

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 594 OF 2017

Mrs. Shlokha N. Chhabria .. Petitioner
vs.
Mr. Narendra A. Chhabria .. Respondent

Mr. R.V. Pai a/w. A.R. Pai a/w. Akshay R Pai I/b Bina R. Pai
for the Petitioner
R.Ramani, Dilip Shinde and Aruna D. Shinde for the
Respondent.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 27th November 2018.
Date of Pronouncing the Judgment: 7th **December 2018.**

JUDGMENT:-

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The petitioner-wife challenges the order dated 13th May 2016 made by the Family Court at Bandra rejecting her application for interim maintenance.
- 4] Mr. Pai, the learned counsel for the petitioner submits that the learned Family Court failed to appreciate that the

petitioner had not suppressed any facts in her application dated 5th January, 2011 seeking interim maintenance, much less can it be said that she has suppressed any material facts. He points out that the petitioner had neither acquired any interest nor transferred such interest in flat No. 602 at Khar (Khar flat) as on 5th January, 2011. In any case, Mr. Pai submits that the petitioner's name was added to the agreement for sale along with that of her father and brother and ultimately the petitioner, gifted her so called interest in the Khar flat to her brother Vishal Thawani. He submits that all these facts were completely extraneous to the issue of maintenance and therefore the learned Family Court erred in denying the petitioner maintenance on the ground of alleged suppression of such facts.

5] Mr. Pai submits that the learned Family Court erred in holding that petitioner had failed to indicate break up of the expenses claimed by her. He submits that the learned Family Court also erred in holding that the petitioner being an able bodied person and a tutor must be presumed to have some source of income. He submits that the learned Family Court also erred in simply postponing the issue of interim

maintenance to the final stage. He submits that the approach of the learned Family Court in the present matter was entirely improper and contrary to the well settled principles in matters of consideration of application for interim maintenance.

6] Mr. Pai submits that the learned Family Court also erred in observing that since the petitioner did not pursue the application for interim maintenance, the same could not be decided for a period of almost 4-5 years since the date of its inception. On the basis of such observation, which is in fact contrary to the record, learned Family Court further erred in inferring that the petitioner is/was capable of earning and did not require any interim maintenance. Mr. Pai submits that such approach is completely perverse.

7] Mr. Pai submits the voluminous material on record in relation to the income of the Respondent-husband has been ignored by the learned Family Court. The impugned order is based on the considerations which are not relevant and at the same time, several relevant considerations which the learned Family Court was duty bound to take into account, have been completely ignored. Mr. Pai submits that on the basis of

material on record and upon considering the life style of both the parties, the petitioner, is required to be awarded interim maintenance of Rs. 5 lacs p.m. and learned Family Court failed to exercise the jurisdiction by dismissing the application for interim maintenance in its entirety.

8] Mr. Ramani, the learned counsel for the respondent, defends the impugned order by pointing out that the learned Family Court has adverted to the correct principles and has rightly rejected the claim for interim maintenance. He points out that this was a clear case of suppression of the facts that the petitioner owned or had interest in a luxury apartment conservative valued Rs.6 crores and during the pendency of the proceeding, she transferred such interest in favour of her brother in order to press her claim for interim maintenance. Mr. Ramani points out that there is sufficient material which establishes that the petitioner's parents are extremely rich affluent and further even the petitioner has considerable income of her own as a tutor in French. He submits that all these relevant facts have been suppressed by the petitioner and therefore the learned Family Court was entirely justified in rejecting her claim for interim maintenance. Mr. Ramani

submits that even if the petitioner had rented Khar apartment, she could have easily earned income of Rs. 1.50 lakhs p.m. He points out that the petitioner has jewelry valued Rs. 1 crore or above. He referred the bank account statement of the petitioner and points out that the petitioner has not withdrawn any amount from her bank account. On the basis of all these, Mr. Ramani submits that it is quite clear that the petitioner has independent sources of income and therefore, he is not in need of any maintenance or interim maintenance. He submits that since this is the position, the issue of respondent's income is quite irrelevant. He submits that the respondent has admitted that he has income of 4-5 lakhs p.a. and further submits that the rest of the income/capital assets which the petitioner claims as being earned/owned by the respondent, in fact belongs to company and firm wherein the respondent may have some limited stake. He submits that there is no infirmity whatsoever in the view taken by the impugned order and therefore this petition may be dismissed.

9] Finally Mr. Ramani submits that the interim maintenance application was filed in the year 2011. If the

petitioner could survive up-to now without receipt of any interim maintenance, then, the only legitimate inference to be drawn is that the petitioner is not in need of any maintenance, much less any interim maintenance. Mr. Ramani submits that on this ground also, the petitioner's claim for interim maintenance deserves rejection.

10] The rival contentions now fall for determination.

11] From the perusal of the impugned order dated 13th May, 2016 made by the Family Court at Bandra, it is apparent that the petitioner's application for interim maintenance has been rejected on the following 6 grounds:

- (i) Suppression of the transactions in relation to Khar flat (Para 224 of the impugned order)
- (ii) Failure to press the application for interim maintenance filed on 5th January, 2011 and disposed of in May, 2016. From this learned Family Court has inferred that the petitioner was/is capable of earning sufficient for her needs. (para 5 of the impugned order.
- (iii) Failure to give break-up of expenses (para 6 and 7 of the impugned order)

(iv) The petitioner's admission that she is a tutor but failure to disclose her actual income as tutor (para 6 and 7 of the impugned order).

(v) Documents have been produced by both the parties, and therefore their veracity will have to be decided after evidence is led in the matter based on rival documents, it is not possible to decide the issue of interim maintenance. (para 7 and 8 of the impugned order).

(vi) The petitioner is an able-bodied person working as a tutor and therefore she is not entitled to any maintenance (para 9 of the impugned order).

12] It is necessary to note that the impugned order comprises in all 9 paragraphs, in which, the learned Family Court has given the aforesaid 6 reasons for dismissal of the petitioner's application for seeking interim maintenance. By way of litigation costs, however, the learned Family Court has awarded the amount of Rs.10,000/- to the petitioner.

13] From the perusal of the impugned order, it is apparent that the main reason for dismissal of the petitioner's application for

interim maintenance is the suppression of the particulars in relation to Khar flat. The application for maintenance was filed on 5th January 2011 indeed there is no reference to Khar flat or any transaction relating to Khar flat. However, the moot question is whether this amounts to any suppression or in any case material suppression for the purpose of considering the petitioner's claim for interim maintenance.

14] As noted earlier, the application for interim maintenance was filed by the petitioner only on 5th January, 2011. As on this date, the material on record establishes that the petitioner had neither acquired any interest in Khar flat nor was there any question of the petitioner transferring her interest in the Khar flat in favour of her brother. The interest if any was acquired by the petitioner in the Khar flat vide agreement for sale Dt.17th March 2011 i.e. 2 months after filing application dated 5th January, 2011 seeking for interim maintenance. The so called transfer of this interest in favour of her brother vide gift dated 22nd November, 2011, again, much after filing of application seeking interim maintenance. The Family Court, was indeed wrong in expecting the petitioner to have disclosed such particulars in her application dated 5th January, 2011 and on such basis rejecting the petitioner's claim for interim maintenance.

15] Again it is necessary to note that the rule relating to disqualification of a litigant from claiming any equitable reliefs on the ground of suppression of material facts is evolved from the need of the Court to deter litigants from abusing the process of the Court or deceiving the Court. Therefore, suppression must be of a material fact. In the sense, had such fact not been suppressed, the Court, in all probabilities would have taken out a view of the matter. The suppression must be of a matter which was material for the consideration of the Court, whatever view the Court may have ultimately taken in the matter. The Apex Court in the case of ***S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar and ors. - (2004) 7 SCC 166*** has explained that it is not as if in and every suppression will dis-entitle a litigation to relief. The Court has to consider the issue of suppression in its entirety and not by resorting in hairsplitting. The Court is also required to consider the explanation that may be furnished by a party who is alleged to have suppressed the particulars. If the explanation is *bona fide* and plausible one, then, such a party must not be required to face dismissal of his/her claim.

16] It is necessary to remember that many a times, it is not parties but their adviser or advocates who decides which documents

or which particulars may be material or not. The Court has to therefore examine whether the suppression is deliberate/ *mala fide* or intended to abuse the judicial process and deceive the Court. In the present case all such relevant consideration do not appear to have been taken into account by the learned Family Court.

17] The agreement for sale dated 17th March, 2011 by which the petitioner is alleged to have acquired interest in the Khar flat very clearly indicates the name of her father and brother in addition to her name as the proposed purchaser of the Khar flats. Mr. Ramani's contention that since notice of demand or notice for payment of taxes have been addressed only to the petitioner, it must be presumed that the petitioner is the sole owner of the Khar flat, deserves no acceptance. In such matters, it is not unreasonable to proceed on the basis of such notices which are normally issued to a person whose name appears first on the agreement for sale or the total document as the case may be. It is by itself is not determinative or interest in such matters.

18] Mr. Pai, learned counsel for the petitioner has explained that the Khar flat was in fact agreed to be purchased by the petitioner's father and brother since the petitioner had no

independent source of income. He points out that ultimately, the petitioner vide gift deed dated 22nd November, 2011 has transferred whatever limited interest she may have in the Khar apartment in favour of her brother. There was no monetary consideration as such involved in the transaction. Therefore, the petitioner and her advocate did not deem it necessary to refer to the transactions in relation to Khar flat in the proceeding seeking interim maintenance. Mr. Pai points out that since the transactions were post 5th January, 2011 there was no question of any reference to such transactions in the application dated 5th January, 2011. At the *prima facie* stage such explanation could not have been rejected as *malafide* in the facts and circumstances of the present case. Learned Family Court has not even adverted such explanation much less rejected the same on any cogent ground. It is pertinent to note that this is not even allegation of the respondent that Khar flat was in fact rented out and the petitioner deprived herself of the rent from the Khar flat by gifting the same in favour of her brother. Only the allegation is that Khar flat could have been rented out and since this was not done, the petitioner is dis-entitled to any interim maintenance. However, this was clearly not a case whether the petitioner's claim for interim maintenance could have been rejected on the ground of suppression of material particulars.

19] The impugned order notes that gift deed dated 22nd November, 2011 was executed by the petitioner despite knowledge that on 18th November, 2011 the respondent had taken out application seeking a restraint on the alienation of Khar flat and this circumstance is also held against the petitioner for denial of interim maintenance. Again, such circumstance, is neither borne from the record nor can it be said that such a circumstance was relevant for denial of interim maintenance to the petitioner. The case of the petitioner is that she was not present in the Court on 18th November, 2011 when application is taken out restraining alienation. There is no material on record to establish that the petitioner was indeed present or otherwise had any knowledge about such application. Besides, admittedly, as on 22nd November, 2011 there was no injunction or restrain order to restrain the petitioner alienating the Khar flat by way of gift deed in favour of her own brother. Learned Family Court was therefore not justified in taking into account this circumstance, in denial of interim maintenance to the petitioner. The reasoning in paragraph 2 to 4 of the impugned order cannot be sustained and is required to be set aside in the facts and circumstances of the present case.

20] The second reason in the impugned order for denial of

interim maintenance to the petitioner is equally untenable. It is true that the petitioner filed her application for interim maintenance on 5th January, 2011 and that the same was ultimately disposed of by an order dated 13th May, 2016. However, this does not mean that the petitioner was in any manner responsible for the delay of 5 years in the disposal of her interim application. There is nothing on record to indicate that the petitioner herself delayed the decision on her interim maintenance application. The inference drawn by the learned Family Court of the delay in the disposal of application for interim maintenance is quite perverse. The learned Family Court was not at all justified in inferring that such delay is indicative of the fact that the petitioner was/is capable of earning sufficient for her needs and therefore, was not in need of any interim maintenance. The second reason for denial of interim maintenance to the petitioner is thus quite untenable and warrants interference.

21] The third reason is that the petitioner had allegedly failed to indicate a break-up of her expenses while claiming interim maintenance of Rs. 5 lakhs p.m. This is contrary to records. In para 13 of the application seeking maintenance, the petitioner has actually given break-up of the expenses. In any case, the application seeking interim maintenance has to be considered in its entirety.

The petitioner has given sufficient indication not only as regards her own financial status but also financial status of the respondent. The petitioner has given sufficient indication about life style to which the parties were accustomed as well as matrimonial. The petitioner has given sufficient indication as regards the capital as well as non capital assets owned by the respondent and as also stated broadly the reasons as to why she has claimed interim maintenance of Rs. 5 lakhs p.m. The question as to whether all such pleadings have to be accepted or not is different matter. However, the learned Family Court was not at all justified in simply rejecting the petitioner's claim for interim maintenance on the basis that the petitioner had failed to give a break-up of the expenses. The third reason in respect of the impugned order is also entirely untenable.

22] The fourth reason in the impugned order for denial of interim maintenance to the petitioner is that the petitioner admitted that she was a tutor but failed to disclose her income as tutor. The Petitioner had indicated that she was a tutor and produced on record some statement of her income. This factor is no doubt required to be considered when determining the quantum of interim maintenance. However, it cannot be said that there was any failure to disclose the income and on such ground the petitioner's claim for

interim maintenance warranted a denial for its entirety.

23] The fifth reason is entirely untenable. The issue of interim maintenance is required to be decided in summary manner on basis of documents if available or otherwise on the basis of legitimate inferences which can be drawn from the circumstances placed on record by both the parties. The Family Court has not even adverted to the documents placed on record by both the parties but merely observed that the documents can be looked into only after their veracity is tested in trial. This is not at all correct approach for dealing with application for interim maintenance. Therefore, even fourth reason for taking interim maintenance to the petitioner is untenable.

24] The last reason is that the petitioner is a able bodied person and working as tutor. No doubt, this may be one of the circumstance for determining the quantum of interim maintenance but this is not a circumstance for denial of interim maintenance altogether. In the facts of the present case, the learned Family Court has not even bothered peruse the material on record and to decide the issue of the life style of the parties were accustomed to before their relationship was strained. Therefore, even sixth reason for

denial of interim maintenance to the petitioner is not untenable in the facts of the present case.

25] The impugned order is thus required to be set aside on the ground that the dismissal of the application for interim maintenance is based upon the ground or reasons which are found to be untenable. Ordinarily, this would call for remand. However, considering the fact that the entire material is on record before this Court and the issue is only of interim maintenance, a remand will not be appropriate. In fact neither of the parties even suggested remand. As it is the application for interim maintenance filed in the year 2011 and from that date onwards, the petitioner is not in receipt of any interim maintenance, therefore, it will be only appropriate that the issue of interim maintenance is decided at the stage and in these proceeding.

26] The material on record will have to be appreciated in the context of statutory provisions as interpreted by various Courts. Therefore, the reference to some precedents will be appropriate at this stage itself.

27] In *Manish Jain vs. Akanksha Jain – AIR 2017 SC*

1640, the Apex Court has held that an order for maintenance *pendente lite* or for costs of proceedings is conditional on circumstance that wife or husband who makes a claim for same has no independent income sufficient for her or his support or to meet necessary expenses of the proceeding. In this case, the Apex Court has clearly held that it is no answer to a claim of maintenance that wife is educated and could support herself. Likewise, financial position of wife's parents is also immaterial. The Court must take into consideration status of parties and capacity of spouse to pay maintenance and whether applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation. The court should, therefore, mould claim for maintenance determining quantum based on various factors brought before Court.

28] In *Bharat Hegde vs. Smt. Saroj Hegde – AIR 2007 Delhi 197*, the Delhi High Court has held that the focus of enquiry at the stage of considering the application for interim maintenance has to be means of applicant has to be means of applicant spouse to maintain himself or herself as also financial means of non-applicant spouse from whom maintenance have been claimed. The issue of conduct or misconduct of either spouse is irrelevant. As, in

proceedings for divorce, dissolution or judicial suppression, there are bound to be allegations and counter allegations. If such allegations and counter allegations are to be considered, then it will be difficult to proceed with the determination of interim maintenance. The enquiry at this stage is a summary enquiry not involving any trial at length. Maintenance is an incident of the status from an estate of matrimony. While considering claim for interim maintenance, the Court has to keep in mind the status of the parties, reasonable wants of the applicant, the income and property of the applicant. Conversely, requirements of the non-applicant, the income and property of the non applicant and additionally the other family members to be maintained by the non-applicant have to be taken into consideration. Whilst it is important to ensure that maintenance awarded to the applicant is sufficient to enable the applicant to live in somewhat the same degree of comfort as in the matrimonial home, but it should not be so exorbitant that the non-applicant is unable to pay. Award of interim maintenance cannot be punitive. It should aid the applicant to live in a similar life style she/he enjoyed in the matrimonial home.

29] The Delhi High Court in *Bharat Hegde (supra)* culled out from various judicial precedents, the following 11 factors which

ought to be taken into consideration whilst deciding the claim for interim maintenance:

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non applicant has to maintain.
5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non applicant.
9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.
10. The non applicant to defray the cost of litigation.
11. The amount awarded under [S.125 Cr.PC](#) is adjustable against the amount awarded under [S.24](#) of the Act.”

30] The Delhi High Court also rejected the contention that the capital assets of the parties are irrelevant at the stage of consideration of application for interim maintenance. The Delhi High Court also held mere reliance on income tax returns is not sufficient. Prudence and worldly wisdom gained by a Judge before whom citizens of all stratas of society litigate it can always be used by a Judge to broadly ascertain as to what is going on in the society, though such knowledge can be never be used where law requires a

fact to be conclusively proved, but the same, along with host of other factors can be used in such matters.

31] In *Jasbir Kaur Sahgal vs. District Judge, Dehradun – AIR 1997 SC 3397*, the Supreme Court has held that no set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.

32] In *Anamika Banka vs. Nawal Banka @ Nawal Kishor Banka – 2009 (4) PLJR 342*, the Patna High Court has held that in determination of interim maintenance, the Court has to taken into

consideration the standard of living and status which the spouse claiming maintenance was enjoying prior to the institution of the matrimonial case. The Court has to direct balance between standard of living of both Respondent-wife and to ensure that the standard of living for the wife is secure during the pendency of the matrimonial case.

“5.It has to be noted that when the wife-petitioner had set out her case in her application under Section 24 of the Hindu Marriage Act seeking ad-interim maintenance, she had definitely indicated of being habituated and accustomed to certain standard of living and status which she was enjoying prior to the filing of the matrimonial case. Those facts were not even controverted by the husband-opposite party in his written statement to the said application. In fact, the plea of the husband-opposite party of the wife-petitioner having sufficient means was also raised in a vague manner by referring to or relying certain documents. The court below also did not examine the issue with all its pros and cons and had merely proceeded on an assumption that the moment there was Something to show that the wife-petitioner had her own income it was sufficient for her to be denied any amount of maintenance by the husband-opposite party. Such is not the concept of Section 24 of the Hindu Marriage Act. As noted above, the Court has to strike a balance between the standard of life of both the husband and the wife and has to ensure that such standard of life for the wife is secured during the pendency of the matrimonial case. This having been not done, this Court cannot approve the reasonings in the impugned order.

33] The aforesaid principles will have to be applied in the present case in order to appreciate the material on record and the

issue as to whether the petitioner is indeed entitle to any interim maintenance and if so, the quantum of the interim maintenance.

34] The petitioner in her application dated 5th January, 2011 seeking maintenance has indicated the reasons as to why she is entitled to interim maintenance. She is pointed out that the respondent indulged in cruelty and forced out the petitioner from the matrimonial home. The respondent-husband has also made allegations against the petitioner. At this stage, it will not be appropriate to adjudicate upon such allegations and counter allegations because by and large they are not very relevant for deciding the issue of interim maintenance.

35] The petitioner has accepted that she earns some amount working as tutor. However, she has pleaded to the life style which she was used to along with the respondent before their relationship was strained can not even remotely be maintained on her income. In particular she has made detailed averments as regards the income, wealth and life style of the respondent-husband. This is evident from the averments in para 5 to 9 of the application seeking maintenance which read thus:

“5. This Respondent submits that the Petitioner is filthy

rich person having he luxurious apartment of 1500 sq.ft. Consisting of 3 bedroom Hall Kitchen at the address mentioned in the cause title. He is the only son having a married sister. The abovesaid Apartment is provided with the Air-conditioners like Daikin and O General. The abovesaid residence of the Petitioner is loaded with the LCD TVs, Music Systems from Sony. The bedrooms are provided with music systems and separate televisions having the facility of home theater. There are two refrigerators for storing different kinds of food. The Petitioner is having four cars – Honda City, Esteem Swift and Zen from Maruti. The abovesaid residence of the Petitioner is having the washing machines, air coolers. The Petitioner holds two cell phones – Nokia N72 and HTC bearing Nos. 982106490 and abroad no, while his mother also holds one cell phone of Nokia bearing Nos. 9821031398 ----. The Petitioner recently purchased one Blackberry. The Petitioner holding major Gold Credit Cards from HSBC, American Express, City Bank etc. having very high limit, which is maintained fro years together.

6. The Respondent further submits that the Petitioner is having the landed property of the following description:

- a) 33.33% Stake in the premises of approx. 4000 sq.ft. in Mittal Court – 2 diagonally opposite to Inox Theater, Nariman Point, Mumbai. The Petitioner and his family has leased the said premises to Development Credit Bank Ltd. For a period of 5 years.
- b) The Petitioner is having the premises in the basement of approx. 2000 sq.ft. below the abovesaid premises leased to the Development Credit Bank Ltd. in Mittal Court-2 which is used by the Petitioner and his family for godown of their firm, Bombay Electrical Projects and supplies.
- c) 30% share in the premises of 2000 sq.ft. and profits being the partner in Rajkamal Industrial Premises at Kandivali, Mumbai.
- d) The Petitioner and his family's firm namely, Bombay Electrical Project and Supplies at Laxmi Industrial Estate, Andheri Link Road, Mumbai is having

the business in approx 2500 sq.ft. area and is known as one of the best firms providing electrical fittings.

e) There were residential premises of 1100 sq.ft. of the Petitioner and his family in Crystal Building at 16th Road above Cammy Wafers, Khar Mumbai 400 052 which is sold for a sum of Rs. 1,07,00,000/- because of some astronomical advise.

7. The Petitioner is having a business in Electrical Fittings and recently successfully completed the Electrical fittings in the projects of the Five Star Hotel properties – J.W. Marriott (Mumbai), Taj (Goa), Holiday – Inn (Goa), Four Seasons (Mumbai), Rennissance (Powai, Mumbai), Novotel (Juhu, Mumbai) International (Marine Drive, Mumbai), Sahara Star (Santacruz Domestic Airport, Mumbai) and Tunga (New Bombay).

8. This Respondent submits that the Petitioner for the business tours files, opts for the airlines like Kingfisher and Jet by Executive Class and mostly travels to Delhi, Chnnai, Goa, Hyderabad. The Petitioner also attends the exhibitions every year at Germany, Spain, China, Hong Kong, Valencia and other destinations. He opts for the flights and accommodations providing five star facilities and carries two laptops one of Dell Company and other of Sony Vio.

9. The Petitioner uses the Rolex watch and the pens from Mount blank. The Petitioner and his family do not believe any other clothes than the designers and always use the branded jewellery and other accessories. The Petitioner provides the return Airtickets to his sister for her each trip to Mumbai and gifts her valuables and jewellery on every visit.

36] In para 13 of the application seeking maintenance, the petitioner has given the break-up of the expenses and the basis why she claims interim maintenance of Rs. 5 lakhs per month. It is

apparent that this para was not even adverted to by the learned Family Court before making the impugned order. The averments in para 13 read thus:

“13. In the facts and circumstances stated hereinabove, the Petitioner has dragged the Respondent to face the unwanted, unwarranted litigation. The petitioner has failed to provide any maintenance to this Respondent, though he is knowing and well aware that this Respondent is not able to maintain herself and he is under moral and legal obligation to maintain this Respondent. Taking into account, the standard of living the Petitioner enjoys, this Respondent is entitle for a sum of Rs.5 lakhs per month towards her maintenance for her clothes, accessories, medical assistance, gym for physical fitness and other requirements. This Respondent is also required the residential premises as the Petitioner has not only driven her out of the matrimonial home, but also initiated the proceedings through his mother under the provisions of Protection of Women from Domestic Violence Act, 2005 against this Respondent to harass and torture her as well as the present Petition and thus, is refusing and neglecting the shelter to this Respondent. Thus, this Respondent is also entitled for separate residential premises of minimum 1 Bedroom Kitchen Hall of 550 sq.ft. from the Petitioner. This Respondent is also entitled for the expenses from the Petitioner for defending the litigations initiated by him against this Respondent in this Hon'ble Court as well as before the learned Metropolitan Magistrate's Court at Bandra, Mumbai and for the said purpose, this Respondent will require minimum Rs.5 lakhs.”

37] The petitioner in respect of the averments in her application seeking interim maintenance has produced several documents on record. It is true that it is too early to make any final

observations or inferences which flow from such documents. However, such documents are required to be considered for the purpose of drawing *prima facie* inference at least. The learned Family Court by not even advertng to any of the documents clearly failed to exercise jurisdiction vested in it. The consideration of such documents, no doubt, on *prima facie* basis could not have been postponed on the ground that the veracity of the documents is required to be determined after trial.

38] The respondent in his reply to the application for interim maintenance, chose to deny everything without bothering to state anything. By way of illustration reference can be made to the averments in para 4(e) to 4(h) of the response to the reply which read as follows:

e) With reference to para 5, I deny that I am having luxurious apartment of 1500 sq.ft and I further deny of heaving so much luxuries at home. I deny that I have four cars, two cell phones, One Blackberry Cell phone etc., Credit Cards of different banks. I deny the rest of contets of this para. I say that I am residing along with my mother in her flat and we have basic necessities at home like TV, fridge, A/c and one cell phone. I have one married sister and she is residing along with her family and in-laws at Bangalore. I say that my father was on bed from last eight years and he expired on 07/01/11.

f) With reference to para 6, I deny that I have any landed properties mentioned therein.

g) With reference to para 7,8,9 and 10 I deny the contents therein.

h) With reference to para 11, I deny the contents therein, I deny that I am earning Rs. 20 lakhs per month and therefore there is no question of disclosing of that income which I do not earn in my Income-Tax return. I don't have high income and independent business. The Respondent has purposely with malafide intention of extorting maximum amount from me has imagined and stated false story here. I am not the son of Tata or Birla Industrialist but a middle class man doing service with Bombay Electricals and earning approximately Rs.20,000/- per month. The Respondent is well aware of it. I have to meet my personal expenses and look after my old mother's medical expenses and maintain her. My mother is 72 years old and I have one married sister”

39] The perusal of the documents on record indicate that the income of the respondent is certainly not Rs. 20,000/- p.m. as has been incorrectly stated in the reply. The petitioner is a Director of Bombay Electrical Projects & Supplies (I) Pvt. Ltd. established several decades ago. The petitioner is also a partner in a partnership firm functioning under the name and style of “Sterling Luminaires”. This firm is in the business of manufacture and trading of electrical fittings, goods and also act as agents, distributors for various types and varieties of electrical fittings and goods. The respondent has considerable stake in these concerns. From the evasive nature of denial, it is apparent that there is some truth in the various details

placed on record by the petitioner. In the context of the respondent's luxurious life style, which is reflected from the material placed on record, it is not possible to accept that the income of the respondent is only Rs. 4 to 5 lakhs p.a. The respondent, will easily being in a position to pay interim maintenance of Rs. 1 lakh p.m. to the petitioner. However, since the petitioner earns Rs. 25,000/- to 30,000/- p.m as a tutor in French, it will be reasonable if the interim maintenance is determined as Rs. 75,000/- p.m.

40] The learned counsel for the respondent may be right in submitting that the respondent has jewelery which can be valued about one crore or above. However, that by itself is no reason to deny the petitioner interim maintenance. Surely, the respondent cannot expect that the petitioner lives by selling her jewelery. So also the bank account statement indicate the balance of few thousands of rupees and therefore, no adverse inference can be drawn on the basis of such account have not been operated by the petitioner for some time. The petitioner, has no doubt, claimed interim maintenance @ Rs. 5 lakhs per months. Such claim in the fact and circumstances of the present case cannot be considered primarily because at this stage, we are not dealing with the issue of final alimony or maintenance but only the issue of interim

maintenance. In the facts of the present case, interim maintenance of Rs. 75,000/- p.m will be legitimate, particularly since the award will have to be from the date of the application i.e. 5th January, 2011.

41] The petitioner, in her application seeking maintenance had made detailed averments as regards the luxurious life style of the respondent. The respondent, as pointed earlier, has, apart from evasive denials has not produced any material on record to rebut such averments. For example the petitioner could have disclosed about his residencies. The petitioner could have placed on record his credit card statements or his passport details to rebut the averments in para 5 to 10 of the application for interim maintenance. The respondent has done nothing of this and yet the respondent expects the Court to believe that his income was only Rs. 20,000/- p.m or Rs. 4 to 5 lakhs p.a. Such stand has been taken by the respondent only to avoid the liability for the payment of interim maintenance.

42] The details from the Registrar of Companies itself bear out that the respondent is a Director and has considerable share holding in the family concern, which is in the business for last several decades. All these circumstance, have not been looked into

by the learned Family Court whilst making the impugned order.

43] From the material on record, the contention of the respondents that the petitioner as a tutor in French must be earning Rs. 30,000/- p.m in the facts of the present case can be accepted. However, taking into consideration the life style, the parties were accustomed to, surely, such earning will not dis entitle the petitioner to claim additional amounts by way of interim maintenance. As noted earlier the circumstance, that the petitioner's parents are rich and affluent is an irrelevant circumstance, when it comes to deciding petitioner's claim for interim maintenance. The respondent therefore cannot deny the petitioner's interim maintenance on the ground that her parents are rich and affluent or that her parents are in a position to maintain her. Primary duty of maintenance is that of respondent-husband and the same cannot wished away on the basis of such considerations.

44] The ruling in the case of *Mamta Jaiswal vs. Rajesh Jaiswal*, (2000) DMC 170 relied by Mr. Ramani turns on its own facts. The ruling does not say that the moment the wife has some independent income, her claim for interim maintenance must be rejected. The independent income must no doubt be taken into

consideration whilst determining the quantum of interim maintenance. However, it is not correct to say that the moment the wife has some income, the claim for interim maintenance must be rejected.

45] Therefore, on cumulative consideration of all such factors, the Petition is disposed of with the following order:

- (i) The impugned order dated 13th May, 2016 made by the learned Family Court at Bandra is set aside.
- (ii) The respondent is directed to pay the petitioner the interim maintenance at the rate of Rs. 75,000/- p.m. with effect from 5th January, 2011 on or before fifth day of each succeeding month.
- (iii) The petitioner to indicate the details of her bank account to the respondent and thereupon the respondent to arrange to deposit of Rs. 75,000/- p.m by way of interim maintenance to the petitioner on or before 5th day of each succeeding month.
- (iv) The respondent to deposit the arrears towards maintenance in the petitioner's bank account as aforesaid within a period of two months from today.
- (v) The respondent to also pay the cost of Rs. 50,000/- to the petitioner within a period of two months from today.
- (vi) The rule is made absolute to the aforesaid extent.

46] It is clarified that none of the observations in the impugned order or for that matter in the present order need influence the learned Family Court while deciding the issue of final maintenance. The issue of final maintenance will have to be decided on the basis of evidence which the parties will lead before the learned Family Court and on its own merits and in accordance with law.

(M. S. SONAK, J.)