17th March 2016, has noted the statement of husband that he was not seeking for any interim reliefs other than interim relief of stay on the decree and divorce.

21] Taking into consideration the aforesaid, we are satisfied that at least from 1st September 2014, the husband was due and payable maintenance at the rate of Rs.30,000/- per month and therefore, at least from the said date, is in arrears. We determine the date as 1st September 2014, because the order dated 11th June 2014, directs the husband to clear arrears at the rate of Rs.15,000/- per month within a

period of six months from 10th July 2014. Since, there is no stay, in the matter of payment of maintenance at the rate of Rs.30,000/- per month post such date, the husband is required to pay the same and also clear the arrears within some reasonable period.

22] In *Bhuwan M. Singh Vs. Meena and ors.* – (2015) 6 SCC 353, the Supreme Court, in the context of maintenance under Section 125 of Cr.P.C. as well, has held that the wife is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligation of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity.

23] In *Shamima Farooqui Vs. Shahid Khan* – (2015) 5 SCC 705, the Hon'ble Supreme Court, again in the context of provisions of Section 125 of Cr.P.C., has held that the statute commands that there have to be some acceptable arrangements so that the wife can sustain herself. The principle of sustenance gets more heightened when the children are with the mother. Be it clarified that sustenance does not

mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband.

24] In this case, we may only note that the amount of Rs.30,000/- was determined on 10th December 2013 and that too, with reference to the date of the petition. Already, considerable time as elapsed since then. The two daughters have also grown up and their financial needs have proportionately increased. Taking into consideration of such aspects, we see no reason to deny relief in terms of prayer clauses (a), (b) and (c) of this civil application. However, we note that the relevant date for the purposes of relief in terms of prayer clause (b) shall be 1st September 2014, for the reasons already indicated earlier.

25] We therefore, partly dispose of this civil application with the following order:

- (a) This civil application is made absolute in terms of prayer clause (c). Registry is directed to permit the wife to withdraw

the amount deposited together with accrued interest, if any;

(b) The civil application is also made absolute in terms of prayer clauses (a) and (b), to the extent indicated. The husband is directed to pay maintenance at the rate of Rs.30,000/- per month effective from 1st September 2014 and continue to pay such amount until further orders. The arrears from 1st September 2014 till 31st July 2017 to be cleared within a period of six weeks from today. The maintenance of Rs.30,000/- to be paid on or before the 5th day of each month. The first of such payment shall be made on or before 5th August 2017; and

(c) Insofar as relief in terms of prayer clause (d) is concerned, post this civil application for further consideration after six weeks. In the meanwhile, the husband, is permitted to file reply in response to relief in terms of prayer clause (d).

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)