

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.27 OF 2018
IN
FAMILY COURT APPEAL NO. 199 OF 2017**

Smt. Asha Ramesh & Anr

..Applicants

Vs.

Mr. Ramesh Ganesan

..Respondent

Ms Rama Subramanian for the Applicants

Ms Jalaja Nambiar a/w Mr. N. B. Suvarna for the Respondent

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

DATE : 8th FEBRUARY, 2018

P.C.

1 The above Civil Application has been filed seeking the following relief :

(i) To direct the Family Court-III at Mumbai to release a sum of Rs.6,20,921/- (Rupees Six Lacs Twenty Thousand Nine Hundred and Twenty One Only) to Spenta Enclave Private Limited Master RERA Escrow A/c Phase-1 Account No.5750000004495 maintained with HDFC Bank Ltd. Tulsani Chambers, Nariman Point, Mumbai (IFS Code HDFC 0000001), from the monies held in Fixed Deposit Account in the name of the Applicant No.2

2 In the context of the said relief a few background facts would have to be noted. The marriage between the Applicant No.1 herein and the Respondent husband has been dissolved by judgment and order dated 14-11-2007 passed by the Family Court. It is an undisputed position that the child

born out of the wedlock is suffering from what is known as Down Syndrome. It is in the said context that in the said judgment and order dated 14-11-2007, the Family Court directed the Respondent husband to deposit an amount of Rs.50 lacs in the name of the child as security for the child's future and pay maintenance of @ Rs.20,000/- p.m. to the child. The Respondent husband accordingly deposited the amount of Rs.50 lacs in the Family Court and the said amount has been kept in a fixed deposit as per the directions of the Family Court. It seems that thereafter the Respondent husband stopped the payment of Rs.20,000/- which was awarded as maintenance to the child. The said maintenance was stopped on the ground that the child having attained majority the liability of the Respondent husband has come to an end. The said contention was negated by the Family Court in the proceedings filed by the Appellant wife for recovery of the maintenance being R. D. No.377 of 2012. The Family Court accordingly allowed the said application filed by the Appellant wife by order dated 17-8-2013. The said order has been taken exception to by the Respondent husband by filing a Family Court Appeal which is pending in this Court and we are informed that a stay is operating in respect of the said order dated 17-8-2013.

2 The Appellant wife has thereafter filed an application for releasing the amount of Rs.50 lacs kept in the fixed deposit so as to facilitate the purchasing of a flat in her name along with that of a daughter. The said

application has been rejected by the Trial Court by order dated 31-7-2017 inter alia on the ground that it is for taking care of the child that the said amount of Rs.50 lacs was directed to be deposited as and by way of permanent alimony and that against the order dated 17-8-2013 passed by the Family Court the proceedings are pending in this Court wherein stay has been granted. However the overarching reason as can be seen from the order dated 31-7-2017 filed in Misc Civil Misc Application No. 31 of 2016 is the ground that the said amount of Rs.50 lacs and the interest accruing therefrom is to be utilised to take care of the child including her security. The Trial Court also took note of the fact that the child is now in college but is still suffering from the Down Syndrome as per the report which the Family Court obtained from the J. J. Group of Hospitals Mumbai.

4 Having regard to the order dated 31-7-2017 passed by the Family Court we do not find any reason to take a different view than the view taken by the Family Court in the said order dated 31-7-2017. Hence no relief can be granted to the Applicants, the above Civil Application is accordingly rejected.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]