

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

WRIT PETITION NO. 14604 OF 2017

KAPIL MAROTIRAO RODE
VERSUS
NEHA KAPIL RODE

...

Advocate for the Petitioner : Shri S. S. Kazi
Advocate for the Respondent : Shri H. B. Pawar h/f.
Shri H. V. Tungar.

**WITH
WRIT PETITION NO. 2104 OF 2018**

NEHA KAPIL RODE
VERSUS
KAPIL MAROTIRAO RODE

...

Advocate for the petitioner : Shri H. B. Pawar h/f.
Shri H. V. Tungar
Advocate for the respondent : Shri S. S. Kazi.

...

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th JULY, 2018.**

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PER COURT :

1. By the order of the learned Administrative Judge of this Bench, both these petitions have been clubbed and placed before this Court.

2. The petitioner- husband in the first petition, is the

respondent in the second petition filed by the wife. As such, both these parties, for the sake of brevity, would be referred to as 'the husband' and 'the wife'.

3. The husband is aggrieved by clause-3 of the order 27/09/2017 passed by the learned Principal Judge, Family Court on application Exhibit 11 in HMP No. A-88/2017. The said order reads as under :-

ORDER

- "(1) *The application is allowed.*
- (2) *The petitioner is directed to pay **Rs.10,000/- per month** to the respondent, towards her interim maintenance which is inclusive of her medical and educational expenses, from the date of the order till the hearing and final disposal of the main petition.*
- (3) *As regards the maintenance from the date of the application i.e. 02/04/2016 till the date of the order, the petitioner is directed to pay to the respondent a lumpsum amount of Rs. 1 Lac within four months from the date of the order.*
- (4) *As regards the litigation expenses, the same will follow cause.*

(5) *No order as to cost of this application".*

4. The husband contends that an exorbitant maintenance has been granted and hence it needs to be reduced, keeping in view that he is an engineer working with the Maharashtra State Electricity Distribution Company Limited. He has several liabilities. His deduction from the salary are to the extent of Rs. 45,000/- and his gross salary is Rs. 76,591/-.

5. The wife has brought up her petition contending that when the salary of the husband is more than Rs. 75,000/- per month, she should be granted atleast 25 % of the salary as maintenance in the light of the judgment of the Honourable Supreme Court in the matter of *Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy, 2017 AIR (SC) 2383*.

6. The learned Advocate for the wife, therefore, submits that undue sympathy has been shown towards the husband while granting the interim maintenance.

7. I have considered the strenuous submissions of both the

parties and have gone through the salary slip of the husband for the month of July- 2018 in the light of the law laid down by the Honourable Apex Court.

8. There is no dispute in so far as the gross salary of the husband is concerned. The statutory deductions and the deductions on account of certain loans and advances taken by the husband are about Rs. 32,409/- which are deducted from the gross salary of Rs. 76,591/-. As such, his net earnings are Rs. 44,182/- per month. The wife submits that her mother-in-law earns Rs. 15,000/- per month as pension.

9. The learned Advocate for the husband submitted that out of Rs. 44,182/-, further deduction of Rs. 13,000/- is carried out on account of housing loan.

10. It cannot be ignored that the wife is rendered a destitute and the husband seeks to create certain liabilities by way of immovable properties and for which certain amounts are deducted from his salary. This cannot be a ground for depriving the wife of reasonable maintenance on the basis of

certain liabilities created by the husband. The Family Court has granted interim maintenance @ Rs. 10,000/- per month from 02/04/2016, which is the date of the application filed by the wife. I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause gross injustice to either of the parties.

11. The learned Advocate for the husband strenuously submits that Clause 3 of the impugned order be set aside and the same maintenance granted in Clause-2 may be made applicable from the date of the application.

12. The learned Advocate for the wife does not oppose.

13. As such, the direction to pay a lumpsum Rs. 1,00,000/- from the date of application till the date of order, at the request of the husband, is modified and shall be replaced by a direction to pay Rs. 10,000/- for each month from the date of the application till the date of the order. The said amount shall be paid by the husband to the wife within 8 weeks from today, failing which his defence would be struck off in the pending

litigation before the Family Court.

14. In the light of the above, both these petitions are partly allowed and the impugned order is modified as above.

(RAVINDRA V. GHUGE, J.)

shp/-