

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.185 OF 2013  
IN  
FAMILY COURT APPEAL NO.123/2013

Ritu Joseph Philip

... Applicant

V/s.

Col. Joseph Philip

... Respondent

Mrs. Ritu J. Philip for the Applicant

Mr. H. P. Vyas for the Respondent

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

**DATED : JUNE 22, 2018**

**P.C. :**

1 This Civil Application has been filed by the Appellant wife,  
party appearing in person for the following reliefs:

*“(a) Rule be issued and record and proceedings be called for,*

*(b) The Respondent husband be directed to deposit the arrears of maintenance amounting to Rs.6,58,660/- (Rupees six lakhs fifty in this Hon'ble Court and the Applicant may be given the liberty to withdraw the same in the alternative.*

*(c) This Hon'ble Court may be pleased to pass the necessary orders directing that the salary of the Respondent husband may be attached by the CDA and the Applicant may be paid the arrears of maintenance from the Respondent's salary directly by the concerned authorities.*

*(d) The Respondent husband may be directed to deposit and amount of Rs.8,67,000/- (Rupees eight lakhs sixty seven thousand only) which has been taken by him as HRA on the flat standing in the name of the Applicant and the said amount may be given to the Applicant herein.*

*(e) Pending the hearing and final disposal of the present Application as well as the Family Court Appeal (ST) No.30527, the Respondent be directed to continue to pay to the Applicant the maintenance at the rate of Rs.50,000/- per month.*

*(f) Ad interim reliefs in terms of prayer clause (b), (d), (e) above be granted.*

*(g) Costs of the Application be awarded.”*

2 As far as prayer clause (b) is concerned, the party in person has fairly stated before us that the amounts mentioned in prayer clause (b) have already been received by her. We accept her statement.

3 As far as prayer clause (c) is concerned, we find that the same is in the alternative to prayer clause (b). Considering the fact that she has already received the amounts mentioned in prayer clause (b), nothing survives in prayer clause (c).

4 As far as prayer clause (e) is concerned, we find that the order of the Family Court dated 21<sup>th</sup> June 2012 had granted maintenance to the Appellant wife @ Rs.50,000/- pm from the

date of the order.

5 Being aggrieved by this order, the Respondent husband had filed a separate appeal being Family Court Appeal No.120 of 2012. That was finally decided by the Division Bench of this court vide its order dated 9<sup>th</sup> October 2014 and the maintenance granted to the Appellant wife was reduced from Rs.50,000/- pm to Rs.20,000/- pm. This order of the Division Bench in the Family Court Appeal No.120 of 2012 has not been challenged by the Appellant wife and has, therefore, attained finality. This being the case, even prayer clause (e) would not survive.

6 This, now only leaves us with prayer clause (d) of the Civil Application.

7 It is the contention of the Appellant wife that the Respondent husband be directed to deposit a sum of Rs.8,67,000/-, which according to her had been given to him by way of House Rent Allowance (HRA) on a misrepresentation made by the Respondent husband to the Army Authorities. She further submits that, the fact that the Respondent husband has availed of the HRA from the Army Authorities, would itself go to show that the Appellant wife had not deserted the Respondent

husband.

8 As far as the amount of Rs.8,67,000/- is concerned, we fail to see as to how this amount can be claimed by the Appellant wife. If for any reason, there has been any misrepresentation done or made by the Respondent husband to the Army Authorities on the basis of which he has gained this amount, it is for the Army Authorities to recover the same from the Respondent husband. To our mind, the Appellant wife cannot claim this amount merely on the strength that he had misrepresented to the Army Authorities that he was still married to the Appellant wife, when in fact, he had filed a petition for divorce on the ground of desertion.

9 We, however, make it clear that the second argument of the Appellant wife viz; that the fact that the husband had obtained HRA from the Army Authorities itself would go to show that she had not deserted him, is an issue, that is expressly kept open for the Appellant wife to canvass when this appeal is finally heard. In this regard, if she requires to put any additional documents on record, she is at liberty to do so by filing an appropriate Application in that regard.

10 In these circumstances, the Civil Application is disposed of in view of the discussion earlier.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)