

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****Writ Petition NO. 12953 OF 2016**

Mr. Manoj T.C. Varma

...Petitioner

*Versus*

Mrs. Renuka Manoj Varma

...Respondent

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Mr.Rajesh Singh, for the Petitioner.

Mrs.Renuka M.Varma, Respondent-in person present.

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***CORAM : G.S.KULKARNI, J.******DATE : 17<sup>th</sup> JANUARY, 2018*****P.C. :**

1. Heard learned Counsel for the petitioner and Mrs.Renuka Manoj Varma-respondent in person. The challenge in the present petition is to the order dated 4 March 2015 passed by the learned Principal District Judge, Thane, wherein the cross appeals of the parties came to be disposed of in the following terms:-

“1. The appeal and cross appeal is hereby allowed partly.

2. The order of the Lower Court directing the respondent to resume the society of the petitioner i.e. restitution of conjugal rights, is hereby set aside.

3. The respondent is directed to pay the monthly maintenance of Rs.15,000/- to the petitioner and Rs.10,000/- each to both children i.e. totaling Rs.35,000/- till they attain the age of 19 years for their maintenance,

from the date of application i.e. 26/05/2003.

4. Decree be drawn accordingly.
5. No order as to costs.
6. R & P be sent back to the concerned court.”

2. The order which was challenged in the cross appeals was an order passed by the learned 5<sup>th</sup> Joint Civil Judge, Senior Division, Thane, dated 2 January 2010 whereby the petition for restitution of conjugal rights and for permanent maintenance as filed by the respondent was allowed in the following terms:-

- “1. The petitioner is hereby allowed.
2. The respondent is directed to resume the society of the Petitioner within two months from date of this order. Failing which shall pay to the Petitioner an amount of Rs.15,000/- (Rupees Fifteen Thousand only) per month till the order is obeyed.
3. The respondent shall also pay an amount of Rs.10,000/- (Rupees Ten Thousand only) per month to the Petitioner for maintenance of their minor child from the date of this order until he attains majority.
4. Decree be drawn up accordingly.”

3. The grievance of the petitioner is in regard to the directions of the learned Principal District Judge in the impugned order whereby the learned Principal District Judge has modified the order dated 2 January 2010 passed by the learned Joint Civil Judge, Senior Division, in regard to monthly maintenance to be awarded at an

amount of Rs.10,000/- each to both the children “*till they attain the age of 19 years...*”. Learned Counsel for the petitioner submits that such a modification in regard to elder son Vikram was not acceptable and appropriate inasmuch as the elder son Vikram had attained majority in October,2008 and the younger son Aditya attained majority on completion of 18 years of age on 28 September 2012. It is submitted that the age of 19 years as referred in paragraph 3 of the operative order passed by the learned Principal District Judge does not take into consideration the provisions of Section 3 of the Indian Majority Act,1875 as sub-section (1) of Section 3 of the Act provides that '*Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.*', and sub-section (2) provides that '*In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.*'

4. The respondent in person did not dispute the above legal position and would concede that son Aditya would be entitled for the maintenance till he attains the age of majority till his 18 years of age which he completed on 28 September 2012. IN view of the respondent

agreeing to the above factual and legal position, the grievance of the petitioner as raised in the petition would not survive.

5. By an order dated 16 August 2017 this Court had directed the petitioner to deposit in the trial Court, the entire arrears as directed by the trial Court. Learned Counsel for the petitioner states that the said order passed by this Court has been complied and the amount has been deposited with the trial Court. The respondent today prays that she be permitted to withdraw this amount. The petitioner also has no objection. The respondent is accordingly permitted to withdraw the amount so deposited by the petitioner being arrears of maintenance.

6. If there are any execution proceedings pending as taken out on behalf of the respondent to execute any earlier orders by which maintenance was awarded to the respondent-wife, those proceedings shall remain uninfluenced by the present order and all contentions of the parties in that regard are expressly kept open.

7. Needless to observe that the parties are now bound by the order dated 2 January 2010 passed by the 5<sup>th</sup> Joint Civil Judge, Senior Division, Thane, in regard to the directions to pay maintenance as

contained in clause (3) of the said order.

8. The petition in the circumstances would not warrant any further adjudication. It is disposed of in the above terms. No costs.

*(G.S.KULKARNI, J.)*