

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7175 OF 2017

Sumit Vijay Kumar .. Petitioner
Versus
Shraddha Gupta Jain .. Respondent

WITH

WRIT PETITION NO.1215 OF 2018
WITH
WRIT PETITION NO.1229 OF 2018
WITH
WRIT PETITION NO.6268 OF 2017

Shraddha Gupta .. Petitioner
Versus
Sumit Vijay Kumar Jain .. Respondent

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Ms.Manjula Rao, Sushmitha Sherigar, Rupali Naik, Advocate for the petitioner in WP No.7175/17 and for respondent In WP Nos.1215/18, 1229/18 and 6268/17.

Mrs.Taubon F. Irani for the respondent in WP 7175/17 and for the petitioner in WP Nos.1215/18, 1229/18 and 6268/17.

CORAM: SMT.BHARATI H. DANGRE, J

RESERVED : 22nd MARCH 2018

PRONOUNCED : 13th APRIL 2018

JUDGMENT : -

1 The group of 4(four) petitions were heard together, by consent of the parties, since the issues in the four

petitions revolve around the marital discord between the same parties, and it was more appropriate to deal with the different issues amongst them and dispose off all the petitions by passing common order touching different issues. All the four writ petitions assail the orders passed by the Family Court and either of the parties is aggrieved by the said order.

2 The present group of petitions are a reflection of the pertinent and peculiar issues arising in a marital discord in a metropolitan city where both the spouses strive together to build a nest and nurture it for the new born. Emily Dickinson's Poem "For every Bird a nest" truly reflects the situation in which the modern day couples find themselves placed in.

*"For every bird a Nest
wherefore in timid quest
some little Wren goes seeking around*

*Perhaps a home too high
Ah Aristocracy !
The little Wren desires*

*Yet who of all the throng
Dancing around the Sun
Does so Rejoice ?*

However, on account of some discord when this nest is sought to be divided along with the sharing of responsibilities as parents towards the child of tender age. The parties would be hereinafter referred to as 'husband' and 'wife' in order to avoid the shifting of the caption in the respective petitions since the parties have been impleaded in accordance with the petitions filed in the irrespective capacities.

In order to appreciate the orders which are assailed before this Court, it would be necessary to refer to the chronology of events in brief to appreciate the background in which the orders have been passed by the Family Court and to deal with the rival contentions of the parties assailing the said orders. The petitioner Sumit Jain is aged 36 years, and is presently working as a Vice-President (Sales) with Lodha Group, whereas the wife Shraddha Gupta, aged 31 years is working as Vice-President of the Axis Bank. The marriage between the parties was an arranged marriage and was solemnized on 8th March 2011 at Gaziabad. At the time of marriage, both the parties were serving with Axis Bank, but the wife was serving in Delhi and husband was

serving at Mumbai. However, after marriage, the wife sought a transfer from Delhi to Mumbai branch of Axis Bank, and she continues to work in Axis Bank in Mumbai, whereas the husband in June 2016 gave up his job with the Axis Bank and engaged himself in another job with the Lodha Group of Companies. Upto 2012, the parties were residing in a rented flat. However, in May 2012, the parties booked two flats by availing two separate loans. The parties jointly purchased two flats at Cosmic Heights, Bhakti Park, Wadala (East), Mumbai. The parties were never able to convert the said house into a 'home' providing nest for their child and it is hereinafter referred to as "matrimonial house". The dispute around the parties is concentrated on an issue as to whether the unit which they purchased was one flat or whether they are two flats. Out of the wedlock, a child was born in 2014 and before the parties could enjoy the bliss of the new born coming into their life, and before they could assume their responsibilities as mother and father, the marriage of the parties started sailing through a rough phase. The allegation of the wife is that the husband inflicted cruelty upon her and there was persistent demand of dowry. According to the wife,

an amount of Rs.1.4 crores was spend on the wedding, and an amount of Rs.50 lakhs was given in cash. Inspite of this, the family of the husband was not happy and there was demand of more amount. It is the allegation of the wife that jewellery worth crore of rupees was handed over to the husband and his family. The wife also makes certain allegations about the marriage being not consummated for initial period of six months in view of the erratic habits of the husband, but according to her, he was treated for the cause and the marriage was consummated.

3 The marriage crumbled further when the uncle of the wife lodged a complaint under Section 498A of the IPC on 28th April 2016 at Narvana, Gin, Haryana with serious allegations levelled against the husband as well as his family members. The said complaint resulted into a filing of an FIR in October 2016. The Anticipatory Bail Application filed by the husband came to be rejected by the Sessions Court, Jind on 30th November 2016, but his parents and brother and sister-in-law were granted Anticipatory Bail. The husband then approached Punjab and Haryana High Court seeking

relief of Anticipatory Bail, which was granted to him on 15th December 2016. The wife also lodged a complaint at Wadala Police Station on 15th May 2016 upon a petty issue of handling of the remote control of Television in which an N.C came to be filed on 16th May 2016. On 4th June 2016, the husband instituted proceedings for divorce under Section 13 of the Hindu Marriage Act on the grounds of cruelty and the petition came to be numbered as A-1618 of 2016. It is pertinent to note that on 5th August 2016, a summons for divorce was served upon the wife through the bailiff and it is the specific grievance of the husband that on receiving the said summons, the wife filed a false complaint against the petitioner for assaulting her under the influence of liquor at Wadala Police Station. Apprehending the relationship to deteriorate further, it is the case of the husband that he started staying at a friend's place and later shifted to a rented premises.

4 In this backdrop, various applications came to be filed by the respective parties. On 16th August 2016, the husband filed an interim application vide Exhibit-8 praying

for appointment of Commissioner to partition the matrimonial house as per the original lay out of the flat. It is the specific case of the husband that on 18th August 2016, when he returned to the matrimonial home from work, a new pad lock was installed by the wife on the main door and he was not allowed to enter his own house as the wife refused to open the door. The husband approached the Wadala Police Station and filed N.C No. 2187, but since the wife refused to permit him to stay in the said accommodation, he was left with no option than to take another alternative accommodation. In the mean time, on 29th September 2016, the wife also filed an interim application seeking the injunction against the husband restraining him from entering the flat/matrimonial house located at Bhakti Park, Wadala (E), Mumbai.

5 Writ Petition No.7175 of 2017, a writ petition filed by husband arises out of an order passed by the Family Court on 6th April 2017 rejecting the application filed by the husband vide Exhibit-8 seeking appointment of Court Commissioner for partition/division of two flats bearing

No.1901 and 1902 situated at Cosmic Heights, Bhakti Park, Wadala, whereas WP No.6268/2017 is filed by the wife Shraddha challenging the order passed by the Family Court, thereby refusing the relief sought by her by Exhibit-14 to restrain the husband, his agents and family members from creating nuisance and attempting to enter into matrimonial house, until final disposal of the proceedings. The Family Court by an order dated 6th April 2017 partly allowed the application and restrained the respondent from creating third party right in respect of flat nos.1901 and 1902, whereas rejected the relief sought to restrain the husband, his agents and family members from creating nuisance and attempting to enter into matrimonial house at Cosmic Heights. This Court would deal with the issue raised in these two petitions together, since it involves around the same cause of action i.e. the joint ownership of the flat nos.1901 and 1902, the matrimonial house.

It is not in dispute that Flat nos.1901 and 1902 is purchased by the husband and wife from one Mr.Bhushan Sethi and Mrs.Rohini Sethi - the original purchasers of the

flat. The two flats were purchased by two separate sale deed/agreements. Flat No.1901 is a 2 Bedroom Hall Kitchen flat registered in the name of the husband as a primary owner and the husband has obtained loan on the said flat and he is paying the EMI of that flat. Flat No.1902 is a 1 Bedroom Hall Kitchen Flat which is registered in the name of wife as a primary owner, and she is paying EMI of the said flat. It is the case of the parties that these flats were subsequently renovated, and according to the husband, he has borne the expenses of renovation exceeding an amount of Rs.25,00,000/- (Rupees Twenty Five lakhs) and in the two Writ Petitions, two orders have been passed by the Family Court on the respective applications preferred by the husband and the wife.

6 Writ Petition No.7175 of 2017 arises out of the impugned order passed on an application filed by the husband to appoint a Commissioner for partition and division of two flats namely, i.e. Flat nos.1901 and 1902. The application preferred by the husband narrated the marital discord existing between the parties and narrated the

circumstances in which he was compelled to shift to his friend's house in order to avoid the lodging of false cases against by the wife, apprehending that the wife would create pressure on the police to get him arrested. He states that he was required to shift shifted to a rented premises. However, by the said application, he prayed that since Flat nos.1901 and 1902 are separate flats, the said flats be partitioned in the interest of justice and the CCTV camera be installed on his side of the flat to be granted to him. Along with the application, the applicant had placed on record the lay out map of the said flat as well as the agreement for sale executed between the owner Mr.Bhushan Sethi and Mrs.Rohini Sethi and the applicant and the respondent wife in respect of the Flat no.1902 in Cosmic Heights admeasuring 535 sq.ft on the 19th floor of "A" wing of the building which mentions that the vendors have availed loan facility for acquiring the said flat. The said agreement reflects the total consideration for the said flat. Another agreement for sale has been placed on record dated 15th June 2012 executed between Bhushan Sethi and Rohini Sethi and the applicant husband and wife in respect of Flat no.1901 on 19th floor, "A" wing in Cosmic

Heights, and it is mentioned that the vendors have availed home loan facility from the ICICI bank in respect of the said flat. The said flat is shown to be admeasuring 780 sq.ft, and the amount of consideration paid is also reflected. The applicant has also placed on record the documents to demonstrate that he had availed housing loan in respect of Flat no.1901 which is payable with a principal amount of Rs.53,048/- and the interest component of Rs.3,99,857/- and the total amount of loan that was sought is Rs.60,00,000/- (Rupees Sixty Lakhs). The applicant has also placed on record the separate sale certificates of the said flat and the separate maintenance bills in respect of the said flats on record. The affidavits sworn by the parties in form of the declaration to be given in consideration of the Axis Bank sanctioning the housing loan as against the flats so as to create an equitable mortgage on the said flats have also been placed on record.

7 Ms.Manjula Rao, learned counsel for the applicant husband would submit that the Family Court has erred in rejecting the application filed by the husband seeking

partition of the said flat. She would take this Court through the chronology of events and would submit that the husband was subjected to tremendous mental harassment and have been kept out of his own house in respect of which he is paying an EMI. She would submit that the matrimonial house is purchased by the husband and wife in form of two separate flats, and both the husband and wife have respectively obtained loans on the flat which they have purchased and both of them are repaying the loan. The learned counsel would submit that one fine day when the husband returned to the said house, he found the locks being changed, which left with him no option than to reside separately and since he was facing constant pressure from the wife by her lodging complaints to police station and since he had already suffered the frivolous allegation in form of a complaint which was filed in Haryana by the uncle of the wife, in order to avoid the said scenario and further harassment, the husband had chosen to stay outside the said matrimonial house. However, Ms.Rao would submit that being a husband, he is entitled for a fair treatment in view of the fact that one of the flat amongst two flats belong to him,

and the amount of EMI is regularly being deducted from his regular salary. He would submit that he is also fastened with a liability to pay maintenance towards his daughter and in addition, he is required to pay rent since he is residing in the separate accommodation, which is drying his financial resources. In this backdrop, Ms.Rao would submit that the Family Court has failed to take into consideration the said peculiar situation and ought to have appointed a Commissioner to partition the flat, which relief was sought by the applicant in the application in the peculiar backdrop of the fact that the two flats are separate flats.

As against this, the learned counsel Ms.Taubon Irani would argue that the two dwelling units in form of flat nos.1901 and 1902 is a single unit, and she specifically places reliance on the notice issued by the Income Tax Department on 15th March 2016, wherein the Income Tax Department on verification, has found that the residential property occupied by the wife is a single unit with one main entry door and they are not two separate units. She would invite attention of this Court to the proceedings filed under the Domestic Violence

Act, and she would submit that the wife was subjected to utmost cruelty, and she was left with no option than to restrict the entry of the husband into the said flat on account of utmost cruelty inflicted by him. Ms.Irani would submit that the flats cannot be subjected to partition and the whole purpose with which she had approached the Family Court was to keep the husband out of matrimonial home, since he was treating the wife with utmost cruelty and it was for her safety that he was to be kept away from the matrimonial house.

8 On consideration of the rival claims made by the parties and the submissions advanced by the respective counsel, in support and against the impugned order passed by the Family Court, it is clear that the parties have purchased two flats by two different agreements to sell i.e. flat nos.1901 and 1902 in Cosmic Heights, Bhakti Park, Wadala. Though the said flats have been purchased by the husband and wife jointly, as both the agreements to sale reflect the name of the husband and wife as purchasers, it is clear that there are two different flats and both of them had availed loan on the flats separately. The husband has availed the loan towards

purchase of flat no.1901, whereas the wife has availed the loan on flat no.1902. The husband has availed the loan facility of Rs.60 lakhs whereas the wife has availed loan of Rs.25 lakhs on flat no.1902. The payment slip of both the applicant and the respondent are on record, which would reveal that an amount of EMI is deducted from their respective salaries. The share certificate in respect of flat nos.1902 and 1902 are distinct.

In order to determine as to whether the two flats is one unit or not, my learned Predecessor (Justice G.S. Kulkarni) had directed the Mumbai Municipal Corporation to be impleaded as a party respondent to ascertain as to the actual position whether the two flats are separate flats on record of Municipal Corporation or they are permitted to be amalgamated into one flat. In pursuance of the said order, a report was tendered before the Court by the Assistant Assessor and Collector who categorically stated that Flat No.1901 and 1902 are assessed separately to municipal property taxes.

This position being brought on record, it is clear that the two flats are separate, may be for the sake of convenience, being one family residing in the two flats, some arrangements might have been worked out so as to put the two flats to use in form of a single dwelling unit to be occupied by one family. The Family Court has dealt with the application filed by the husband and has observed that the dispute is in respect of sharing of the flats. However, the said relief claimed by the petitioner to partition the said flat is of a final nature which could not have been granted at the interim stage, and in this backdrop, the application came to be rejected.

There appears to be no legal infirmity in the impugned order passed by the Family Court on 6th April 2017. The husband had sought a relief which is in the nature of final relief and it could not have been granted at an interim stage. Though Mrs.Rao has placed reliance on the judgment of this Court in the case of **Sandeep Kedia and Pooja Kedia** delivered on 2nd August 2011 (Smt.Roshan Dalvi, J) in Writ Petition 2254 of 2011, the said order is passed in the peculiar

facts and circumstances where the parties had purchased two flats and they were joined as one flat. However, it was the specific case before the Court that the husband has not repaid any amount and the husband had given an offer that the wife may come and reside in a flat. However, the wife was residing in Dubai. Therefore, there was no question of she coming and staying there, but it was accepted by the Court that she was the owner of one of the two flats which have been converted into one and she could not have been deprived of enjoying the benefits of her ownership and she could put the flat to best use and avail the income accruing therefrom. In such circumstances, the order was passed by the Court to put a temporary partition and the wife was entitled to claim the income generating from the portion of flat of which she was the owner. Therefore, the facts of the present case are distinguishable from the facts in Writ Petition No.2254/2011. Reliance was placed by Ms.Rao in the judgment in the case of *Yogita Das Gupta Vs Kaustav Das Gupta, MAT APP (FC) 7/2014*. This judgment is also not applicable to the present case since that judgment which was delivered by the Court was in an Appeal and necessarily, the

Appeal came to be decided after appreciation of evidence on record and in those circumstances, the judgment passed by the Delhi High Court could be justified.

However, in the present case, what the husband sought is a partition of the matrimonial house, which the Court rejected on the ground that it would be amounting granting of final relief and was rightly refused to grant at the interim stage. This Court is of the opinion that there is no perversity in the impugned order passed by the Family Court and hence, no reason warrants interference in the said order. Writ Petition No.7175 of 2017 is therefore, liable to be dismissed.

9 Dealing with the Writ Petition No.6268 of 2017 which is filed by the wife has assailed the order passed by the Family Court on 6th April 2017 on an application seeking a restraint order against the husband, his agents and family members from creating nuisance and attempting to enter into matrimonial house until final disposal of the proceedings.

Ms.Irani who argued in support of the petition would submit that the Family Court has erred in not granting the relief prayed by the wife on a completely wrong assumption. Mrs.Irani would submit that the said application came to be filed in Petition No.A-1618 of 2016, but it ought to have been appreciated in light of the Domestic Violence application filed by the wife under Sections 12, 18, 19, 20, 22 and 23. She would submit that in the said application, she had narrated the entire chronology of events justifying her to be entitled to a declaration that the respondent and his family members had committed the act of domestic violence against the applicant and restraining the husband and family members from entering into Flat nos.1901 and 1902.

On perusal of the impugned order dated 6th April 2017, the Family Court has rightly observed that Flat nos.1901 and 1902 has been purchased by the husband and wife jointly, and in flat no.1901, the husband is the primary owner, whereas in Flat no.1902, wife is the primary owner and both the parties had given the details of down payment towards purchase of these flats. The Family Court has

accepted the case of both the parties that they have availed loans on the respective flats. The Court expressed that the flats are in joint ownership, in the sense that the husband and the wife are both owners of both these flats and the husband being one of the joint owner cannot be restrained from entering into the flat which is jointly owned by him in respect of which he is also repaying the loan. In the backdrop of these facts, the Family Court did not deem it fit to grant such a restraint order in view of the joint ownership of Flat nos.1901 and 1902 in the name of husband and wife. However, in the interest of justice, the Family Court has restrained the husband through his agents and family members from creating any third party rights in respect of Flat Nos.1901 and 1902. The said order passed by the Family Court cannot be faulted with. The Family Court has rightly observed that since the husband is a co-owner of Flat no.1901/1902 which, according to the petitioner, are separate flats and according to the respondent wife is one composite unit. However, there is no denial of the joint ownership of the husband in these flats and it is the case of the wife that the flats have been joined and being used as a single dwelling

unit, the husband cannot be restrained from entering into the said dwelling unit and the order passed by the Family Court in the background of the facts and circumstances calls for no interference and needs to be upheld. Writ Petition No.6268 of 2017 is therefore liable to be dismissed.

10 This Court do not find any perversity in the order passed by the Family Court refusing appointment of Commissioner to partition the flat at an interim stage, and so also the order of the Family Court refusing to pass any restraint order restraining the husband from entering into the matrimonial house, owned jointly by the husband and wife. The husband is at liberty to reside in the said house by making appropriate arrangement. It is directed that the respondent wife would co-operate with the husband to reside in the matrimonial house, since the relief sought by the wife restraining the husband from entering into the said flat has been specifically rejected, and in the backdrop that the flat is jointly owned by the husband and wife and he cannot be restrained from entering his own property.

11 Writ Petition No.1215 of 2018 is filed by the wife assailing the order passed by the Family Court on an interim application filed by her seeking interim maintenance for the minor daughter Ahana. By the order dated 13th October 2017, the Family Court, Mumbai has partly allowed the application and directed the respondent husband to pay an amount of Rs.40,000/- per month to the wife for maintenance of the minor child from the date of application i.e. since 20th September 2016.

It is argued by the learned counsel Ms.Taubon Irani that the wife had moved an application, seeking maintenance of Rs.1,91,200/- every month towards the expenses of the minor child. The learned counsel invited the attention of this Court to the application filed on 20th Separately 2016. Paragraph no.9 of the said application sets out the expenditure incurred by minor Ahana and it is the contention of the applicant that she is unable to meet the expenses and she is required to seek her mother's help to meet the expenses. The chart in paragraph no.9 bifurcates the amount of Rs.1,92,000/- towards Ahana's day care,

expenses of her maid, her clothes, diapers etc. It also includes the expenses of maid for cooking and cleaning, foreign trips to the tune of Rs.40,000/-, domestic travel to the tune of Rs.10,000/-. The application also gives the detail of the property owned by the husband at Gurgaon and also a statement is made that the husband has invested an amount of Rs.60,00,000/- (Rupees Sixty lakhs) in the Mutual Funds.

In the application, the following prayers are made

- a) This Hon'ble Court direct the Petitioner to pay Rs.1,91,200/- every month towards the expenses of the minor child along with monthly expenses of the House and that of the Respondent.
- b) This Hon'ble court directs the Petitioner to provide a car and a driver.
- c) This Hon'ble Court direct the Petitioner to pay the school fees of the minor child "Aahana" when enrolled.
- d) This Hon'ble Court be pleased to direct the Petitioner to produce the Conveyance Deed of the said land purchased by him.
- e) This Hon'ble Court direct the Petitioner to continue to pay the EMI for Rs.81.50 lakhs being the loan towards the house and continue paying the monthly maintenance of the said flat.
- f) Litigation cost Rs.2,00,000/- for the payment"

In response to the said application, a reply was filed by the respondent, stating that the child Ahana is only 2 ½ years old and the application is nothing but an attempt to extort money in the guise of expenditure of the minor daughter. In the reply, the husband has expressed his readiness and willingness to contribute and share the expenses of the daughter on production of genuine and authenticated documents, showing that the expenses are incurred for the maintenance of the child.

In support of the stand of the respondent husband Ms.Rao, learned counsel representing the husband would submit that the husband is required to incur the expenses of paying rent to the tune of Rs.36,000/-, on account of he not being permitted to share the household in which he has invested money and for which he is paying an EMI of Rs.55,000/-. On the contrary, it is argued by Ms.Rao that the wife is paying EMI to the tune of Rs.32,000/- only and she is working as Vice-President with the Axis Bank and has concealed her true income. Ms.Rao would emphasize on the

fact that her client is required to bear her additional expenses of paying rent of the flat and he is deprived of being staying in his own house in which he has invested and also he is repaying the EMI.

12 On consideration of the application and the reply tendered by the parties, and on consideration of the submissions advanced by the learned counsel, it can be seen that the Family Court has considered the earning capacity of the husband and wife and also the liabilities borne by them. The Court has considered the bank statement of the husband which was placed on record and also referred to certain credit entries of his salary into his account. The Family Court has also considered the position of the wife who is working as Assistant Vice-President in Axis Bank and the husband had produced a salary slip of wife of December 2014, and she herself had produced her salary slip for September 2017 which has reflected her gross salary of Rs.1,17,516/- which includes the Basic, Conveyance allowance, HRA, LTC, Special allowance etc. The Court has considered her income after deducting the statutory deductions. The Family Court has

also considered the Income Tax returns for the Assessment Year 2016-17 and proceeds to observe that both the husband and wife are required to pay the EMI of the joint flat owned by them. The Court has observed that the respondent wife is not required to pay any rent, whereas by an earlier order, the parties were directed to bear school fees and educational expenses to the extent of 40% and 60% respectively. The Court has considered the statement given by the applicant in respect of the expenses of Ahana and arrived at a conclusion that the husband is liable to 50% expenses of the daughter and considering the age of Ahana, the Court deemed it fit to award interim maintenance @ Rs.40,000/- per month from the date of application i.e. 20th September 2016.

Though an attempt was made by Ms.Irani, the learned counsel opposing for the wife to convince this Court that the said amount awarded by the impugned order is not sufficient to cater to the needs of Ahana, specifically taking into consideration the status of the parties, it appears to me that the amount that has been awarded by the Family Court is just and reasonable amount, and cannot be said to be a

meager amount. Though in paragraph no.9 of the application, the applicant mother has given the details which are somehow an exaggerated version of what is required by an approximately 3 years old child, and which also includes an amount towards house maintenance, household expenses, including electricity and ration, towards driver - fuel, it is not understood as to how this amount is claimed as expended towards the daughter exclusively. The child Ahana is too small to travel alone, and the driver and fuel expenses are obviously the one which are required for the mother. Similarly, the household expenses to the tune of Rs.35,000/- cannot be calculated as expenses towards daughter Ahana, but it is towards electricity of the house, the luxuries of which the applicant wife is enjoying. The house maintenance of Rs.8,000/- can also never be calculated as exclusively meant for Ahana. This Court is of the clear opinion that the demand made is an exaggerated projection of the day to day requirements of Ahana and for a child of 3 to 4 years, an amount of Rs.40,000/- is sufficient more so, whatsoever more is required for her maintenance, can be contributed by the applicant mother who is also equally responsible for

upbringing of a child and taking care of her day to day expenditure, when she is a mother with an earning capacity and is in fact, earning a handsome salary. In such circumstances, it would be unjust if the husband is burdened with the sole responsibility of bearing the expenses of the child. Though the applicant has claimed a maintenance of Rs.1,91,200/- per month for a child aged three years, it is reflective of fictitious figure calculated by taking into consideration other expenses which cannot be counted towards the maintenance of the child. The Family Court has taken a balanced view of the earnings of the husband as well as the wife and most important, the needs of the child. The wife had prayed for monthly expenses of the house and to provide a car by the said application. The said prayers have been rightly rejected by the Family Court. No legal infirmity can be found in the impugned order passed by the Family Court and hence, the said order passed on 13th October 2017 is upheld and the writ petition no.1215/17 is dismissed.

13 As far as Writ Petition Stamp No.17913 of 2017 is concerned, the same is filed by the wife, being aggrieved by

the order passed by the Family Court below Exhibit-43 where the wife has sought permission to enroll the minor daughter Ahana in JBCN school. She also sought direction to be issued to the husband to pay school fees and the education related expenses of daughter Ahana, till completion of her education. She has also sought direction to restrict the husband from interacting with the school authorities or to enter the school premises without permission of the Court.

The Family Court has dealt with the issue by taking into account the comparative statement of the school fees i.e. AVM School tendered by husband which was initially selected by the mother herself and the JBCN school. Perusal of the order of the Family Court reveals that the fees of AVM school is Rs.85,000/- per annum whereas the fees in JBCN school is Rs.6,00,000/- per annum. There is thus a difference of approximately 7 to 8 times in the fees of the latter school as compared to the former.

It is no doubt true that the mother can insist on a good schooling for a child, but she cannot insist that it should be a school which involves high expenditure because necessarily,

merely because the fees are high, would not make the school, a good school. The concern of a mother that the child should be put in a good school is understandable. The father do not have any quarrel about the said concern and both the parties are at *ad idem* that the daughter should be sent to a school which would provide her good schooling and at the same time, it should be at a distance close to the residence and to her day care. With great maturity, both the parties agree before the Court that they would find out one such school and would then take a decision of admitting the child in the said school from the next academic session. In the light of the said consensus reached between the parties, this Court is not called upon to decide the writ petition arising out of the order dated 7th June 2017 passed by the Family Court, Mumbai, on an interim application filed by the wife.

In the light of the arrangement reached between the parties that they would jointly agree as to the school in which daughter Ahana would be admitted from the next academic session, by keeping in mind the factors as to the location of the said school from the residence and the Day

care, and the school being importing good education to the child.

In the result, Writ Petition No.7175 of 2017 is dismissed. Writ Petition No.1215 of 2018 file by the petitioner-wife is dismissed. Writ Petition No.6268 of 2017 is also dismissed. Writ Petition No.1229 of 2018 is disposed of.

(BHARATI H. DANGRE, J)

At this stage, today when the judgment is pronounced, Ms.Irani prays for grant of stay to the order dismissing her petitions, namely, Writ Petition Nos.1215/17 and 6268/17. Since she intends to approach The Hon'ble Apex Court challenging the stay order, the said request is vehemently opposed by Ms.Manjula Rao, learned counsel appearing for the husband. Since this Court has considered the issue in great detail, this Court is of the opinion that no case is made out for grant of stay to the order passed by this Court. The request made is thus rejected.

(BHARATI H. DANGRE, J)