

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

**FAMILY COURT APPEAL NO.18 OF 2017
ALONGWITH
CIVIL APPLICATION NO.30 OF 2017**

Shri. Mahindar Yerram Shetty	..Appellant
Versus	
Smt. Uma Mahindar Shetty and others	..Respondents

**AND
FAMILY COURT APPEAL STAMP NO.33381 OF 2016**

Sou. Uma Mahindar Shetty and another	..Appellants
Versus	
Shri. Mahindar Yerram Shetty alias	
Y. V. Mahendar	..Respondent

Shri. Satyajeet P. Dighe for the Appellant in Family Court Appeal No.18 of 2017 and for the Respondent Family Court Appeal Stamp No.33381 of 2016.

Shri. Nitin P. Dalvi for the Respondents in Family Court Appeal No.18 of 2017 and for the Appellants in Family Court Appeal Stamp No.33381 of 2016.

**CORAM : R. M. SAVANT &
SMT. SADHANA S. JADHAV, JJ
DATE : 21st JUNE, 2017**

PC.

1 The above Family Court Appeals are cross Appeals filed by the Appellant - husband and the wife. Both the Appeals lay a challenge to the judgment and order dated 26.09.2016 passed by the Learned Judge of the Family Court, Nashik. By the said order, Petition No.C02 of 2013

filed by the Respondent wife came to be partly allowed and maintenance came to be granted by the Learned Judge of the Family Court in terms of the directions as contained in the operative part of the impugned order. The said operative part reads thus :-

- “1] Petition is partly allowed with proportionate cost as under.
- 2] Respondent shall pay Rs.3/- lakhs lump-sum amount towards past maintenance of son Hardik i.e. Petitioner no.4 within three months from the date of this order. He shall also pay Rs.6000/- per month maintenance to petitioner no.4 from the date of this order till further order. If in other proceeding maintenance deposited that be adjusted in the present maintenance amount.
- 3] Respondent shall also pay Rs.2/- lakh to each petitioner nos.2 and 3 towards their marriage expenses within 3 months from the date of this order.
- 4] Claim of maintenance of petitioner Nos.1, 2 and 3 is hereby rejected.
- 5] A decree be drawn up accordingly.”

Hence, the Appellant - husband who was the Respondent in the said proceedings was directed to pay a lump-sum amount of Rs.3,00,000/- towards past maintenance of the son Hardik and Rs.6000/- per month maintenance from the date of the order till further orders. The Appellant - husband was also directed to pay an amount of Rs.2,00,000/- each to the original Petitioner Nos.2 and 3 who are his daughters, towards their

marriage expenses. The said payment was directed to be made within three months from the date of the order. The claim for maintenance of the original Petitioner Nos.1, 2 and 3 i.e. wife and the said two daughters was rejected.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the marriage between the Appellant - husband and the Respondent - wife who is the Appellant in the companion Appeal came to be dissolved by a decree of divorce. There is no dispute about the fact that the couple have three issues i.e. one son and two daughters. The daughters are twins. The daughters after their graduation in Commerce have done their MBA, whereas the son is prosecuting studies in engineering from an Engineering College in Nashik. It has come on record that the original Petitioner No.2 i.e. one of the daughters Samira is gainfully employed in Accenture. The other daughter Sudhira has the same educational qualifications as Samira. The maintenance was sought on the ground that the Appellant - husband has neglected to take care of the children, the maintenance therefore sought was in the sum of Rs.10,000/- for each of the Petitioners and also marriage expenses for the Petitioner Nos.2 and 3 to the extent of Rs.3 lakhs to Rs.5 lakhs.

3 The Petition for maintenance was opposed to on behalf of the Appellant - husband as indicated above in the said proceedings. It was the case of the husband that the Petitioner No.1 is working as an LIC agent and has sound income. It was also his case that since they are divorced, the Petitioner No.1 was not entitled to claim maintenance. In so far as the Petitioner No.2 is concerned, it was his case that she was employed in Accenture and she was earning Rs.60,000/- to Rs.65,000/- per month, whereas the Petitioner No.3 is in service in Nissan Automotive and she is earning Rs.50,000/- to Rs.60,000/- per month. The parties led evidence in respect of their respective assertions. It has come in the evidence that the Appellant - husband is a Central Government employee and drawing Rs.70,000/- to Rs.75,000/- per month. It has also come in evidence that his parents are getting Rs.50,000/- as pension. It has come in evidence that his parents have two bungalows, one in Sitaphal Mandi and one in Marridpalli, Andhra Pradesh. The Appellant - husband is an Income Tax Officer. As regards the employment of the Appellant - husband, the evidence of the Chief Accounts Officer working in Central Excise and Service Tax, Hyderabad came to be led.

4 The Learned Judge of the Family Court on the basis of the material which has come on record has deemed it appropriate to grant maintenance in terms of the directions contained in the operative part.

The Learned Judge whilst arriving at the said conclusion has taken into consideration Section 20 of the Hindu Adoption and Maintenance Act which deals with the obligation in respect of maintenance of the children and aged parents. It is on the said basis that the Learned Judge of the Family Court held that it is the obligation of the husband to maintain the minor son and the unmarried daughters as also the aged or the infirm parents. The Learned Judge of the Family Court having regard to the evidence which has come on record has come to a conclusion that the original Petitioner No.2 being employed, she would be able to maintain herself. In so far as the original Petitioner No.3 is concerned, the Learned Judge has observed that since the original Petitioner No.3 is also an MBA, it can be presumed that she is having earning capacity. However, the Learned Judge did not countenance the case of the Appellant - husband that she was working in Nissan Automotive in the absence of any evidence in that regard. The Learned Judge however has rejected the claim for maintenance made on behalf of the original Petitioner Nos.2 and 3 i.e. the daughters. In so far as the son is concerned, the Learned Judge took into consideration the educational expenses, minimum needs of the son and the source of income of the Respondent i.e. Appellant - husband, deemed it appropriate to grant maintenance of Rs.6000/- per month from the date of the order. As indicated above, the operative part

of the impugned order contains the directions in so far as the maintenance is concerned.

5 The Appellant - husband has challenged the impugned order granting maintenance on the ground that the Petitioner Nos.2 and 3 are not entitled to maintenance as they are working and the son is not entitled to maintenance as he is a major. The Respondent wife has filed the cross Appeal claiming enhancement in the amount granted towards the marriage of the daughters as also grant of maintenance for herself i.e. Appellant - wife and to the daughters. In so far as the grant of maintenance to the daughters is concerned, though it has come on record that the daughter Samira is working with Accenture, there is no material on record to substantiate the case that the daughter Sudhira is gainfully employed. However, the Learned Judge of the Family Court has rejected the maintenance for both the daughters.

6 The Learned Counsel for the Appellant - wife fairly submitted that the wife is not pressing for her maintenance.

7 In our view, considering the obligation which Section 20 casts upon the father, the Family Court ought to have granted maintenance to the Petitioner No.3 who at present is not gainfully

employed. In so far as the challenge to the award of a lump-sum amount to the son, as also the daughters towards their marriage expenses, in our view, the Award of the said sums to the son and the daughters can be said to be more than reasonable and therefore the Appellant - husband cannot make any grievance about the same. This has to be viewed in the context of the fact that the son is presently prosecuting studies in engineering and that towards the marriage expenses an amount of only Rs.2,00,000/- each has been awarded to the daughters. We also do not find any reason to interfere with the maintenance which is granted at Rs.6000/- per month to the son. The justification of the same has already been mentioned in the impugned order. During the course of the hearing of the above Appeals, the Learned Counsel for the Appellant - husband fairly stated that apart from the amount of Rs.2,00,000/- towards the marriage expenses, the Appellant would be ready to contribute a further amount if the said is communicated to the Appellant - husband after the marriages of the daughters are fixed. We expect both the Appellants to be reasonable in that regard. However we deem it appropriate to grant the original Petitioner No.3, Sudhira maintenance of Rs.3000/- per month till she gets employment or she gets married whichever is earlier. Having regard to the aforesaid facts, Family Court Appeal Stamp No.33381 of 2016 is required to be partly allowed and Family Court Appeal No.18 of

2017 is required to be dismissed. Hence the following directions :-

- I) The Appellant - husband to pay an amount of Rs.3000/- per month to the original Petitioner No.3, Sudhira from 01.05.2017. In so far as the amounts payable in terms of the impugned order, the Appellant - husband is granted six weeks time from date to clear the arrears on account of maintenance. In so far as the lump-sum amounts to the son and the daughters are concerned, the Appellant - husband is granted eight weeks time from date.
- II) The attachment of the salary of the Appellant - husband which has been done pursuant to the orders passed by the Executing Court would stand lifted for a period of eight weeks from date. If the amounts as directed by the directions as contained in the instant order are not paid, then the salary of the Appellant - husband would once again stand reattached to the extent directed by the Executing Court.

8 Subject to the aforesaid, the Family Court Appeal No.18 of

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2017 is dismissed and Family Court Appeal Stamp No.33381 of 2016 is partly allowed. In view thereof, the Civil Applications do not survive and to accordingly stand disposed of as such.

[SMT. SADHANA S. JADHAV, J]

[R.M.SAVANT, J]