

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION 59 OF 2018

IN

FAMILY COURT APPEAL NO. 40 OF 2018

Mr. Prashant G. Rane ..Applicant

Vs.

Mrs Purva P. Rane @ N.A. Kadam and Another ..Respondents

Mr. Surel S. Shah a/w Ms. Neeta Solanki i/b Kiran Jain and Co, for the Applicant.

Mr. H. P. Vyas, for Respondent Nos. 1 and 2.

CORAM:-K. K. TATED & B. P. COLABAWALLA,JJ.
DATE :-AUGUST 7, 2018.

P. C.:

Heard. By this Civil Application, the Applicant husband is seeking a stay of operation and implementation of the impugned judgment and decree dated 27th December, 2017 passed by the Family Court in Petition No. C-124 of 2013.

2 In the present proceeding, the Respondent wife had filed Petition for maintenance under Section 18 (1) (2) (a) of the Hindu

Adoption and Maintenance Act, 1956. In that Petition, by the impugned judgment and decree dated 27th December, 2017 the Family Court directed the Appellant to pay a sum of Rs. 15,000/- per month as maintenance to his daughter from the date of the decree till her marriage. The Family Court has also directed the Applicant husband to make separate provision for accommodation of the Respondent wife and her daughter, else pay an amount of Rs. 10,000/- per month towards rent to the Respondent wife from the date of the decree. The Family Court has also directed the Applicant to return all the ornaments as per the list placed on record by the Respondent. That list reads thus:-

“List of Gold Jewellery, documents, articles lying with the Respondent:-

- 1. Gold Mangalsutra weighing about 45 grams.*
- 2. Gold Chain weighing about 8.9 grams.*
- 3. Gold Bracelet weighing about 6 grams.*
- 4. Educational Certificates.*
- 5. Cloths.”*

3 The learned counsel for the Applicant submits that the Family Court has erred in coming to the conclusion that the Respondent is entitled to a sum of Rs. 15,000/- per month for maintenance of minor daughter. He further submits that the Family Court has also erred in coming to the conclusion that the Respondent is entitled to a sum of

Rs. 10,000/- towards rental compensation. He submits that there is no dispute that the Applicant already returned all ornaments to the Respondent wife. To that effect, he is relying on an affidavit in lieu of examination in chief of applicant and particularly paragraph 13. He further submits that even brother of the Respondent admitted in his evidence that they have already received all gold ornaments. But in spite of this the Family Court directed the Applicant to return those gold ornaments.

4 The learned counsel for the Applicant submits that as on today the net salary of the Applicant is not more than Rs. 43,000/- p. m. In that he has to maintain his old parents and also to bear their medical expenses. Therefore it is impossible for him to pay a sum of Rs. 25,000/- p.m. to the Respondent as awarded by the Family Court. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and decree of the trial court till the hearing and final disposal of the present Family Court Appeal. He submits that if stay is not granted, irreparable loss may be caused to the Applicant. The Applicant has good chances of success in the present proceedings.

5 On the other hand, the learned counsel appearing on behalf of the Respondent opposed for grant of stay. He submits that as on today the age of the child is 9 years and she is taking education at Mumbai which costs her Rs. 10,000 to 15,000/- p. m. Apart from the educational expenses, the wife has to bear all other expenses including medical and day to day maintenance etc. Therefore there is no question of stay to the impugned judgment and decree passed by the trial Court. He further submits that as on today, she do not having accommodation in Mumbai to stay independently. He submits that today she is staying with her parent. Therefore, in any case, she has to contribute something there also. There is no question of staying the maintenance allowance of Rs. 10,000/- per month as a rental compensation.

6 The learned counsel for the Respondent submits that admittedly in the present proceeding the Applicant has not placed on record any documentary proof to show that he has returned her Stridhan as stated in petition at page 74. He submits that the Respondent has stated in her petition that the golden Mangalsutra as well as the gold chain and bracelet belonging to her daughter- Aarna is in the custody of the Respondent only. To that effect, she is relying on paragraph 38 of her petition.

7 On the basis of these submissions, the learned counsel for the Respondent submits that there is no question of granting any stay. She further placed on record documentary evidence issued by “Sulzer” where the Applicant is working to show that his total income for the assessment year 2018-2019 is Rs. 9,99,421/-. On the basis of this submission, the learned counsel for the Respondent submits that there is no question of granting any stay in the present Civil Application.

8 We have heard the learned counsel for the parties at length. It is to be noted that in the present proceeding, the Family Court has granted maintenance in favour of the Respondent. The Family Court has directed the Applicant to pay Rs. 15,000/- p.m. towards minor child who is taking education and presently her age is near about 9 years.

9 We do not find any reason to stay the order passed by the Family Court. Apart from that Rs. 10,000/- awarded by the Family Court in favour of the Respondent is reasonable. It ought to have been granted more in Mumbai, to acquire the accommodation, if any. The question of ornaments is concerned, the Court has suggested the learned counsel for the Applicant that if he is ready and willing to deposit Rs.

1,50,000/- towards costs of ornament and that is to be remained in Fixed Deposit till the hearing and final disposal of the Appeal. The learned counsel, after taking instructions from his client states that it is not possible for him to do so. Therefore, there is no question of staying that part of the impugned order also.

10 In view of above we do not find any substance in the Civil Application. Same stands rejected with costs.

11 At this stage, the learned counsel for the Respondent wife submits that as on today sum of Rs. 1,20,000/- is due and payable by the Applicant towards maintenance awarded by the Family Court.

12 Considering this fact, the Applicant is directed to pay the arrears of maintenance charges within two weeks from today, failing which this Court shall take action under Order 39 Rule 11 of the Code of Civil Procedure, 1908.

Civil Application stands rejected.

(B. P. COLABAWALLA, J.)

(K. K. TATED, J.)