

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 60 OF 2017
WITH CA/14420/2017 IN FCA/60/2017 WITH FCA/14/2018

Ramesh s/o Govindrao Anantwar
Age-52 years, Occ: Service (Teacher)
Resident of ND-42,P-2,40/07, HUDCO,
Nanded, Tq. & Dist. Nanded.
At present Kolambi, Tq. Naigaon,
Dist. Nanded

... Appellant

Versus

Ujwala w/o Ramesh Anantwar
Age-43 years, Occ: Household,
Resident of ND-42,P-2,40/07, HUDCO,
Nanded, Tq. & Dist. Nanded.

... Respondent

Mr.S.S. Shinde, Advocate for the appellant.
Mr.V.V. Bhavthankar, Advocate for the respondent.

**CORAM : PRASANNA B. VARALE
& S.M.GAVHANE,JJ.**

DATED : 05.07.2018

P.C.:-

. By way of the present appeal, the appellant is challenging the judgment and order passed by the learned Judge of the Family Court, Nanded in Petition No.A-385/2014.

2. Mr. S.S. Shinde, learned counsel appearing for the appellant at the outset submitted that the appellant is aggrieved by order dated 09.10.2017 and more particularly clause Nos.3 and 4 and having no serious objection to clause No.2. The learned counsel invited our attention to the order passed by the learned Judge of the Family Court. The petition was filed seeking dissolution of marriage invoking in the provisions of the Hindu Marriage Act. It may not be necessary for us, in view of the submission of the counsel, to go into the other details. Suffice it to say that there were allegations and counter allegations against each other. The marriage was not in dispute. It is also the part of the record that certain proceedings in the Criminal Court were initiated by the respondent against the appellant/husband. Be that as it may. Learned counsel for the appellant concentrated on clause 3 and 4. It may be necessary to refer clause 3 and 4 of the order. Clause 3 and 4 of the order reads as under:

"3. Petitioner is ordered to pay permanent alimony @ Rs.10,000/-per month to respondent from the date of this order until she remarries or until she is proved to be capable of maintaining herself.

4. Petitioner is restrained from interfering into the possession of respondent over his house

situated in Hudco, Nanded, except in accordance with law."

3. The learned counsel appearing for the appellant submit that the learned Judge of the Family court committed serious error in granting an exorbitant amount of permanent alimony at the rate of Rs. 10,000/- per month. The learned counsel for the appellant submitted the material to show the income earned by the appellant. The learned counsel then submitted that the appellant has to discharge his burden as a father and his son Rahul is prosecuting studies. The learned counsel then submitted that to bear the academic expenses and other expenses of himself and the son, the appellant will have to spare a large some amount from his income. Then the learned counsel submitted that by deducting such an amount, payment of alimony at the rate of Rs.10,000/- per month would be a financial burden on the appellant which the appellant is unable to bear. The next submission of the learned counsel for the appellant was a nature of critical attack on clause 4 of the order. The learned counsel submitted that no issue was framed by the learned Judge of the Family court on the aspect of preventing the appellant/husband from entering in his own house and only by way of ready some material in the nature of the application submitted by the respondent/wife to police

authorities. The learned Judge of the Family court prevented the appellant from entering in his own house for indefinite period.

4. The learned counsel submitted that such a prevention was clearly unsustainable. The counsel submitted that the learned Judge of the Family Court by putting such an embargo or the prevention order exceeded his jurisdiction.

5. Per contra learned counsel Mr. Bavthankar appearing for the respondent supports the order passed by the learned Judge of the Family Court. On hearing both the learned counsels appearing for the parties and on going through the material placed on record more particularly in the form of the judgment and order passed by the learned judge of the Family court, we are of the opinion that no interference is called for in clause 3 of the order impugned in the present appeal. Though the learned counsel for the appellant made a submission before us that the learned Judge of the Family Court committed an error in awarding exorbitant amount of permanent alimony, we find that the learned Judge of the Family court was justified in considering the income of the appellant. It is not in dispute that the appellant is a teacher and the salary certificate was placed on record

showing the monthly income of the appellant to the tune of Rs.50,831/-. The contributions of GPF and education loan was Rs.15,000/- and Rs.8000/- per month respectively. Thus, the petitioner was getting the salary in hand or net salary at the rate of Rs.23,524/- per month.

6. The learned Judge of the Family Court committed no error in observing that Rs.15000/- was being saved by the appellant by way of contribution to his provident fund and this amount could not have come in way of making the appropriate provision for alimony to the wife except the submission that the appellant has to academic expenses of his son, there is no other material to suggest that as against the education expenses, the appellant has to shell out the large amount. On a pointed query to the learned counsel, the learned counsel fairly submitted that the son of appellant is prosecuting post graduate courses. In such a situation wherein the son of the appellant is adult and prosecuting his Post Graduate course, the submission cannot be accepted that the appellant will have to spare a large amount towards, the expenses for an adult son, as such he may be directed to pay a lesser amount of alimony. Considering all these facts, we are of the opinion that there is no merit in the submission of the learned counsel in so far as clause

3 of the order is concerned. Resultantly no interference is called for in clause 3 of the order impugned in the appeal.

7. In so far as the next clause i.e. clause No.4 is concerned, the learned counsel submitted that while assigning the reasons for passing the order of more particularly clause 4, the learned Judge of the Family Court relied only on certain material. On going through the reasoning we find merit in the submission of the learned counsel. The learned Judge of the Family Court referred to certain application submitted by the respondent/wife to police authorities thereby launching a criminal prosecution against the husband. The learned Judge of the Family Court by taking note of this fact and in addition to that further observing that the respondent being a woman having poor parents without any source of income at the age of 45 cannot be expected to take away of her shelter with the aid of the decree of dissolution of marriage in such situation time gap protection has to be extended to the respondent in respect of the shelter.

8. The learned Judge may be right in observing that merely because the dissolution of decree was passed, the respondent is not expected to suffer the evil of the throwing her out, at the some time the learned Judge

Family court was pleased to observe that the arrangement is to be made for the respondent by providing it time gap shelter. The learned Judge could not have passed the order in a nature of the shelter as an absolute remedy to the respondent. If that was the intention of the learned Judge of the Family Court, the learned judge of the Family Court could have certainly fixed the time frame. It would have been certainly reasonable approach to state a time frame, so that the respondent/wife could have made certain alternate arrangements for her shelter and the evil of making her shelterless could have been avoided. Considering these facts and findings and merit in submission of the learned counsel appearing for the appellant, we are of the opinion that indulgence of this Court is warranted in clause 4 of the order dated 09.10.2017 by modifying clause 4 and by directing the petitioner restraining from interfering in the possession of the respondent over his house situated in Hudco, Nanded for a period of six months excepted in accordance with law six months of the date of order of this Court, the appeal is allowed partly and disposed of accordingly.

9. In view of the decision of the appeal preferred by the husband and finding no fault in the other findings of the learned Judge of Family court, we see no reason to interfere in the appeal filed at the instance of

respondent/wife, challenging the very order passed by the learned Judge, Family court. The appeal being devoid of merits deserves to be dismissed and accordingly the appeal is dismissed.

10. In view of the disposal of present Family Court Appeal No.60 of 2017, CA No. 14420 of 2017 does not survive and stands disposed of accordingly.

[S.M.GAVHANE, J.]

[PRASANNA B. VARALE, J.]