

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

WRIT PETITION NO. 8760 OF 2016

Bhalchandra D Korgaonkar ...Petitioner
Versus
Chitra V Shirsat ...Respondent

**WITH
WRIT PETITION NO. 334 OF 2017
WITH
CIVIL APPLICATION (ST) NO.18320 OF 2017
IN
WRIT PETITION NO. 334 OF 2017**

Bhalchandra D Korgaonkar ...Petitioner
Versus
Chitra V Shirsat ...Respondent

Mr.Bhalchandra D Korgaonkar, Petitioner in person, in both Writ Petition and Applicant in CAWST No.18320 of 2017.

Mr.Sahil Mahajan for the respondent in both the Writ Petition and CAWST No.18320 of 2017.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 15th MARCH 2018

P.C.

1. The Writ Petition No.8760 of 2016 and Writ Petition No.334 of 2017 are heard by the consent of parties together. Since both the writ petitions revolve around the similar issue as to whether the petitioner-husband is entitled for seeking the refund of the amount of maintenance that has been deposited by him in

pursuance of the order of the Family Court towards the maintenance of the child, on spacious ground that the wife has been mis-utilizing the amount and there is misappropriation of the amount at her instance. The marriage between the petitioner and the respondent, which was solemnized in the year 2000, at present stands dissolved by a decree of divorce passed by the Family Court on 30th November 2017. The petitioner husband has instituted said proceedings for divorce along with the Custody Petition No.A-2379/2008. By the decree of divorce passed on 30th November 2017, the custody of the child is granted to the petitioner-father after the period of appeal is over. By the said judgment the Family Court has also issued directions to grant permanent alimony of Rs.15,000/- to the respondent-wife and also directed to arrange for accommodation or pay an amount of Rs.10,000/- per month to the wife.

2. Since, the marriage of the parties is already dissolved, this Court would not deal with the relationship between the petitioner and the respondent and the proceedings instituted between themselves during the said period and, in fact, the record reveals that there are 14 writ petitions and some miscellaneous proceedings filed by the parties, against one another, including before this Court as well as the Family Court. The present two writ

petition's revolve around an application filed by the petitioner-husband in Petition No.A-2379 of 2008, one being an application at Exh.437 and another being an application Exh.475. Both the applications preferred by the husband necessarily seek refund of money paid in terms of the order of maintenance of the child on the ground that the same have been misappropriated. Reference has been made to the order passed by the Family Court on 3rd April 2012. An interim application filed by the wife claimed maintenance *pendente-lite* to the tune of Rs.40,000/- per month for herself and her son. The Judge Family Court, Bandra, on consideration of the capacity of the parties and taking into consideration the welfare of the child, who was six years old, partly allowed the said application, though it rejected the claim of maintenance in favour of the wife, and directed to pay an amount of Rs.15,000/- per month as a maintenance *pendente-lite* to the son from the date of application i.e. from 25th February 2010. The wife subsequently appealed against the refusal of the maintenance to her, but was unsuccessful. In the application before the Family Court the wife had claimed that her son is six years old, and taking education in school, required an amount of Rs.24,000/- per month for the maintenance and she had given the basic calculations, where the amount would be expended, which would include the educational expenses, day to day expenses,

health care and a dignified upbringing of the child. The Family Court, however, did not grant maintenance of Rs.24,000/- as claimed but concluded that an amount of Rs.15,000/- would be appropriate, it allowed the application of the wife. It is not in dispute between the parties that the petitioner-husband is paying the said amount of maintenance. The wife do not make a grievance that the amount has not been paid and though would submit that on some occasions there was some delay, but the arrears were subsequently cleared.

The petitioner-husband moved an application below Exh.127 before the Family Court claiming access to several documents, “including production of health, school progress reports and details of expenses of the child”. On hearing the said application the Judge, Family Court by order dated 17th September 2013, found it appropriate to issue direction to produce the health reports and progress of the child, and to keep the petitioner informed about it. The Court also directed that the father should be kept informed about the medical report, if the child is hospitalized in future. However, it rejected rest of the prayers, which included the prayer of details of the expenses of the child.

On an application filed below Exh.437, the Family Court passed the impugned order on 25th May 2016. While dealing

with the said application, the Court observed the background of the grant of maintenance and concluded that the grant of maintenance is a welfare legislation and once the husband has paid the amount of maintenance, he cannot claim refund of the said amount and in any case, specifically when the respondent-wife is taking care of the child. The said application came to be rejected on account that there was no application for modification of the maintenance order filed by the petitioner-husband and there was no question of reducing the maintenance. It is this order which is assailed in Writ Petition No.8760 of 2016, the petitioner-husband moved another application of similar nature i.e. Exh.475 seeking somehow similar relief and making allegations against the wife that she has been utilizing the amount paid towards maintenance of the child for clearing the lawyer's fees and thus this results in mis-utilization of the amount.

The Judge Family Court passed an order on 21st November 2016, and took note of the fact that on earlier occasions Exh.437 came to be rejected by the Family Court on the ground that it cannot be said that the amount is being mis-utilized and more-so-over with an observation that the amount is going towards maintenance of the child, there is no question of refund. On 21st November 2016, the Family Court observed that once the

application was rejected, merely by changing the wordings of the application, it cannot be again preferred on a similar grounds, since, the petitioner-husband has not brought on record, the change of circumstances entitling him to press such an application. Resultantly, on 21st November 2016, the Exh.475 also came to be rejected. Being aggrieved, the petitioner preferred the Writ Petition No.334 of 2017.

3. I have extensively heard Shri.Korgaonkar, the Petitioner, who appears in person and also heard the learned counsel appearing for the respondent-wife. It is no doubt true that the amount of maintenance which is deposited for the maintenance of a child must be expended and utilized for the said purpose only and for no other purpose. The order passed by the Family Court by which the maintenance was granted to the son, rejected the application for grant of maintenance in favour of the wife. When the wife had prayed for an amount of Rs.24,000/- towards maintenance of the child, the Court has granted amount of the Rs.15,000/-. Perusal of the order passed by the Family Court would reveal that the Family Court has taken into consideration the broad heads under which the mother would be required to spend for taking care of the child which would include his educational

expenses. In this backdrop, though the wife had claimed an amount of Rs.25,000/-, the Court thought it fit to award maintenance of Rs.15,000/-p.m. The said amount is titled as “maintenance *pendente-lite*”. There is no stipulation in the order as to where the amount would be spend or under what caption the amount would be required to be paid. The amount of maintenance was not varied, except a modification of the order, at the instance of this Hon’ble Court in Writ Petition No.8939 of 2013 along with Writ Petition No.750 of 2014, the subsequent one, being filed by the respondent-wife who claimed maintenance for herself, the learned single Judge of this Court directed the petitioner to pay an amount of Rs.5,000/- towards the charges of engaging a maid. This was so directed in the peculiar facts, since the Court observed that the wife has capacity to earn, however, since she is required to take care of the child, she is not able to fetch a job and in order to unable to do so, the learned single judge of this Court directed the petitioner to pay an amount of Rs.5,000/- towards the maintenance of the wife so as to enable her to hire maid service to look after her child so as to facilitate her to work. To this limited extent the orders passed by the Family Court, dated 03rd April 2005, came to be modified.

4. The grievances raised by the Petitioner in both the

application for refund of money is that though he has been depositing the amount from time to time, the amount has been spent for some other purposes and the Petitioner, in person has placed on record the statement from the HDFC Bank, which is in the joint name of the respondent and her father Vasant Dattaram Shirshat. Perusal of the said statement would reveal that the amount was to be deposited in the account from time to time and there are some withdrawals made by the respondent-wife, which includes some withdrawals of a huge amount like an amount of Rs.50,000/- and it is allegation of the Petitioner that the wife has not accounted for the withdrawal of this amount. It is also alleged by the Petitioner that a cheque of Rs.50,000/- has been given to the lawyer from the said account and he is aggrieved by the said conduct of the respondent-wife. The petitioner appearing in person places heavy reliance on the cross-examination of the respondent, where she has admitted that she had withdrawn an amount of Rs.50,000/- on 05th October 2013, and she also paid cheque of Rs.50,000/- to Mr. Ramesh Lalwani i.e. advocate in the matter. The petitioner appearing in person would argue that the cross-examination reveals that the wife is unable to remember the exact details of the amount, which she had withdrawn from time to time and also the details of the account clearly show that her bank

balance was swollen after the amount went into the account.

5. The learned counsel for the respondent took me through the reply filed by the respondent-wife in opposing the said applications. In the said reply, the wife has categorically stated that the amount was being deposited in her account and she is taking care of the child and in affidavit in reply, she has given details of expenses incurred by her on day to day basis and on monthly basis for catering to the need of the child. According to her substantial amount is incurred, which is more than Rs.15,000/- per month for apprising the child but, since, she is staying with her parents some time, her father being a pensioner has arranged for the deficit amount and that is how she is arranging to look after the welfare of the child. She admits in her affidavit that on some occasions, when the advocates are required to be paid, and since, they do not accept the cheque given by the father and therefore she had given the cheques in her name from the account and the equivalent amount or in fact much more was arranged by her parents in cash, which she had utilized for meeting the sons expenses. She also made statement in affidavit in reply and also given details of the proceedings filed before the Court. This would reveal there are as many as 25 proceedings instituted before the various Courts which includes 12

writ petition's and several proceedings and she has also given dates of the proceedings where she is required to attend and were in fact attend by her counsel. It is specific stand of the respondent-wife that the amount of Rs.15,000/- p.m. is being utilized for maintenance of the child and the apprehension expressed by the petitioner is totally unfounded and, in fact, she has incurred more amount on the expenses at times, which she is able to made good with the assistance of father with whom she resides. It is specifically enquired from the learned counsel for respondent as to whether the wife is working at present, it is informed that she is searching for job and she is not employed anywhere.

6. On perusal of the proceedings of the impugned orders passed by the Family Court, it appears that the Family Court has taken into consideration the important aspect of the matter, which is the welfare of the minor child and has observed that the order passed granting maintenance to the child in the year 2012 did not specifically order submission of any detail accounts to be supplied every month to the petitioner or it was never intention of the Family Court that the wife should be made liable to explain each and every penny, which goes into the pocket towards the maintenance of the child. If this was the intention of the Family Court when the order

was passed and the petitioner is, in fact, paying in furtherance of the said order it is not possible for the Court to modify the said order asking her to give the details of the expenses on the child. On the earlier occasion when such an application was made by the petitioner before the Family Court, the same came be rejected. Though the petitioner in the capacity of a father was held to be entitled to know about the school progress of the child and about the medical care and health of the child, whenever such situation arose. The Family Court specifically rejected the prayer to give the details of the spendings on the child. In any contingency, now, the marriage between the petitioner and respondent stands dissolved and the Petitioner-husband has been given the custody of the child. When the petitioner-husband would be maintaining and catering to the needs of the child and he would realize that an amount of Rs.15,000/- p.m. is a meagre amount to maintain a growing child, whose needs cannot be specifically ascertained at a particular point of time, since, a child may take ill some time or wants to join a course, a child may require a fancy trip and the parent is duty bound to take care of such need. In such circumstances, an amount of Rs.15,000/- p.m., which was awarded by the Family Court which the petitioner-husband is paying cannot be said to be misappropriated and mis-utilized. Merely because the expenses of

the Advocates have been paid from the account which is admitted by the Respondent-wife in her reply, it cannot be said that there were mis-utilization of this amount. In such circumstances, there is perversity or irrationality in the order passed by the Judge Family Court, who has specifically observed that the repeated applications are not permissible and what the petitioner is ultimately seeking the modification of the order, passed in April 2010 under the guise for asking the details of expenses to be supplied and for refund of the money which is already deposited in her account. In any circumstances, such a relief cannot be granted. The order passed by the Family Court is just and proper and needs to be upheld and warrants no interference.

7. The order of maintenance of payment of Rs.15,000/- p.m. towards the child is intact as on date, the Petitioner to continue to make the deposits towards the maintenance of the child. As far as the amount of Rs.5,000/-, which has been granted by way of maintenance to the wife by order of this Court on 08th October 2014, it is observed by this Court that after passing of the order though period of three years expired, the respondent-wife is not able to procure a job for herself. The intention with which the order is passed is clearly expressed in paragraph No.11 of the said order and

the consideration shown by the Court towards the grant of amount of Rs.5,000/- was making a provision for maid so that the wife can go to work and earn. As on date, the learned counsel for the respondent states that the wife has not been able to fetch a job. In such circumstances, the order passed by the said Court granting maintenance to the wife of an amount of Rs.5,000/- for a specific purpose would cease to exist after the period of three months from the date of this order.

8. The Writ Petitions is dismissed, being without merit and substance.

9. In view of the disposal of the Writ Petition, Civil Application is also disposed off.

(SMT.BHARATI H. DANGRE, J.)