

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

**CIVIL APPLICATION NO.67 OF 2017
IN
FAMILY COURT APPEAL NO.146 OF 2017**

Kum.Mayuri Rajkumar Katakdhond and Ors.
-Minor-Through Guardian (Mother)
Sou. Vidya Rajkumar Katakdhond .. Applicants

V/s.

Shri Rajkumar Narsinha Katakdhond .. Respondent

Mr.R.D.Soni i/b Mr.VR.Kasle for the applicants

Mr.Avinash M. Reddy for the respondent

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : JUNE 19, 2018

P.C. :

- 1 Heard the learned counsel for the parties.
- 2 This Civil Application is preferred by children against their father for the maintenance charges @ Rs.32,000/- per month each.
- 3 In the present proceeding, the respondent filed Petition No.A-425 of 2012 (Old HMP No.160 of 2012) in the Family Court at Solapur

under section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 against his wife for divorce on the ground of cruelty and also desertion.

4 The applicants / children also filed the Petition No.C-02/2012 (Old Special Civil Suit No.113 of 2010) against their father under section 20 of the Hindu Adoption and Maintenance Act, 1956 for maintenance @ Rs.32,000/- per month for each applicant. The Family Court, Solapur by its common judgment and decree dated 04.10.2016 dismissed the respondent father's petition for divorce and partly allowed the applicants' petition for maintenance under section 20 of the Hindu Adoption and Maintenance Act, 1956. The Family Court directed the Respondent father to pay sum of Rs.8,000/- per month to each child (Total Rs.24,000/-) towards the maintenance from the date of judgment. Being aggrieved by the judgment and decree dated 04.10.2016 passed by the Family Court, applicants preferred the present Family Court Appeal No.146 of 2017 for enhancement of maintenance charges.

5 During the pendency of the said Family Court Appeal, the applicants preferred the present Civil Application for a direction against the Respondent to pay a sum of Rs.32,000/- per month to each applicant as maintenance. It is the case of the applicants that it is very difficult for their mother to bear their day to day expenses and also education expenses.

6 It is the case of the applicants that applicant no.1 Mayuri Rajkumar Katakdhond aged 18 years, passed her 12th Standard

Examination in February, 2017. Now she is preparing for NEET Medical Entrance Examination in Akash Institute, Pune. It is their case that for her education expenses including other expenses her mother requires more than Rs.38,970/- per month as under:

Sr.No.	Particulars	Monthly Amount	Yearly Amount
1	NEET Education Fees	12,470/-	1,49,600/-
2	Mess Fees	10,000/-	1,20,000/-
3	Travelling Fees	2,500/-	30,000/-
4	NEET Test Series Fees	3,000/-	36,000/-
5	Educational Note Books & Text Books	5,500/-	66,000/-
6	11 th College Fees	2,500/-	30,000/-
7	Medical	1,000/-	12,000/-
8	Other Miscellaneous Expenses	2,000/-	24,000/-
	Total	38,970/-	Rs.4,67,600/-

7 Applicant no.2 Vishal Rajkumar Katakdhond, aged 15 years appeared in 11th Standard, is also preparing for NEET Medical / IIT-JEE/Foundation for the Academic year from April 2018 to June 2020 in Akash Institute, Pune for two years. His education expenses are as under:

Sr.No.	Particulars	Monthly Amount	Yearly Amount
1	Education Fees	12,175/-	1,46,100/-
2	Mess Fees	10,000/-	1,20,000/-
3	Travelling Fees	2,500/-	30,000/-

4	<i>NEET/IIT-JEE/Test Series Fees</i>	<i>3,000/-</i>	<i>36,000/-</i>
5	<i>Educational Note Books & Text Books</i>	<i>5,500/-</i>	<i>66,000/-</i>
6	<i>Medical</i>	<i>1,000/-</i>	<i>12,000/-</i>
8	<i>Other Miscellaneous Expenses</i>	<i>2,000/-</i>	<i>24,000/-</i>
	Total	36,175/-	Rs.4,35,100/-

8 Applicant no.3 Vikram Rajkumar Katakdhond aged 14 years is studying in 10th Standard English Medium School and he is preparing for 10th and also for CLAT Entrance Exam of Pune Academy. His education expenses are as under:

Sr.No.	Particulars	Monthly Amount	Yearly Amount
1	Education Fees	3,400/-	40,800/-
2	School Mess Fees	1,500/-	18,000/-
3	School Bus Fees	1,500/-	18,000/-
4	Tution Fee all Subject	8,000/-	96,000/-
5	Educational Note Books	1,500/-	18,000/-
6	Medical Expenses	4,000/-	48,000/-
7	Cloth	1,500/-	18,000/-
8	Birthday	-	6,000/-
9	Personality Development Course	2,000/-	24,000/-
10	Swimming	1,000/-	12,000/-
11	Gym	1,500/-	18,000/-
12	Football	1,000/-	12,000/-
13	Computer & Typing	3,000/-	36,000/-
14	Educational Text Books	2,000/-	24,000/-
15	Handwriting	1,000/-	12,000/-

	Marathi/English/Cursive		
16	Other Miscellaneous Expenses	2,000/-	24,000/-
	Total	34,900/-	Rs.4,24,800/-

9 It is the case of the applicants' mother that though she is an Advocate, it is not possible for her to bear the entire expenses of these three children. She submits that her monthly income is not more than Rs.25,000/- to Rs.30,000/- per month. She submits that as per IT Assessment, her income is to the extent of Rs.2,25,000/- to Rs.2,50,000/- per year only. She further submits that on the other hand, respondent is a Professor. She submits that as per salary certificate his total income for the month of September, 2017 was Rs.1,70,869/-, October, 2017 Rs.1,73,518/- and November, 2017 Rs.1,70,869/-. She submits that apart from this salary income, Respondent is holding agricultural land and also doing other business. He does not have any other responsibility. She submits that at present, each applicant is getting only Rs.8,000/- per month by way of maintenance charges. She submits that apart from education expenses, she has to look after day to day needs of all these applicants. Therefore, in the interest of Justice, this court during the pendency of the present Family Court Appeal be pleased to direct the Respondent to pay a sum of Rs.32,000/- per month to each applicant by way of maintenance charges .

10 The learned counsel for the applicants submits that in the present proceeding, though the Family Court by judgment dated 4.10.2016 directed the respondent to pay sum of Rs.8,000/- per month to each child towards maintenance but same was from the date of order i.e.

4.10.2016. He submits that the Family Court has not given any reason, why maintenance should not be granted from the date of filing of petition under section 20 of the Hindu Adoption and Maintenance Act, 1956. He submits that this court be pleased to direct the Respondent to pay the maintenance charges from the date of filing of petition before the Family Court.

11 The learned counsel for the applicants submits that if the present Civil Application is not allowed, irreparable loss will be caused to the applicants. It will be very difficult for the applicants' mother to maintain and give proper education to all of them. Therefore, in the interest of Justice, this Hon'ble Court be pleased to direct the Respondent father to pay sum of Rs.32,000/- per month to each child by way of maintenance from the date of filing of original petition with family court till the hearing and final disposal of the present Family Court Appeal.

12 On the other hand, the learned counsel for the respondent father vehemently opposed the present Civil Application. He filed affidavit-in-reply dated 06.04.2018. He further submits that they also preferred Family Court Appeal No.42 of 2017 before this court challenging the judgment and decree dated 4.10.2016 passed by Family Court, Kolhapur under section 20 of the Hindu Adoption and Maintenance Act, 1956 directing him to pay sum of Rs.8,000/- per month to each applicant. He submits that at the time of passing the impugned judgment, the Family Court failed to consider the fact that the respondent has to look after his mother as well as her daughter from

first marriage. He submits that respondent's mother is not keeping well. She also requires medical treatment. Apart from that, the respondent's daughter from his first marriage is also taking education at Mumbai. She is studying for entrance of M.D. exam. He submits that the Respondent has to spend near about Rs.15,000/- per month apart from other expenses. He submits that it is very difficult for him to maintain his mother as well as daughter in the meagre salary which he is getting.

13 The learned counsel for the respondent submits that each month respondent is spending his salary as under:

Sr.No.	Particular of expenses	Amount
1	Medical expenses of my father who is Heart patient and also he is skin diseased Patient	6,000/-
2	Medical expenses of my mother who is suffering from paralysis and is air bed Patient	10,000/-
3	Medical expenses for myself because of I am suffering from skin allergy and skin diseases and stomach problem and bronchitis	5,000/-
4	Education expenses of my first wife's daughter Reshma who resides at Mumbai and is studying for M.D. Entrance Exam and admission	15,000/-
5	House maintenance	5,000/-
6	Car loan E.M.I.	7,000/-
7	Tata Insurance premium	4,000/-
8	Max New York Life Insurance Premium	2,000/-
9	LIC premium of applicant Mayuri	214/-
10	Personal provident fund in post	4,000/-
11	House expenses as like grocery, vegetable, cloths, milk, paper bill, servant salary	25,000/-
12	Light bill	1,500/-

	Total Rs.	84,714/-
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14 The learned counsel for the respondent submits that as on today his saving is only Rs.8,000/- to Rs.10,000/- per month. Therefore, it is impossible for him even to pay sum of Rs.8,000/- per month to each of the applicant by way of maintenance as per the order passed by the Family Court.

15 The learned counsel for the respondent submits that applicants' mother i.e. his wife is an Advocate having practice of 15 years. She is practicing as an Advocate in Solapur district and in addition she is a Public Notary. She is earning more than Rs.30,000/- per month from advocate's profession and Rs.15,000/- to Rs.20,000/- from Notary profession. Apart from that, the applicants' mother is also working as a legal consultant of various insurance companies, from which, she is getting near about Rs.60,000/- per month. In support of all these submissions, the learned counsel for the respondent relies on paragraph 11 of his affidavit-in-reply which reads thus:

“11. I say that, on the other hand the applicants mother is advocate and since last 15 years and she is practicing as advocate in Solapur District court and in addition she is a Public Notary. She is earning more than Rs.30,000/- per month from advocate profession and Rs.15,000/- 20,000/- from Notary profession. Not even this is working as legal consultant of various Insurance companies and from the said consultancy she gets near about Rs.60,000/- per month from the said profession. Therefore, she is having sufficient income to maintain children. However, she does not spent any single pai for family. On the contrary, she was spending the amount for enjoyment. However, my parents and first wife's daughter is

solely dependent on me. I am maintaining them. I have given detail chart of monthly expenses from my net salary in above said paragraph.”

16 The learned counsel for the Respondent submits that it is crystal clear from the above mentioned facts that as on today, Respondent's saving per month is not more than Rs.5,000/- to Rs.8,000/- per month and therefore, there is not question of awarding enhanced maintenance to the applicants. He submits that considering the income of applicants' mother, there is no question of allowing the present Civil Application at all. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

17 We have heard both the sides at length.

18 It is to be noted that as on today, the respondent is getting more than Rs.1,25,000/- per month as net salary after standard deduction including Provident Fund, Income Tax etc. Respondent has to maintain only his mother as well as daughter from first wife, whereas on the other hand applicant no.1 is preparing for NEET medical examination. Applicant No.2 is appearing for 11th standard and applicant no.3 appearing for 10th standard exam. As per applicants' mother's Income Tax return which are on record, shows that total income for Assessment Year 2013-14 as Rs.1,99,760/- and for the Assessment Year 2014-15 as Rs.2,40,660/-. This itself shows that it will not be possible for the applicants' mother to bear entire expenses of all these three applicants, whereas on the other hand, respondent is getting net salary of more than Rs.1,25,000/- per month. Out of that, he has to look after his

mother and daughter from first wife. It is the case of the respondent himself that he is spending minimum Rs.15,000/- per month on his daughter from first wife who is taking education at Mumbai. Therefore, considering the income source of applicants' mother and applicants' father and that respondent is spending more than Rs.15,000/- per month on his first wife's daughter, we are of the opinion that during the pendency of the present Family Court Appeal, respondent must pay the same amount as he is spending on his first wife's daughter i.e. Rs.15,000/- per month.

19 It is to be noted that present Civil Application is filed by the applicants on 15.2.2017 claiming maintenance of Rs.32,000/- per month for each applicant. By this application, applicants are also seeking other reliefs i.e. maintenance be granted from the date of desertion from 03/06/2007 till the date of filing of the petition on 12/04/2010. Liberty to the applicants if they so desire to take out separate application for the other reliefs. Civil Application is disposed of with following order:

- a) Respondent is directed to pay sum of Rs.15,000/- per month to each applicant on or before 10th of each month from the date of present Civil Application i.e. from the month of March 2017.
- b) Arrears after adjusting amount already paid, be cleared within six months by equal instalment from the month of July, 2018.
- c) Respondent to pay maintenance @ Rs.15,000/- per month to

each applicant on or before 10th of each month i.e. first payment be made on or before 10.07.2018.

d) Liberty granted to the applicants if they so desire to prefer appropriate application for remaining reliefs and that application will be decided on its own merits.

e) Civil Application stands disposed of accordingly with cost of Rs.7,500/-.

f) Cost to be deposited in the Registry of this court and or paid to the applicants within four weeks from today.

g) If cost is deposited in the Registry of this court, applicants are permitted to withdraw the same without furnishing any security.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)