

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 355 OF 2013
WITH
CIVIL APPLICATION NO. 106 OF 2015
IN
FAMILY COURT APPEAL NO. 241 OF 2013**

Mrs. Apurva V. Tambe	..Applicant
Vs	
Mr. Vishnu B. Tambe	..Respondent

**WITH
CIVIL APPLICATION NO. 66 OF 2017
IN
FAMILY COURT APPEAL NO. 241 OF 2013**

Mr. Vishnu B. Tambe	..Applicant
<u>In the matter between</u>	
Apurva V. Tambe	.. Appellant
Vs	
Mr. Vishnu B. Tambe	..Respondent

Mr. S.A. Sawant for the Appellant- Apurva Tambe
Mr. Jaydev Trivedi a/w. Bhupali Vaze for Respondent – Vishnu Tambe.

CORAM	:	SHANTANU S. KEMKAR & M. S. SONAK, JJ.
DATE	:	10th JULY, 2017.

COMMON ORDER :

. Heard learned counsel for the parties.

2] These civil applications arise out of Family Court Appeal No. 241 of 2013 in which the challenge is to the judgment and decree

dated 30th September 2013 (impugned judgment and decree) made by the Family Court, Mumbai.

3] The Family Court, by the impugned judgment and decree dissolved the marriage between Vishnu and Apurva. Custody of Shreya was retained with Apurva. On the aspect of maintenance to Apurva and Shreya, the impugned judgment and decree, makes the following award:

“5. The respondent shall continue to receive Rs.5,000/- or more per month from the office of the petitioner as and by way of maintenance and educational expenses for the minor daughter Shreya as she has directly approached his office from where she is paid”.

4] In the appeal instituted by Apurva, by order dated 19th December 2013, the decree of divorce was stayed till further orders. The appeal itself was admitted on 26th August 2015.

5] By Civil Application No. 355 of 2013 and 106 of 2015, Apurva seeks maintenance for herself and Shreya. By Civil Application No. 66 of 2017, Vishnu seeks a declaration that Apurva has illegally and fraudulently received an amount of Rs. 5,50,755/-, by way of maintenance, which was deducted from Vishnu's salary by his

employer, i.e., Headquarter Southern Command, Pune and an order directing Apurva to return the said amount or adjust the said amount towards future maintenance. Accordingly, it is only appropriate that all these three applications are taken up and disposed of by common order.

6] Despite the order staying the decree and divorce granted by this Court on 19th December 2013, Vishnu, has married the second time on 2nd January 2014. This Court, vide its order dated 23rd March 2016 observed that such second marriage solemnised on 2nd January 2014 is completely illegal. Vishnu, appealed to the Hon'ble Supreme Court, aggrieved by the interim order dated 23rd March 2016. By order dated 2nd December 2016, the Hon'ble Supreme Court, set aside the order dated 23rd March 2016 by observing that the High Court should have refrained from passing a final order on the issue at the interlocutory stage. The Hon'ble Supreme Court also requested the High Court to expeditiously dispose of the appeal by treating the observations and findings in the order dated 23rd March 2016 as only "*prima facie*".

7] There is no dispute that until the order dated 2nd December 2016 was made by the Hon'ble Supreme Court, Apurva was in receipt of an amount of Rs.9613/-, which amount, was directly being paid by Vishnu's employer, in terms of certain orders issued by the employer.

8] Vishnu, it appears, on basis of order dated 2nd December 2016 made by the Hon'ble Supreme Court, has succeeded in persuading his employer to reduce this amount to Rs.2500/- or thereabouts. Even the order dated 2nd December 2016, requires observations in the order dated 23rd March 2016 to be treated as *prima facie* observations. Therefore, on the basis of such order, there does not appear to be any justification on the part of Vishnu to drastically reduce the maintenance from approximately Rs.10,000/- to Rs.2500/-. In any case, it is only appropriate that Vishnu, now, makes good the difference. Vishnu, as noted earlier, in breach of stay order granted by this Court, entered into the second marriage. Surely, Vishnu, cannot take advantage of his own acts, particularly such acts are in defiance of the orders made by this Court. Accordingly, it is only

proper that Vishnu pays an additional amount of Rs.7500/- per month by way of maintenance to Apurva and Shreya.

9] The Family Court, on the basis that Apurva and Shreya were receiving some amount from the employer had determined the maintenance at the rate of Rs.5000/- in the year 2013. In the year 2017, taking into consideration the needs of Shreya in particular, this amount is required to be enhanced at least another Rs.2500/-. This means Apurva and Shreya, together are entitled to be paid maintenance at the rate of Rs.15,000/- per month.

10] In this case, if the income of Vishnu is taken into consideration, maintenance of Rs.15,000/- to his wife and daughter cannot be regarded as excessive. In ***Bhuwan M. Singh Vs. Meena and ors. – (2015) 6 SCC 353***, the Supreme Court even in the context of Section 125 of Cr.P.C. has held that the provision for maintenance was conceived to ameliorate the agony, anguish, financial suffering of a woman, who is unable to maintain herself and her children. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam

for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape of route, unless maintenance can be avoided on any legally permissible grounds.

11] 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. Sometimes, a plea is advanced by the husband that he does not have the means to pay, or he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife.

12] Applying such principles, maintenance, at the rate of Rs.15,000/- per month is required to be awarded in favour of Apurva and Shreya, even though, they claim for cumulative maintenance of Rs.30,000/- per month. Vishnu, cannot be permitted to take advantage of his own actions, which, may not be consistent either with law or a notion of fairness. On basis of some self created alleged liabilities, Vishnu, cannot, avoid payment of maintenance to his wife and daughter. Shreya, who is a minor, requires maintenance amount not merely for her survival, but also for purposes of her reasonable educational needs, which, Vishnu, cannot be permitted to avoid. Vishnu, in the present case, by raising frivolous defences, and by even misinterpreting the Court orders, has succeeded in depriving Apurva and Shreya maintenance at the reasonable rates.

13] Vishnu, however, urges that Apurva was / is employed. He urges that factum of such employment was suppressed by Apurva. Vishnu, therefore submits that even the order of initial payment or maintenance recovered by Apurva from the employer was a product of fraud. Vishnu urges that such orders be recalled and Apurva be directed to refund the maintenance amount received up to now.

Vishnu, on this basis, resists maintenance at the present rates, not to speak of enhanced rates to Apurva and Shreya.

14] Despite opportunities, learned counsel appearing for Vishnu was unable to make good the submissions made. To begin with, he relied upon deposition of Apurva in Petition A-2136 of 2008 at Exhibit-79 dated 22nd July 2013. Secondly, he attempted to point out certain contradictions in the affidavit filed by Apurva.

15] Upon careful consideration of Apurva's deposition dated 22nd July 2013, there is really nothing to hold that Apurva is employed. In the deposition, all that Apurva has said that she was working prior to her marriage and her salary was Rs.3500/- and not Rs.5000/-. So also, there is really nothing in the affidavit filed by Apurva, on basis of which, it can be said that Apurva is gainfully employed and therefore, dis-entitled to any maintenance amount. Vishnu, under the circumstances, is not at all justified in resisting the claim for maintenance upon such frivolous grounds. On the basis of such unjustified resistance, Vishnu, has no doubt, succeeded in denying Apurva's maintenance/arrears of maintenance, quite

unmindful of impact upon his daughter Shreya.

16] Vishnu, in his Civil Application No.66 of 2017 at paragraph 9, has stated thus:

“9. The Applicant states that the Appellant has committed fraud upon the Applicant as well as the Headquarters Southern Command, Pune by misrepresenting that she is unemployed. Hence; the aforesaid deductions of Rs.5,50,755/- from the salary of the Applicant towards the maintenance of the Appellant is totally illegal and the Appellant is required to refund the aforesaid amount. It is well known principle of law that “No one can take advantage of his own wrong” whereby in the present case the Appellant is guilty of committing fraud by furnishing false information on oath and obtained order of maintenance from Headquarter Southern Command, Pune”.

17] However, we find that there is neither any fraud nor misrepresentation practised by Apurva upon the Court, upon Vishnu's employer or for that matter Vishnu himself. The principle *“No one can take advantage of his own wrong”* relied upon by Vishnu, applies to Vishnu's own conduct, as noted earlier. In such circumstances, Civil Application No. 66 of 2017 seeking refund of Rs.5,50,755/- from Apurva, is clearly an abuse of legal process. Such application therefore, warrants dismissal with exemplary costs.

18] Upon cumulative consideration of the material on record and in the light of aforesaid discussions and reasoning, we dispose of three civil applications with the following order:

a] Civil Application No. 355 of 2013 and 106 of 2015 are disposed of by directing Vishnu to pay maintenance at the consolidated rate of Rs.15,000/- per month in favour of Apurva and Shreya;

b] Such maintenance amount shall become payable from 1st April 2015, taking into consideration the circumstance that Civil Application No. 106 of 2015 was filed by Apurva on 24th March 2015.

c] The arrears of maintenance at the rate of Rs.15,000/- per month from 1st April 2015 till 30th June 2017 shall be cleared by Vishnu within a period of 8 weeks from today;

d] In computing aforesaid arrears, Vishnu will be entitled to credit for amount of maintenance already paid by him between the period 1st April 2015 and 30th June 2017. This

means that only the balance payment will have to be cleared within 8 weeks from today;

e] Vishnu shall regularly pay maintenance of Rs.15,000/- per month on or before 5th day of each succeeding month. The first of such payment shall be made on or before 5th August 2017.

f] The amount of maintenance shall be transferred by Vishnu through banking channels into the bank account of Apurva. The details of such bank accounts are already available with Vishnu. In any case, Apurva is at liberty to furnish such bank details to the Vishnu/learned counsel appearing for Vishnu at the earliest;

g] In case of two defaults in payment of maintenance amount, Apurva will be at liberty to address a letter along with a copy of this order to Vishnu's employer, i.e., Headquarter Southern Command, Pune, so that the employer, can, deduct the amount of maintenance and

transmit the same into the bank accounts of Apurva. The employer, is requested to act on the basis of authenticated copy of this order and do needful;

h] Civil Application No. 66 of 2017 is dismissed with costs of Rs.10,000/- payable within 8 weeks from today. Costs to be either paid or deposited in this Court within a period of 8 weeks from today. In case, costs are deposited in this Court, Apurva will be at liberty to withdraw the same unconditionally.

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)