

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

**CIVIL APPLICATION NO.144 OF 2017
IN
FAMILY COURT APPEAL NO.95 OF 2017**

Nikita Ashok Jain ... Applicant

V/s.

Ashok Mangilal Jain ... Respondent

Mr.Ranveer Shekhawat i/b M/s.Raj Legal for the applicant

Mr.Rohan Cama with Mr.Kiran Jain and Ms.Neeta Solanki i/b M/s.Kiran Jain and Co. for the respondent

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

DATED : APRIL 4, 2018

P.C. :

1 Heard.

2 By this Civil Application, applicant original petitioner is seeking direction against the respondent husband to pay the amount of Rs.75,000/- per month to the applicant towards maintenance and separate residence.

3 In the present proceeding, the applicant wife filed petition C-85 of 2013 before the Family Court at Bandra, Mumbai for her maintenance under section 18 of the Hindu Adoption and Maintenance

Act, 1956 (hereinafter referred to as 'the said Act') for Rs.3,00,000/- per month. That Petition was vehemently opposed by the Respondent. In that petition, applicant preferred interim application. In that interim application, the Family Court by order dated 08.07.2015 directed Respondent husband to pay interim maintenance of Rs.25,000/- per month w.e.f. 15.02.2014 till the disposal of the application under section 18 of the said Act.

4 Being aggrieved by the order dated 08.07.2015, respondent husband preferred Writ Petition No.8663 of 2015 before this court. This court by its order dated 20.08.2016 reduced the amount of Rs.25,000/- per month to Rs.15,000/- per month. Thereafter the Family Court, Mumbai by its impugned order dated 20.02.2017 held that the applicant is entitled maintenance @ Rs.18,000/- per month from the date of judgment. Hence, the applicant preferred the present Family Court Appeal No.95 of 2017.

5 The respondent husband also preferred Family Court Appeal No.65 of 2017 challenging the same judgment and decree dated 20.02.2017 passed by the Family Court under section 18 of the said Act for reduction of the maintenance charges.

6 The learned counsel for the applicant wife submits that Family Court erred in coming to the conclusion that applicant is entitled maintenance charges @ Rs.15,000/- per month only. He submits that, the Family Court ought to have granted maintenance charges from the date of presentation of petition i.e. 22.07.2013 instead of from the date

of judgment. He submits that applicant do not have any source of income. Not only that, she has to take care of her minor son namely Aditya from her first marriage.

7 The learned counsel for the applicant submits that respondent is running the business of import and sale of lace, accessories of garments and he is having huge income to the extent of Rs.10 to 12 crores per annum from the said business and other investment. He submits that the applicant brought on record the true facts of the respondent's income. He submits that applicant brought on record the investment made by the respondent in several properties. Not only that, the respondent is paying Rs.7,47,914/- of L.I.C. Of India towards single L.I.C. Policy. The respondent is also holding policy worth Rs.20.0 lakhs and annual premium of the said policy is Rs.80,000 to Rs.90,000/- per month. The respondent is having PPF account. In support of this contention, the learned counsel for the applicant relies on the paragraphs 31 and 32 of the impugned judgment which reads thus:

“31. It revealed from the argument of the respondent that he is earning Rs.5000/- to Rs.6000/- from his job. According to the respondent presently he is doing job and earning above amount. Prior to March 2012 he was running business by name A.R. Lace House, situated at 38/42, Sippy Chawl, First Floor, Mumbai-2. He has closed down his business in the month of March 2012. Presuming that the respondent has closed his business in the month of March 2012 and if he is doing job and earning Rs.5000/- to 6000/- per month, then how he is repaying, transferring huge amount. It appears from the bank statement of respondent below Exh.50, before Standard Chartered Bank, bearing account No.23510060115 that he has transferred Rs.1,70,000/- on 1-3-2013, from A.R.Lace House to his own account stated above. On 13-3-

2013 he has issued cheque of Rs.4,00,000/- in favour of his mother, bearing cheque No.452173, said cheque was encashed. The respondent has transferred an amount of Rs.32,50,000/- from his above account to the account of Hindu Undivided Family Account on 12-12-2012 and an amount of Rs.10,47,219/- was deposited in his account on 8-12-2012. He is not remembering who has issued the cheque of above amount. Safal Jain is wife of his younger brother and Rekha Jain is his sister. He has given an amount of Rs.10,00,000/- to Rekha Jain and an amount of Rs.25,00,000/- to Safal Jain by way of fund transfer. The respondent is holding undivided Hindu Family account. Each member of the family is holding (Karta) separate Hindu Undivided Family account. The Hindu Undivided Family of each Karta is having separate account and they are filing separate income tax return. The respondent is holding separate account of HUF. He is holding policy of worth Rs.20,00,000/- and annual premium of said policy is Rs.80,000/- to Rs.90,000/-. He is paying above premium since last 8-9 years. The respondent has paid an amount of Rs.7,47,914/- to LIC of India on 3-8-2009 towards single payment premium of LIC Policy. He is having postal investments. Till end of 2014 he was having investment in post of Rs.9,00,000/- and he has receiving interest of Rs.72,000/- per annum. He has received final amount of Rs.9,00,000/- from Post Office. On 21-8-2009 and 24-8-2009 he has paid two premiums towards LIC of India.

32. The respondent is holding account before Union Bank of India. Said account statement is below Exh.52. The respondent has given an amount of Rs.75,045/- to a customer on 31-7-2013 but he do not remember for what purpose he has given said amount. It appears from the above statement of respondent below Exh.52 that there is entry of Rs.5000/- per month auto swipe, said entries are related to the fixed deposit amount as per the direction of respondent. The respondent has no National Saving Certificate but his income tax returns of the year 2014-15 shows that he was receiving interest from NSC. The NSC amount is approximately Rs.60,000/- to Rs.70,000/-. The respondent has received LIC maturity amount of Rs.7,79,075/- in the year 2014-15. The respondent is having

PPF account and PPF interest is near about Rs.40,334/-. His PPF account is pending before Central Bank of India. The respondent is holding single premium policy, which provides him Rs.1,50,000/- after every three years. Said policy was drawn in the year 2010. Total sum amount was assured of Rs.7,50,000/- by way of single premium policy.”

8 The learned counsel for the applicant submits that considering the income of the Respondent, the family court ought to have directed to pay sum of Rs.3.0 lacs per month towards maintenance. He submits that as the applicant do not have any source of income and not only that she has to look after her son, this Hon'ble Court pending the hearing and final disposal of the present First Appeal, direct the Respondent to pay sum of Rs.75,000/- per month to the applicant towards the maintenance charges. He submits that the applicant have to maintain her minor son and therefore, applicant is entitled additional maintenance charges during the pendency of the present Family Court Appeal. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***Jasbir Kaur Sehgal (Smt.) vs. District Judge, Dehradun and Others, (1997) 7 SCC 7.***

9 On the basis of these submissions, the learned counsel for the applicant submits that this Hon'ble Court be pleased to allow the present Civil Application. He submits that if Civil Application is not allowed, irreparable loss will be caused to the applicant.

10 On the other hand, the learned counsel for the respondent husband vehemently opposed the present Civil Application. Respondent filed their affidavit in reply dated 10.08.2017. The learned counsel for

the respondent husband submits that Civil Application preferred by Applicant is liable to be dismissed only on the ground of suppression of facts. He submits that present application is filed by the applicant for enhancement of maintenance charges on the ground that she does not have any source of income. He submits that applicant made incorrect statement on solemn affirmation in the present Civil Application. He submits that applicant is a Diploma Holder in Home Science Fashion Designing. She is running a business of preparation of cakes in the name of 'Bake House'. In support of this contention, he relies on photo and other material obtained by them from Net which is from page 290 to 301 in Family Court Appeal No.65 of 2017. He submits that from truecaller they learnt that applicant is also running Nikita Restaurants and Cares Bakery. In support of this contention, he relies on print out taken by them from truecaller which is on page 300 of Family Court Appeal No.65 of 2017.

11 The learned counsel for the respondent submits that inspite of having business and source of income, applicant made incorrect statement on solemn affirmation before this court and hence, application preferred by her is required to be dismissed with costs on this ground only.

12 The learned counsel for the respondent submits that in any case, applicant is not entitled to claim any maintenance from the respondent to maintain her minor son because as per judgment dated 25.9.2009 passed by the Family Court, Mumbai at Bandra in Petition F-467 of 2009 between applicant and her ex-husband. Applicants ex-husband

agreed to maintain the minor son Aditya. In support of this contention, he relies on paragraph 4 of the said order which reads thus:

“4. As agreed between them, the permanent custody of her minor son Aditya shall remain with the petitioner No.1 mother and they have made necessary arrangements for the education and maintenance of the minor son-Aditya. The petitioner No.1 has waived the right of maintenance for herself for past, present and future against the petitioner No.2. Both the petitioners agreed and declared that they do not have any claim of whatsoever nature against each other in future. There is no exchanges pending between them. The petition has been presented on 25.03.2009. The statutory period of six months has been elapsed since the date of presentation of the petition. There are absolutely no chances of reconciliation between them. I confirmed this fact from the parties as well as from the report of Marriage Counsellor.”

13 The learned counsel for the respondent further submits that applicant is not entitled to claim enhanced maintenance charges by filing the present Civil application on the ground that she has to maintain her minor son also. He submits that as per section 21 and 22 of the Hindu Adoption and Maintenance Act, 1956 respondent is not liable to pay any maintenance charges towards the minor son from first marriage of the applicant. On this ground also application preferred by the applicant is required to be dismissed with costs.

14 The learned counsel for the respondent further submits that the respondent also preferred Family Court Appeal No.65 of 2017 challenging the impugned judgment and decree passed by the Family Court awarding maintenance @ Rs.18,000/- per month to the

applicant. He submits that respondent also preferred Civil Application No.75 of 2017 for stay of the said order. Therefore, there is no question of entertaining the present Civil Application.

15 We have heard both the sides at length. Admittedly, in the present proceeding, applicant wife filed petition C-85 of 2013 before Family Court at Bandra, Mumbai under section 18 of the Hindu Adoption and Maintenance Act, 1956 claiming maintenance @ Rs.3,00,000/- per month. The Family Court by its impugned judgment and decree dated 20.02.2017 partly allowed the applicants petition and directed respondent to pay maintenance @ Rs.18,000/- per month to the applicant from the date of judgment.

16 Prayers made in the Civil Application are in the nature of partly allowing appeal itself, which is not permitted at all. Apart from that, the applicant is not entitled to claim any additional maintenance on the ground that she has to look after her minor son because applicant's ex-husband already taken the responsibility of the minor son for maintenance and same is recorded in judgment dated 25.09.2009 in Petition F-467 of 2009. Apart from that, applicant is Diploma Holder in Home Science and Fashion Designing. She is also doing business in the name of 'Bake House'. These facts cannot be denied in view of documents on page 290 to 300 in Family Court Appeal No.65 of 2017.

17 Considering these facts, we are of the opinion that at present, applicant failed to make out any case for allowing her Civil Application for additional maintenance charges. It is made clear that observation

made by us in the present order should not come in the way of both the parties at the time of hearing and final disposal of Family Court Appeals filed by them.

18 Hence, Civil Application stands rejected. No order as to costs.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)