

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

**CIVIL APPLICATION NO.30 OF 2015
IN
FAMILY COURT APPEAL NO.13 OF 2012**

Ujwala Mahesh Jadhav ... Applicant

Vs

Mahesh Wamanrao Jadhav ... Respondent

Mr.P.M. Havnur for the Applicant

Ms.Sangita Salvi i/b Ms.Seema Sarnaik for Respondent

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: AUGUST 9, 2019

P.C.:

1. This Civil Application is filed by the appellant-wife seeking maintainance pending appeal. The appellant-wife has challenged the judgment of the Family Court granting a decree of dissolution of marriage to the husband. While doing so, the Family Court has awarded permanent alimony of Rs.5,000/- to the wife. The husband was further directed to provide alternative accommodation of at least two rooms in the vicinity of the existing matrimonial home failing which the husband would pay a sum of Rs.7,000/- per month towards rent. The directions for maintainance

has remained constant. Pending appeal, this Court under the order dated 13.8.2015 has revised the rent and provided for periodic increase thereon. We are informed that currently the husband is paying Rs.14,400/- by way of rent which soon will become Rs.16,000/- per month. The wife has prayed for interim maintenance of Rs.25,000/- per month, pending appeal.

2. The Family Court while awarding maintenance, came to the conclusion that the wife had no independent source of income. The Family Court also considered the salary of the husband. At the relevant time he was and continues to be employed in the railways. The Family Court also took note of the fact that the wife was occupying the official accommodation provided by the employer of the husband and for not vacating the same, the husband had to pay penal rent.

3. We have on record the husband's recent salary slips. The salary slip for the month of June, 2019 shows that he is holding the post of Junior Engineer (SIG.). His basic salary was Rs.64,100/-. With D.A., H.R.A., and other allowances, his gross salary came to Rs.98,163/-. We notice that this contains a component of night duty allowance. However, his previous salary slips for the months

of April, 2019 and May, 2019 also show various allowances such as overtime and night duty allowances. This component is thus almost a perennial addition to his basic salary and other regular allowances. It is undisputed that his yearly increment would fall due on 1.7.2019. We can take judicial notice of the fact that the 7th Pay Commission recommendations which are accepted by the Government of India, prescribe yearly increment approximately at the rate of 3% of the basic salary. When taken into consideration, this component with additional DA and HRA components of such increment, his gross salary would come to approximately Rs.1,05,000/-. The only deduction which we must take into account is his income tax and professional tax components which come to about Rs.9,000/-. The husband is thus drawing regularly a net salary of Rs.95,000/- per month. The learned Counsel for the husband, however, submitted that even the provident fund contributions must be reduced for ascertaining the husband's net salary. Such argument cannot be accepted. The provident fund contributions are in two parts – one which is compulsory and another which is voluntary. Be it a compulsory or voluntary contribution, the employee's contribution to his provident fund is in the nature of savings. At the time of retirement or sooner, if he

requires such amount, would be released in his favour with accumulated interest. We notice that the husband has provident fund balance of Rs.11,66,000/- (rounded off).

4. The Counsel for the husband submitted that the husband's responsibility of taking care of his aged mother who suffers from multiple ailments including kidney failure. The record would however suggest that the mother is a widow and pensioner, her husband himself being the ex-employee of railways. Counsel for the husband stated that she received family pension of approximately Rs.16,000/- per month. The medical expenditure is obviously looked after by the employer. Taking into account such pension component, the husband's expenditure for providing special care to the aged mother also would not be considerable.

5. On the other hand, there is no evidence of the wife's source of earning. The appellate Court has so held in the impugned judgment. The learned Counsel for the wife though argued that in the past, she was gainfully employed, the husband has not produced any evidence of her current income. We, therefore, proceed on such basis.

6. Before providing for revision in maintainance pending appeal, one more factor which we have to take into account is that the wife vacated the official quarters only on 20.3.2016. The revision would, therefore, apply from such date and would be prescribed in two parts. Under the circumstances, the Civil Application is disposed of with the following directions:

i) The Respondent in addition to the rent payable as per the order of the Court dated 13.8.2015, shall pay to the wife by way of interim maintainance the following sums:

a) Rs.15,000/- per month (inclusive of Rs.5,000/- awarded by the Family Court) for the period between 1.4.2016 to 31.7.2019;

b) With effect from 1.8.2019, he shall pay a sum of Rs.20,000/- per month (inclusive of Rs.5,000/- awarded by the Family Court);

ii) The arrears shall be paid directly to the wife in three equal installments falling due on 5th September, 5th October and 5th November respectively.

6. Civil Application is disposed of accordingly.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)