

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO. 9 OF 2016
WITH
CIVIL APPLICATION NO. 16 OF 2016
WITH
CROSS-OBJECTION ST. NO. 8673 OF 2016**

Kiran K. Pai.	..Appellant.
Vs.	
Geeta Kiran Pai & anr.	..Respondents

Mr. Kishor K. Malpathak, for the Appellant.

Mr. Anurag Jain, for the Respondents.

**CORAM : R. M. SAVANT &
SMT.SADHANA S. JADHAV, JJ
DATE : 28th JULY, 2017**

P.C.

1 The above Family Court Appeal takes exception to the Judgment and Order dated 29/9/2015 passed by the learned Judge of the Family Court No. 5, Pune. By the said order, the Petition being P.C. No. 10/2010 came to be partly allowed. The claim for maintenance of the Respondent No. 1 wife came to be rejected. However, the maintenance in the sum of Rs. 25,000/- per month to the Respondent No. 2 i.e. the daughter of the Appellant and the Petitioner No. 1 came to be granted from the date of the filing of the Petition i.e. 3/4/2010. The operative part of the said Judgment and Order for the sake of ready reference is reproduced herein under :

ORDER

- “1. The petition is partly decreed with costs as under .
2. The petitioner No. 1 Geeta's claim of maintenance is hereby dismissed.
3. The respondent shall pay Rs. 25,000/- (Rs. Twenty five thousand) per month to the petitioner No. 2 Pooja from the date of filing of this petition i.e. 03-04-2010 in addition to the maintenance granted in the Domestic Violence Case.
4. The petitioner No. 1 shall adjust the amount which she has received as an interim maintenance for her daughter Pooja only while recovering the maintenance as per this decree.
5. A decree be drawn accordingly.
6. This judgment is dictated and pronounced in open Court.”

2 The facts giving rise to the above Family Court Appeal can in brief be stated thus :

(i) The marriage between the Appellant and the Respondent No. 1 took place on 2/5/2004 at Pune. Out of the said wedlock, the Appellant and the Respondent No. 1 have one daughter named Pooja who was born on 1st February, 2007 and is presently in the custody of the Respondent No. 1.

(ii) Both the Appellant and the Respondent No. 1 are working. The

relations between the Appellant and the Respondent No. 1 are estranged and they have been living separately since 21/11/2006. The relations between the parties have come to such a pass that proceedings under section 498A read with section 34 of the Indian Penal Code as also the proceedings under the Domestic Violence Act came to be filed by the Respondent No. 1 against the Appellant. It seems that in the domestic violence proceedings, maintenance of Rs. 5,000/- came to be granted to the daughter Pooja.

(iii) The Respondent No. 1 filed the said Petition PC. No. 10 of 2010 for maintenance. It was her case in the said Petition that the Appellant has left for U.K. on 13/10/2007 without informing her, which information according to her, she got through the watchman of the building.

(iv) It is her case that after the birth of Pooja, the Appellant refused to see the child and had therefore, caused cruelty to her.

(v) It was her case that since birth of Pooja, the Appellant has not paid a single farthing to her and that she is surviving on the basis of the loan taken from her relatives and friends during the period of pregnancy and at the time of delivery.

(vi) The Respondent No. 1 has admitted in her Petition that she was

employed with Sunguard Software Company however, her income is not sufficient for her sustenance.

(vii) The Appellant herein who was the Respondent to the said Petition, filed his Written Statement. He admitted the relation between the Appellant and the Respondent No. 1. He further admitted that they had cohabited together after their wedlock.

(viii) He has also admitted that the Respondent No. 1 has been staying separately since 21/11/2006 and that he is working abroad since October, 2006. He denied that he left secretly for U.K.

(ix) It was his case that the Respondent No. 1 did not inform him after the birth of the child and she even went to the extent of denying to accept her congratulatory phone. It was his case that the Respondent No. 1 was behaving with his parents in an improper manner.

(x) It was his case that the Respondent No. 1 was getting the salary of Rs. 3,95,000/- per year and that he has been paying maintenance of Rs. 5,000/- per month on account of Pooja to the Respondent.

(xi) The Appellant also sought to put on record the alleged vices of the

Respondent No. 1.

3 On the basis of the pleadings of the parties, the Trial Court i.e. the learned Judge of the Family Court framed issues, amongst which was the issue as to whether the Respondent No. 1 and the Respondent No. 2 were entitled to maintenance from the Appellant.

4 The parties in support of their respective assertions led evidence. The Respondent No. 1 led her own evidence whereas the Appellant did not lead any evidence and filed pursis to the said effect. The Trial Court thereafter, ventured to consider the said issue amongst which the additional issue as regards jurisdiction of the Trial Court to try the Petition, which issue was raised by the Respondent in view of the fact that the parties lastly resided in Thane and the Respondent i.e. the Appellant is working in the U.K. and therefore the cause of action for filing the Petition did not arise in Pune. However, the Trial Court answered the said issue by observing that it has the jurisdiction to try and entertain the said Petition as the right to maintenance is a continuous cause of action and since the Petitioner i.e. the Respondent No. 1 herein is residing at Pune, part of the cause of action has arisen at Pune.

5 The Trial Court thereafter proceeded to consider the issue as regards the entitlement for maintenance. The Trial Court has adverted to the

fact of the Appellant being granted divorce by the U.K. Court on 31/8/2012. The Trial Court observed that the said divorce has been granted pending consideration of the instant petition.

6 The Trial Court has taken into consideration the financial wherewithal of each of the parties. The Trial Court in so far as the Appellant is concerned has held that the Appellant having not adduced his evidence and proved his defence, as also not controverted the evidence of the Respondent No. 1 by leading his own evidence. The Trial Court observed that the Respondent No. 1 was working with Sungard Software Company and from the salary slips, it can be seen that for the financial year 1/4/2009 to 31/3/2010 her annual salary was Rs. 7,09,227/-, for the financial year 1/4/2011 to 31/3/2012 her annual salary was Rs. 12,53,605/- and for the financial year 1/4/2012 to 31/3/2013 her annual salary was Rs. 15,28,979/-. The Trial Court on the basis of the said annual income summarised that the gross monthly salary of the Respondent No. 1 was Rs. 69,000/-, Rs. 1,00,467/- and around Rs. 1,27,414/- for the aforesaid respective years. The Trial Court has also taken into consideration the fact that the amounts were kept in the name of her mother, as also amounts were kept in the name of her daughter Pooja in fixed deposit and the amount of Rs. 50,000/- were kept in the name of her father in fixed deposit. The Trial Court has also adverted to the fact that some amount has also been kept in Mutual Funds, as also LIC etc.. The Trial

Court has also adverted to the educational qualification, as also the fact that she had admitted having received amount from the Appellant herein.

7 In so far as the Appellant is concerned, the Trial Court considered his salary slips for the period September, 2014 to December, 2014, which shows that his gross pay was 3,583.30 pound and net pay was 2673.40 pound while he was working in Crown Agents Company in UK. The Trial Court has taken into consideration his salary slip for January, 2015 to July, 2015, which shows his gross pay to be 3,404.00 pound and net pay was 2,572.30 pound per month. On the basis of the aforesaid figures, the Trial Court concluded that the net monthly salary of the Appellant in Indian rupee is Rs. 2,56,230/- after all deductions. The Trial Court did not countenance the alleged expenses shown by the Appellant on the ground that he had not proved the said expenses by leading evidence. The Trial Court however, concluded that having regard to the income of the Respondent No. 1, she would not be in capacity to maintain her and therefore, she would not be entitled to the maintenance.

8 In so far as the daughter is concerned, the Trial Court held that she would be entitled to maintenance in the sum of Rs. 25,000/- per month in addition to what is granted under the Domestic Violence Act. The Trial Court has also observed that both the Appellant and the Respondent No.

1 are required to maintain their daughter from their income.

9 In so far as the flat in question being Flat No. 14 situated at Fantasia, Uthopia Cooperative Housing Society, Wanworie, Pune is concerned, the Trial Court refused to entertain any claim in respect of the said flat in view of the Civil Suit pending between the parties. The Trial Court accordingly has granted maintenance to the extent mentioned in the operative part of the impugned order which has already been adverted to hereinabove.

10 The Respondent No. 1 herein has filed cross-objections to claim maintenance for herself as also to claim enhanced maintenance for the daughter Pooja. The above cross-objections have also been heard alongwith the above Family Court Appeal.

11 In so far as the above Family Court Appeal is concerned, the learned Counsel appearing on behalf of the Appellant Shri Malpathak would contend that the Respondent No. 1 being a person of means, the Trial Court had erred in granting maintenance of Rs. 25,000/- to the daughter. The Learned Counsel would contend that the said maintenance is exorbitant and excessive considering that the child Pooja is only 8 years of age at present.

12 The learned Counsel would also question grant of maintenance

from the date of filing of the Petition as on the said date the daughter Pooja was only 3 years old and the maintenance of Rs. 25,000/- for a 3 year old child is obviously excessive.

13 Per contra the learned Counsel appearing for the Respondent No. 1 Shri Jain would submit that the Respondent No. 1 is entitled to the same lifestyle, which she was accustomed to while co-habiting with the Appellant and would also be entitled to the same standard of living as the Appellant has in U.K. The learned Counsel would submit that having regard to the expenses that would be required to be incurred for the child Pooja in the future years, the amount of Rs. 25,000/- cannot be said to be adequate. The learned Counsel would contend that the Respondent No. 1 is also entitled to maintenance, if she has to maintain the lifestyle to which she is entitled to in terms of the life style which she was enjoying whilst they were cohabiting.

14 We have heard the learned Counsel for the parties and considered the rival contentions. As indicated above, the Respondent No. 1 i.e. wife led her evidence in support of her claim for maintenance for herself and the daughter Pooja. However, the Appellant did not lead any evidence. On behalf of the Appellant, the salary slips were produced, which have been referred to by the learned Judge of the Family Court in the impugned order.

15 There can be no dispute about the fact that the Respondent No. 1 wife is gainfully employed and her salary during the financial year 2012-2013 was in the region of about Rs. 1,25,000/- per month. Hence, in so far as Respondent No. 1 is concerned, it can be said that she is in a position to maintain herself. She would also be in a position to have the same standard of living that she was having when she was residing with the Appellant after their marriage.

16 The submission of the learned Counsel appearing for the Respondent No. 1 i.e. wife that she would be entitled to the same standard of living as the Appellant has in the U.K. cannot be accepted. It is also required to be noted that the flat in which the Respondent No. 1 is residing is belonging to the Appellant. In our view, therefore, having regard to the material which is on record, the Trial Court i.e. the Learned Judge of the Family Court was right in rejecting the application for maintenance in respect of the Respondent wife.

17 In so far as the daughter Pooja is concerned, the obligation to maintain her would be both of the father and mother i.e. the Appellant and Respondent No. 1 especially having regard to the fact that both are gainfully employed and are professionals. We are informed that the daughter is presently studying in an ICSE school in Pune. She is presently 9 years of age

and is in the 5th standard. Hence, that would also be a relevant consideration for fixing the maintenance. Hence, we do not find any error committed by the learned Judge of the Family Court in fixing the maintenance of Rs. 25,000/- for the child Pooja having regard to the needs of the child of her age and considering the cost of living at present. However, provision would have to be made for the expenses which are bound to rise as Pooja grows up. In our view, the interest of justice would be served if some enhancement is granted in the maintenance to Pooja, after she attains a particular age.

18 In so far as grant of maintenance, in addition to the maintenance granted under the Domestic Violence Act, also the grant of maintenance from the date of filing of the Petition i.e. 3/4/2010, the said direction in our view would have to be set aside and substituted. Hence, as Pooja was only 3 years old on 3/4/2000 and the maintenance of Rs. 25,000/- for a child of her age is obviously excessive, we deem it appropriate to issue the following directions.

(i) That the Order granting maintenance to Pooja in the sum of Rs. 25,000/- per month is upheld but the said maintenance would be up to the age of 14 years.

(ii) After the age of 14 years, the Respondent No. 2 i.e. Pooja would be entitled to maintenance at the enhanced rate of Rs. 35,000/- per month.

(iii) In so far as her educational expenses i.e. Term Fees and Tuition

Fees post passing of the ICSE by Pooja are concerned, the Appellant and the Respondent No. 1 would equally share them. The Respondent No. 1 would inform the Appellant of the payment of the Term fees and Tuition fees and on which communication the Appellant would defray 50 % of the expenses to the Respondent No. 1. This would also be applicable in respect of any professional course which Pooja may pursue.

(iv) In the event, the Respondent No. 2 is gainfully employed after she completes her education, then the liability of the Appellant to pay the maintenance would cease to operate.

(v) It is expected that the Appellant would clear the arrears of maintenance if any within 8 weeks from date.

(vii) We make it clear that the amount of Rs. 25,000/- payable to Pooja would be inclusive of Rs. 10,000/- which is granted to her under the Domestic Violence Act.

(viii) In so far as the order for grant of maintenance from 3/4/2010 is concerned, the same is set aside and the Respondent No. 2 would be entitled to maintenance from 29/9/2015 i.e. the date when the learned Judge of the Family Court has passed the impugned Judgment and Order.

(ix) The Respondent No. 1 would accordingly be permitted to withdraw the amount deposited in the Family Court, Pune on the basis that the Respondent No. 2 i.e. child Pooja is entitled to the maintenance from 29/9/2015. The amount would have to be adjusted in terms of the clause (4)

of the operative part of the impugned Order. The balance remaining amount out of the amount deposited to be refunded to the Appellant.

19 Both the Family Court Appeal and Cross-objection to stand disposed of in terms of the above.

20 In view of the disposal the above Family Court Appeal and the Cross-objection, the above Civil Application does not survive and to accordingly stand disposed of as such.

[SMT.SADHANA S. JADHAV,J]

[R.M.SAVANT, J]