

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 298 OF 2016
IN
FAMILY COURT APPEAL NO. 165 OF 2016

Mrs. Hannah Deepak Bakshani ... Applicant/Appellant
Vs.
Deepak Gope Bakshani ... Respondent

Mrs. Mrunalini Deshmukh a/w Ms. Sapana Rachure, Advocate for the appellant.

Mr.G.R.Hegde i/b. Mrs. Sangita S. Katkar, Advocate for the Respondent.

CORAM: R.M.SAVANT &
SMT.SADHANA S.JADHAV, JJ.
DATE : 8th June, 2017.

P.C.

The above Family Court Appeal has been admitted on 3.10.2016 and is directed to be heard along with Family Court Appeal No.117 of 2016.

2. The above Civil Application has been filed seeking interim maintenance pending the appeal. The substantive relief sought in the above Civil Application is vide prayer clause (a). For the sake of ready reference, the same is reproduced hereunder :-

“(a) *That pending the hearing and final disposal of the above Appeal the Respondent be directed to pay an amount of Rs.1,00,000/- per month towards the*

maintenance to the Applicant;”

The applicant has also sought for a direction that the Respondent be directed to pay Rs.9,00,000/- towards the arrears of maintenance and travel.

3. The above Family Court Appeal has been directed against the judgment and order of the Family Court by which the Family Court has dismissed the Divorce Petition filed by the Respondent-husband and, at the same time, has also rejected the application for alimony filed by the Applicant-wife.

4. Insofar as the maintenance pendente lite is concerned, it is required to be noted that the Applicant-wife had filed an application before the Family Court whilst the proceedings were pending before it. The Family Court, by an order dated 31.3.2012, has rejected the application for maintenance pendente lite. The said order was challenged by the Applicant-wife by filing a Writ Petition in this Court.

5 A learned Single Judge of this Court, by an order dated 2.8.2012, by recording that the Applicant-wife was working in a real estate firm in Dubai confirmed the order passed by the Family

Court dated 31.3.2012. The said order passed by the learned Single Judge was challenged by the Applicant-wife by filing Letters Patent Appeal No.235 of 2012. A Division Bench of this Court allowed the said LPA and fixed the interim maintenance at Rs.25,000/- per month each for the Applicant-wife and the son as also directed the payment of travel expenses at the rate of Rs.1,00,000/- for every time that the Applicant-wife visits Mumbai. The said order was challenged by the Respondent-husband by way of Special Leave Petition in the Apex Court which came to be dismissed and the said order dated 18.10.2012 of the Division Bench came to be confirmed.

6 The Applicant-wife and the son was, therefore, paid interim maintenance of Rs.25,000/- per month as also were required to pay travel expenses pending the Marriage Petition, as indicated above by the judgment and order impugned in the above FCA. The said petition has been dismissed as well as the application for permanent alimony. The substantive prayer in the instant application is founded on the fact that though the applicant is earning by working in a real estate firm, the amount she earns is not sufficient to sustain her and the son in a City like Dubai. The

learned counsel however, fairly submitted that the application for interim maintenance is only for the wife and not the son. The claim of Rs.1,00,000/- as interim maintenance pending the above Family Court Appeal is sought to be buttressed by relying upon the financial status of the Respondent-husband and, more especially, the income that he earns from the global business which he is allegedly carrying on. It is required to be noted that the Family Court has rejected the application for alimony on the ground that the Divorce Petition is being dismissed and also on the ground that for the relief of maintenance under Section 25 of the Hindu Marriage Act, there has to be disruption of the marital relation and not merely dismissal of the petition. Hence, the material on which the Applicant-wife now seeks to rely upon was admittedly not considered by the Family Court whilst considering the application for alimony. To buttress her case, the Applicant-wife relies upon a certificate issued by her employers dated 27.12.2012, wherein it is stated that she earns 2000 Dirhams out of commission for a period of six months. The Passport number mentioned in the said Salary Certificate is Z3581982.

Respondent-husband, Shri Hegde, draws our attention to a document in respect of the flat wherein the Applicant-wife is residing in Dubai as also the document of one Alliance Insurance.

8 It is pertinent to note that the tenancy contract dated 23.10.2014 is for the period 17.10.2014 to 16.10.2015. The Annual Contract amount is 100,000 AED. Security Deposit – 5000 AED. The tenancy contract dated 3.11.2016 is for the period 17.10.2016 to 16.10.2017. The contract amount is 1,05,000 AED. Security Deposit 5,000 AED. The description of the property is 4 bedrooms + hall. The miscellaneous fees mentioned in the contract besides 1,05,000 AED is 160 AED. The Green Bill (for consumption of electricity, fuel surcharge, meter service charge) paid for the period 4.1.2016 to 3.2.2016 is 1560 AED. The Applicant pays more than 250 AED towards Green Bill every month on an average and therefore the contention that she earns 2000 AED for six months i.e. 334 AED per month prima facie does not inspire confidence.

9 The said material is now sought to be explained by the Applicant-wife by filing an additional affidavit. In para 5 of the said affidavit, it is sought to be contended that the Applicant-wife is only using two bedrooms, one for herself and one for her son and

that the rent is shared with her sister one Mrs. Laxmi Jayant Nihalani.

10 Insofar as the certificate is concerned, the learned counsel Respondent Shri Hegde points out that the number of the passport mentioned is of a Nigerian Passport. It is required to be noted that in the Employment Contract of the applicant, the passport number mentioned is F 6373183, whereas in the tenancy agreement, the Passport number is Z3581982. Hence, having regard to the aforesaid fact, the certificate on which reliance is sought to be placed by the learned counsel for the Applicant, to say the least, does not inspire confidence. A person in occupation of the four-bedrooms in a City like Dubai obviously has the financial wherewithal to sustain herself and her son. It is required to be noted that the Applicant-wife is also paying Green Tax for the electricity consumed which is 1000 Dirhams. In our view, therefore, no case for grant of any interim maintenance pending the above Family Court Appeal is made out. The Civil Application is accordingly rejected.

11 Insofar as the amount claimed on the ground that there are arrears, the learned counsel appearing for the Respondent-

husband Shri Hegde states that there are no arrears and if there were any arrears, the matter would not have been proceeded with by the Family Court. The learned counsel for the Respondent further states that no such grievance was made when the above Family Court Appeal No.165 of 2016 was admitted. In the light of the aforesaid facts, we do not deem it appropriate to go into this aspect at this stage. The claim for arrears is, therefore, rejected for the present.

(SMT. SADHANA S.JADHAV, J.)

(R.M.SAVANT,J.)