

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO. 65 OF 2009
WITH
CIVIL APPLICATION NO.380 OF 2015**

John Domnic Fernandese

..Appellant

Vs.

Yvonne Fernandese

..Respondent

Mr. Amrendra Mishra for the Appellant

Ms Susan Abraham i/b Smt. T. Parakkadan for the Respondent

**CORAM :R. M. SAVANT, &
SANDEEP K SHINDE,JJ**

DATE : 8th FEBRUARY, 2018

P.C.

1 By the above Family Court Appeal the Appellant husband challenges the judgment and order dated 9-2-2009 passed by the Learned Judge of the Family Court-2, Mumbai by which the marriage Petition filed by the Respondent wife being Petition No.A-2102/2006 came to be allowed and resultantly the marriage between the Appellant and the Respondent solemnized on 5-9-2018 came to be dissolved by a decree of divorce. By the said judgment and order the Appellant husband was also directed to pay Rs.3000/- per month to the Respondent wife towards her permanent maintenance payable from the date of the said order i.e. 9-2-2009. A further direction came to be issued which was in the nature of an injunction thereby restraining the relatives, family members friends etc of the Appellant husband

from entering in the premises in question situated at House No.6, 1st floor, Chapel Road, Bandra, which restraint order is by way of a permanent injunction.

2 The Learned Counsel for the Appellant Mr. Mishra on instructions of the Appellant fairly stated that the Appellant is not prosecuting the above Appeal in so far as the decree of divorce is concerned and accepts the same but is challenging the decree in so far as it grants Rs.3000/- per month as maintenance to the Respondent wife and also restrains the relatives, family members and friends of the Appellant husband from entering the premises being House No.6, 1st floor, Chapel Road, Bandra. The challenge to the first part of the order namely to the decree of divorce is not being pressed as according to the Learned Counsel the Appellant husband and the Respondent wife have been staying apart since the year 2006 and therefore it is almost a period of 12 years that they are staying apart. In view of the restricted challenge to the decree of divorce as stated by the Learned Counsel for the Appellant, it is not necessary to go into the facts in detail.

3 We are informed by both the Learned Counsel that the mother of the Appellant in whose name the tenancy stands had filed proceeding being RAD Suit No.25 of 2009 for a declaration and the eviction of the Respondent wife from the premises in question namely House No.6, 1st floor, Chapel Road,

Bandra. The Learned Counsel are ad-idem that the said Suit has progressed and is at the concluding stage. The Learned Counsel appearing on behalf of the Appellant would submit that since the proceedings are pending in the Small Causes Court, the occupation of the said premises by the Respondent wife be made contingent on the outcome of the said proceedings and that the injunction granted by the Family Court by the instant order should not come in the way of the heirs of the mother of the Appellant husband in prosecuting the said proceedings. The said proposal was put to the Learned Counsel appearing for the Respondent wife. After exchanging the proposal and the counter proposals, the Learned Counsel appearing for the Respondent wife on instructions of the Respondent wife was agreeable to the occupation of the Respondent wife of the premises in question to be made contingent upon the decision that would be rendered in the said RAD Suit No.25 of 2009 and further challenges, if any, by the Appellant husband or the Respondent wife. In view thereof the challenge to the part of the order granting permanent injunction against the relatives, family members and the friends of the Appellant husband is taken care of.

4 In so far as the challenge to the part of the order granting maintenance of Rs.3000/- to the Respondent wife is concerned, the Learned Counsel for the Appellant would contend that the Appellant husband is around 67 years of age and is involved in looking after the properties which are in the

near vicinity of their ancestral house as a caretaker. This is countered by the Learned Counsel appearing for the Respondent wife by contending that the Appellant husband is involved in the business of providing accommodation to tourists in the nature of home stay out of which he is earning. It is required to be noted that the Learned Judge of the Family Court in so far as the said aspect is concerned has fixed the maintenance at Rs.3000/- by taking into consideration the material which has come on record. It is required to be noted that the Respondent wife is also about 65 years of age and has no means of livelihood. The couple have three children out of which we are informed one has accepted to be a Priest, whereas one son is a Chartered Accountant and second son is employed in a call center. We are informed by the Learned Counsel for the Respondent wife that the two earning children are paying some amount to the Appellant husband towards his maintenance apart from his earning from the business which he is supposedly carrying on.

5 Having regard to the costs of living in today's time, it cannot be said that the amount of Rs.3000/- p.m. as maintenance is excessive or extravagant. The amount per day comes to Rs.100/- which in our view is the basic minimum requirement of a person so as to take care of his daily needs. We therefore do not deem it appropriate to interfere with the amount of maintenance fixed by the Family Court which is at Rs.3000/- p.m. Hence in so far as the said challenge is concerned, we repel the same and sustain the

directions issued by the Family Court and direct the Appellant husband to pay the maintenance of Rs.3000/- p.m., the above Family Court Appeal is accordingly disposed of in the following terms:

(i) That the occupation of the premises in question being House No.6, 1st floor, Chapel Road, Bandra, by the Respondent wife would be contingent upon the decision in RAD Suit No.25 of 2009 and the further challenges by the Appellant husband and the Respondent wife. In view of the consensus reached between the parties, the Small Causes Court Mumbai would try the said RAD Suit No.25 of 2009 on its own merits and in accordance with law, uninfluenced by any observations that have been made in the instant impugned order and the grant of permanent injunction by the instant impugned order.

(ii) The challenge to the impugned order in so far as it directs payment of Rs.3000/- p.m. to the Respondent wife is rejected. Hence the maintenance of Rs.3000/- is confirmed.

(iii) The arrears of maintenance which we have been informed by the Learned Counsel for the Respondent wife are to the tune of Rs.18000/- be cleared within 6 weeks from date.

6 The above Family Court Appeal is accordingly disposed of. Decree to be drawn up accordingly.

7 In view of the disposal of the above Family Court Appeal, Civil Application No.380 of 2015 does not survive and to accordingly stand disposed of as such.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]