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

**CIVIL APPLICATION NO. 199 OF 2017
IN
FAMILY COURT APPEAL NO. 20 OF 2014**

Mrs Vaishali Ashish Shah]
of Mumbai Indian Inhabitant, aged about]
38 years, Occup:- Housewife, residing at]
B-405 Hastgiri, Ashok Nagar, Opp. Union]
Bank of India, Kandivali (East) Mumbai]
400 101] Applicant - Appellant.

VS

Mr Ashish Mansukhlal Shah of Mumbai]
Indian Inhabitant, aged about 42 years,]
residing at Sheetal Sankalp, Flat No.10,]
1st Floor, Sheetal Nagar, Mira Road East,]
Dist. Thane and also having address at]
Rollys Royce, Oilfield Supply Center, B-47,]
OSE Jebel Ali, Freezone, Near Roundabout]
9, P.O. Box 261103, Dubai (UAE)] ...Respondent.

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Mr. Malcolm Signaporia I/b Jayesh R. Vyas for the Applicant/
Appellant.

Mr. Vivek Kantawala a/w Mr Amey Patil & Ms. Bhairavi
Waravdekar I/b Vivek Kantawala & Co. for the Respondent.

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

RESERVED ON : 30th July, 2018

PRONOUNCED ON : 3rd August, 2018.

JUDGMENT (Per B.P.Colabawalla J):

This Civil Application has been filed by the applicant - wife (appellant) seeking directions against the respondent - husband to pay to the applicant a sum of Rs.96 Lacs towards one time alimony and further to pay a sum of Rs.70,000/- per month towards the maintenance of the applicant-wife and their two children as also towards the monthly expenses for the applicant-wife and the day-to-day expenses of the children.

2 The applicant was the original petitioner before the Family Court, who had filed the petition being Petition No. A-416 of 2011 for divorce. This petition was filed before the VI Family Court, Bandra at Mumbai. This petition, that was filed by the applicant - wife, was partly allowed and the marriage between the applicant - wife and the respondent - husband was dissolved by a decree of divorce. As far as the prayer for maintenance is concerned, the respondent - husband was directed to pay Rs.10,000/- per month to the applicant-wife and Rs.5000/- per month to each child from the date of the petition till further orders. The custody of the two children, namely, son Vishit and

daughter Ria was retained with the applicant-wife and visitation / access rights were given to the respondent – husband.

3 Being aggrieved by the maintenance granted in the impugned order as well as the rejection of the grant of permanent alimony, the present appeal was filed. In this appeal, the present Civil Application has been taken out seeking enhancement of maintenance.

4 It was stated before us by the learned counsel for the applicant – wife that she is a housewife and does not have any source of income and was relying on her old parents, who also have a limited source of income. It was also brought to our attention that even the father of the applicant – wife had expired on 15th July, 2017. In contrast, the learned counsel for the applicant – wife submitted that as far as the respondent was concerned he was earning a handsome salary of AED 19,930.72 (United Arab Emirates Dirham) which was evidenced from the pay-slip for the month of June-2017 issued by the respondent husbands' employer (Rolls-Royce). This pay-slip was furnished by the respondent himself at the time of hearing of an earlier

Civil Application taken out by the applicant. The learned counsel for the applicant submitted that on the date of filing of the application, AED 1 = Rs.17.53 and taking this exchange rate into account, the respondent was drawing a salary of approximately Rs.3,50,000/-. He submitted that as on date AED 1 = Rs.18.62 and thus the respondent's salary as on today would be approximately Rs.3,71,000/-.

5 Learned counsel for the applicant – wife submitted that although the respondent was served with the papers and proceedings of the petition, he chose not to file his Written Statement though represented by an advocate. Even when the applicant filed her affidavit of evidence along with compilation of documents, the petition remained uncontested as neither the respondent filed his Written Statement nor cross-examined the applicant – wife. It has been further submitted before us by the learned Counsel that in the year 2009, the respondent used to remit Rs.40,000/- per month towards the day to day expenses of the applicant and his two children. Further the respondent also used to remit separately the amount towards children's expenses. This, however, stopped in the year 2011. Learned

counsel appearing on behalf of the applicant has submitted that as on date the applicant - wife and her two children are staying in the house of her father and has, therefore, prayed for one time alimony of Rs.96 Lacs, which would be the approximate cost of a one bedroom flat in the vicinity around Kandivali (East) which is near the residence of the parents of the applicant - wife. In addition to this, learned counsel for the applicant - wife submitted that it is virtually impossible to survive on the basis of the maintenance granted by the Family Court in the impugned order which is Rs.10,000/- per month for the applicant - wife and Rs.5000/- per month each for their two children. He submitted that, taking into consideration the inflation and the cost of living in the city of Mumbai, this was a very paltry sum especially when one takes into consideration that the respondent - husband, as on today, is earning approximately Rs.3,71,000/- and is working in a reputed company such as Rolls Royce in Dubai. He, therefore, submitted that the Civil Application ought to be allowed in terms of prayer clause (a) and the respondent - husband be directed to pay to the applicant - wife a sum of Rs.96 Lacs towards one time

alimony and to pay a sum of Rs.70,000/- per month in total towards the maintenance of the applicant – wife and her two children.

6 On the other hand, learned counsel appearing on behalf of the respondent – husband submitted that, if we were to allow this Civil Application, the same would tantamount to allowing the appeal itself which cannot be done at the interim stage. He submitted that the prayer for one time alimony of Rs.96 Lacs is also the prayer set out in the above Family Court Appeal. If the Civil Application was to be allowed this would effectively dispose of the Family Court Appeal without the same being heard finally. He submitted that as per the order of the Family Court dated 1st August, 2013, the respondent is already paying the amount of maintenance to the applicant – wife and his two children and shall continue to do so. The learned counsel also brought to our notice the list of expenses that are allegedly incurred by the respondent – husband which is annexed at Exh.1 to the affidavit in reply. As per this list, the purported expenses of the respondent – husband are AED 18,351.21. The list of expenses as set out in Exh.1 read thus;

The List of Expenses

			Aed
1	Loan Installment		8,624.21
2	Rent		2,500.00
3	Credit Card monthly Payment		1,400.00
4	Monthly Family Maintenance	₹ 20,000.00	1,163.50
5	Saving	₹ 20,000.00	1,163.50
6	Car Maintenance		1,000.00
7	Food Expenses/Laundry Exps		2,000.00
8	Mobile Expenses		0,500.00
		AED	18,351.21

7 In these circumstances, he submitted that there was no merit in this Civil Application and the same ought to be dismissed.

8 We have heard the learned counsel appearing for the respective parties and have gone through the papers and proceedings in great detail. It is not in dispute that the respondent – husband is drawing a salary of AED 19,930.72 from Rolls Royce. This is clear from the pay-slip annexed to Exh.1 to the Civil Application being pay-slip for the month of June 2017. In the list of expenses, reproduced above, what can

be seen is that one of the item is a loan installment purportedly being paid of approximately AED 8,624.21. Mr Kantawala, learned counsel appearing on behalf of the respondent – husband filed a compilation of documents to try and establish this fact.

9 On going through this compilation, we do not find that there is any loan that is outstanding for which the respondent – husband has to pay the loan installment of such a huge amount of AED 8,624.21. Further, even as far as the other expenses are concerned, nothing has been produced by the respondent husband to substantiate the aforesaid expenses.

10 It is important to note that in this very compilation of documents, a payslip of Rolls – Royce for the month of February 2018 is also produced by the respondent – husband which shows that his net salary is 19,130.72. The said pay-slip is reproduced hereunder.

“Rolls-Royce

Pay-slip

Name	Ashish Shah
Designation	Service Administrator

Department	Admin
Month	Feb-18

Basic	12,582.32
Allowances	6,775.10
Gross Salary	19,357.42

Other Payments

Overtime	
Expense claim	0.00
Bonus	0.00
Education Allowance	0.00
Other allowances	774.30
Annual Air Ticket	0.00
Housing Advance/ Deduction	0.00

Deductions

Personal deductions	0.00
Share Saver	(1001.00)

Net Pay for the month	19,130.72
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Expense Claim Details:-

Deduction Details:-

Email:ashish.shah@rolls-royce.com

11 Looking to the salary being earned by the Respondent – husband as per the pay slip produced by him for the month of Feb. 2018, coupled with the fact that the Respondent – husband has not been able to substantiate any of

the expenses as set out above, we do not think that the prayer for maintenance of Rs.70,000/- per month made by the applicant – wife for herself and her two children is, in any way unreasonable, especially considering the income of the respondent – husband and the day to day expenses for living in the city of Mumbai. We are unable to agree with Mr Kantawala that by allowing this Civil Application for enhancement of maintenance, the same would amount to allowing the appeal itself. Firstly, the applicant – wife cannot be expected to survive on the paltry sum awarded by the Family Court in the impugned Judgment. Secondly, the prayer for one time permanent alimony for residence is not being allowed by us in this Civil Application. That is something that would be considered by this Court at the hearing and final disposal of the Family Court Appeal. We, therefore, find that the grant of maintenance to the applicant – wife at the rate of Rs.70,000/- per month for herself as well as her two children would be in the interest of justice to ensure that the applicant – wife and her two children are able to sustain a decent life during the pendency of the Family Court Appeal.

12 In view of the foregoing discussion, the following order is passed:

- (i) The respondent – husband is directed to pay a sum of Rs.70,000/- per month towards the maintenance of the applicant – wife and the two children, namely, Vishit and Ria from the date of this Civil Application (26th July, 2017);
- (ii) As recorded in our order dated 27th April, 2018, an amount of Rs.3,00,000/- has already been paid by the respondent – husband to the applicant – wife. After deducting this amount of Rs.3,00,000/-, the arrears of maintenance calculated at the rate of Rs.70,000/- per month shall be paid by the respondent – husband within a period of two months from today;
- (iii) After clearing the arrears of maintenance, the respondent – husband shall continue to pay Rs.70,000/- per month towards maintenance of the applicant – wife and the two children till the hearing and final disposal of the appeal;
- (iv) As far as the claim for permanent alimony is

concerned, the same is rejected at this stage and shall be considered by this Court at the time of hearing and final disposal of the appeal;

13 The Civil Application is disposed of in the aforesaid terms. No order as to costs.

(B.P.COLABAWALLA, J.)

(K.K.TATED, J)