

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.400/2014
IN
FAMILY COURT APPEAL NO.274/2014

Shri Baban Dasharath Buchade

... Applicant

V/s.

Sou. Gangubai Baban Buchade

... Respondent

Mr. Anand S. Patil for the Applicant

Ms. Ketaki Datar for the Respondent

**CORAM: K.K. TATED &
SARANG V. KOTWAL, JJ.**

DATED : JANUARY 10, 2018

P.C. :

1. Heard the learned counsel for the parties. This Application is made by the husband for stay of the operation and implementation of the judgment and decree dated 31.07.2014 passed by the Judge, Family Court, Kolhapur in Petition No.C-26/2013 directing the Applicant to pay sum of Rs.2000/- pm by way of maintenance to the Respondent wife from the date of filing the petition. The Trial Court has also directed to Applicant to pay past maintenance @ Rs.1000/- pm for the period of three years prior to filing of petition.

2. The learned counsel for the Applicant submits that the Applicant is a senior citizen. At present he does not have any source of income.

Even he is not keeping well. Today he is residing with his son. He is entirely depend on his son for financial purpose. Hence, it is not possible for him to pay maintenance. He submits that the order passed by the Trial Court is required to be set aside on the ground that the Respondent is his second wife. Moreover, since 1976 he is residing separately. For the first time in the month of December 2012, she has filed the petition for maintenance. These facts are not considered by the Trial Court at the time of passing the impugned order. Hence, pending the hearing and final disposal of the First Appeal, the operation and implementation of the impugned order dated 31.07.2014 be stayed.

3. On the other hand the learned counsel for the Respondent wife vehemently opposed the Civil Application. She submits that this court by order dated 03.12.2014 directed the Applicant to deposit sum of Rs.5000/- in this court within two weeks so that the Respondent wife can engage an advocate out of the said amount. She submits that except that amount the Applicant has not paid a single pie towards maintenance as per the order dated 31.07.2014. She submits that the Respondent has no source of income. Not only that the Trial Court, by impugned order dated 31.07.2014 created charge on Applicant's property i.e. land gut bearing No.190/3D, 190/3+4 and 189/3 situated at Mauje Shiye, Tq. Karveer, Dist. Kolhapur. He submits that if the Applicant is not ready and willing to deposit maintenance charges, there is no question of granting any stay so that she can recover an amount by making an appropriate Application .

4. Heard. It is to be noted that though the impugned order is

passed on 31.07.2014 the Applicant has not paid a single pie to the Respondent towards maintenance charges. This being money decree and the advocate for the Applicant made a statement across the Bar that it is not possible for the Applicant to deposit and/or pay maintenance amount to the Respondent wife, there is no question of granting any stay.

5. Hence, following order is passed:
 - a. The Civil Application stands rejected.
 - b. The Respondent is permitted to execute the decree for recovery of maintenance charges according to law.
 - c. Civil application stands disposed off accordingly.

(SARANG V. KOTWAL, J)

(K.K. TATED, J.)