IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

CIVIL APPLICATION NO.130 OF 2015
IN
FAMILY COURT APPEAL NO.60 OF 2015

Sunita Raj Katra … Applicant

Vs

Raj Katra & anr. … Respondents

Mr.Rohan Cama i/b Ms.Sapana Rachure for the Applicant
Mr.A.Y. Sakhare, Senior Advocate with Mr.Pradip Chavan i/b Pradip Chavan & Associates for Respondents

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

ORDER RESERVED ON: AUGUST 5, 2019
ORDER PRONOUNCED ON: AUGUST 20, 2019

ORDER (PER AKIL KURESHI, J.):

1. This application is filed by the appellant of Family Court Appeal No.60 of 2015. The Family Court, Mumbai, disposed of a Petition filed by the husband for divorce and the application filed by the wife for maintainance by a common judgment dated 11.9.2014. By the said judgment, the learned Judge granted a decree of dissolution of marriage. The husband was directed to pay monthly maintainance of Rs.20,000/- to the wife from the date of the

petition. The husband had made incidental prayers which also came to be dealt with by the Family Court, in the said judgement, with which we are not presently concerned. The judgment in question gave rise to cross appeals. The present appeal is filed by the wife seeking enhancement of permanent maintainance. In the Civil Application, the prayers made are for providing interim maintenance pending appeal at enhanced rate as well as for preventing the respondents from disposing off or creating third party rights in any manner in one flat situated at 901, Strata Tower 4, Planet Godrej Society, Mahalakshmi, Mumbai (for short, 'the said flat'). Respondent No.1 is the husband. Respondent No.2 is a major son of the couple. He has been joined in connection with the prayer against disposal of or creating charge over the said flat.

2. Before the Family Court, the wife had prayed for maintainance from the husband claiming that she had no independent source of income and that the husband had sizeable regular income. He had large investments in mutual funds. He had also purchased immovable properties. It was averred that the husband had several bank accounts in which he had sizeable balance. It was pointed out that the husband was earning

substantial regular income from his jobs. Later on, he had started his own consultancy company from where he would earn regular income. The Family Court in the impugned judgment had observed that both sides had not produced full details of their earnings. Nevertheless, the Court was persuaded to award maintainance at the rate of Rs.20,000/- per month to the wife. In the Civil Application, the applicant has prayed that the husband be directed to pay an enhanced sum of Rs.55,000/- per month towards maintainance pending the appeal.

3. Another prayer made is to direct the respondents not to transfer, alienate or create any charge over the said flat. In this context, the applicant would point out that to frustrate the wife's right of residence and also to frustrate her right of maintainance, the husband had with malafide intentions gifted the said flat to his son under a Deed dated 29.8.2012. At the same time, on 29.8.2012 itself, the son gave a General Power of Attorney to the father in relation to the said flat authorising him to deal with the said property in any manner whatsoever including to sell, exchange or mortgage or to lease out the said property. It is in this context that respondent No.2 has been joined in the Civil

Application.

4. In the context of interim maintainance at the enhanced rate, the learned Counsel for the wife took us extensively through the documents on record. For convenience, he has produced before us two sets of documents. One pertaining to the income of the wife and the other pertaining to the income and investments of the husband. All these documents barring exception of one or two documents, form part of the proceedings before the Family Court. We would be referring to only those documents which are already on record. However, for convenience, we may refer to the page numbers where these documents are to be found, from the two compilations produced by the Counsel for the wife.

5. On the basis of such documents, the learned Counsel for the wife contended that the husband had huge regular income. The Income Tax returns are on record reflecting regular salary. He pointed out that the husband had made investments in mutual funds which several years back were worth more than Rs.3 crores. He had purchased the said flat on 12.2.2008 for a consideration of more than Rs.3.48 crores. The flat was given on lease during the period from December, 2010 for several years fetching monthly

rent of more than Rs.1,40,000/-. The husband had left his jobs paying lucrative salary in order to start his own company. He was highly qualified and an experienced senior executive in the finance sector. The Counsel further pointed out that the husband was maintaining various bank accounts in which he had considerable balance. On the other hand, according to the Counsel, the wife had absolutely no source of income nor any investments. She had produced her Income Tax returns and bank statements. The Family Court committed an error in observing that she had not produced full details of her financial status.

6. In the context of prayer for restraint against the disposal of immovable property, the Counsel submitted that in order to frustrate the wife's right to residence and permanent maintainance, the husband had with a malafide intention shown to have gifted the said flat to his son. At the same time, the son had given power of attorney to the father to deal with the said property absolutely in any manner. The gift deed is thus, a sham transaction and should be ignored.

7. On the other hand, the learned Counsel for the husband opposed the application contending that the Family Court has

given proper reasons for awarding limited maintainance. No case for enhancement is made out. The wife had her own source of income which she had not revealed before the Court. She had not produced full details of her bank accounts, nor had she produced Income Tax returns. He relied heavily on the bank statements to contend that there was a sizeable balance in the bank accounts, indicating source of income which she had not revealed to the Court. He submitted that the husband had left his job and started his own business. The Income Tax returns before and after starting the new business are on record clearly indicating sharp decline in his income. He further submitted that later on, the husband had developed heart ailment forcing him to slow down his activities. The said flat was gifted to his own son since the son did not have any immovable property. Both of them are residing in the same flat. The power of attorney is given only for convenience.

8. Though this is an application for interim maintainance pending appeal and, therefore, we are not governed or even substantially guided by the observations made by the Family Court in the impugned judgment, since both sides have relied on documents which were already on record of the Family Court and

also based their arguments in the context of observations made by the Family Court, we may refer to relevant observations.

9. Before the Family Court. both sides had produced voluminous documents. The learned Judge took cognisance of the Income Tax returns of the husband. He also noted that the husband had started a new business in the name of Lion Tree HR Consultants Pvt. Ltd. of which the husband was a Director alongwith his son and another Director. Reference was made to certain other documents pertaining to the husband's foreign travel expenditure and his bank statements. The learned Judge, however, surprisingly observed that except these documents, nothing is brought on record by the wife to prove the income of the husband. In the context of the wife's finances, the learned Judge recorded that wife was unable to produce Income Tax returns for the period between 1996 – 2007. She had however produced the bank statements and the documents showing receipts of interest from one Raj Enterprises. It was recorded that she was receiving money from her brother. The learned Judge however recorded that both the husband and wife were hiding their real income. In the conclusion, the learned Judge made following observation for

awarding maintainance:

> "Considering the status of both the parties, their income, their investment, in my view, amount of Rs.20,000/- per month as permanent alimony is sufficient for the end of justice."

This would also include the cost for accommodation.

10. In our prima facie opinion, the observations and conclusions noted above, are erroneous. Since we are not dealing with the appeal finally, it is not necessary for us to record final or conclusive opinion on the findings of the Family Court. However, in the context of awarding appropriate interim maintainance pending appeal, it would be necessary to refer to some of the documents on record. At page 172, is a sale deed dated 12.2.2008 of the said flat which the husband had purchased for a consideration of Rs.3,48,40,000/-. At page 201, is a leave and licence agreement of the said flat under which the husband had given the said flat on lease during December, 2010 to November, 2013 for a monthly lease rent of Rs.1,33,000/- for the first 12 months, which would thereafter be increased to Rs.1,40,000/- for the next 12 months and to Rs.1,54,000/- per month for the remainder of the period of the lease agreement. At page 241, is a leave and licence

agreement dated 14.2.2014 of the same flat. The licence fee agreed was Rs.1,70,000/- per month for the first 12 months and thereafter, would be increased to Rs.1,80,000/- for the next year and to Rs.190,000/- for the remaining period of the agreement.

11. These documents would prove that the husband had the capacity to purchase an immovable property way back in the year 2008 for a consideration of more than Rs.3.48 crores. It is not his case that for such purpose, he had taken bank loan which he was repaying. This property had fetched the husband lease rent for several years at the rate of Rs.1,33,000/- per month to Rs.1,90,000/- per month. We are conscious of the fact that presently, the husband is residing in the same flat alongwith his son. Nevertheless, these documents establish financial availability of sufficient funds with the husband and generation of rental income from such immovable property in the past for several years.

12. On pages 285 to 322, are three documents showing the details of the husband's investments in mutual funds through three different fund managers. These were the mutual fund investments the husband held in the year 2013 and thereabouts. The total

value of the mutual fund units held by the husband in various mutual funds then, came to more than Rs.3 crores. This would show that the husband had sizeable other investments.

13. At pages 323 to 361 are the husband's Income Tax returns for the assessment year 2006-2007, 2007-2008, 2010-2011 to 2012-2013. In the return of income filed for the AY 2006-2007, he declared income from salary of Rs.1,22,22,413/-. The gross total income declared was Rs.1,24,93,392/- and the Income Tax payable was Rs.41,15,313/-. In the return of income for the AY 2007-2008, he had shown salary income of Rs.1,35,56,704/- and gross total income of Rs.1,37,83,171/-. His tax liability came to Rs.45,83,315/-. In the return of income filed by him for AY 2010-2011, he had declared salary income of Rs.9,30,000/- and his gross total income was Rs.9,55,000/-. For AY 2011-2012, he had shown gross total income of Rs.5,46,000/-. However, his certificate of deduction of tax at source issued by the employer Royal Bank of Scotland showed his gross salary of Rs.10,44,348/-. In the return of income for the AY 2012-2013, he had declared gross total income of Rs.25,16,000/-.

14. These documents would establish the husband's regular earning of highest bracket, through his employment in different financial companies. The Counsel for the husband had however pointed out that he left his jobs and started his own company which was incorporated on 20.3.2011 as Lion Tree HR Consultants Pvt. Ltd. According to him, the income of the husband thereafter was not the same as compared to the amount of salary he was drawing as an employee earlier, to which aspect we would comment later on.

15. We also have various statements of bank accounts of the husband. The record would show that he was maintaining multiple bank accounts. At page 362 to 384, is a statement of the bank account in ABN Amro bank for the period 1.1.1999 to 28.11.2008. This account shows consistent balance of more than Rs.4 lakhs virtually all throughout the period, at times touching a peak of Rs.1 crore and more (for a short time, it also crossed Rs.2 crores). The account also shows multiple high value transactions. We are conscious that it will not be correct to total all these credit and debit entries to arrive at the husband's worth. Part of the funds may be recycled by buying and selling mutual funds or making other

investments in similar manner. Nevertheless, this in clear terms demonstrates sizeable availability of liquidity in the hands of the husband through his own sources.

16. It is not necessary to refer to every entry of every bank account details of which are on record. Suffice it to note that though not on the same scale as in the case of his account in ABN Amro bank, the husband had considerable movement of funds in his multiple other bank accounts. He had maintained high balance in all such accounts.

17. From the statement of husband's account in ABN Amro Bank, we also notice that sizeable amount was being deposited in his bank account by the employer by way of salary. A sum of Rs.1.68 lakhs was deposited as the salary for the month of January, 2007; Rs.1.48 lakhs for February, 2007, a sum of Rs.48.72 lakhs was paid by the employer in March, 2007; Rs.2.38 lakhs in April, 2007; Rs.3.35 lakhs in May, 2007; Rs.4.37 lakhs in September, 2007; Rs.4.34 lakhs in October, 2007; Rs.1.08 crore in November, 2007; Rs.3.24 lakhs in January, 2008; Rs.57.25 lakhs in February, 2008; Rs.5.65 lakhs in March, 2008; Rs.4.20 lakhs in April, 2008 and so on. This varying payment by the employer

appears to be on account of commission or incentive components over and above basic salary and allowances. The sum of Rs. 1.08 crores paid in November, 2007, we were told by the Counsel for the wife was on account of a major financial deal that the employer struck, which resulted into the payment accruing to the husband. Be that as it may, in clear terms, the husband was drawing handsome salary and other allowances and commission during the said period.

18. Coming to the wife's financial status, we have on record the statement of bank accounts of various banks where the wife had her accounts. We also have on record her Income Tax returns for the AY 2004-2005 to AY 2008-2009 and details of sundry investments in the mutual funds made by her. We have perused her statements of bank accounts. None of them show high value transactions, barring two entries of deposit of sum of Rs.5,50,000/- in December, 1997 in Dena bank account (page 42) and a credit entry of Rs.7,50,000/- in January, 2004 in her ABN Amro bank account. We would refer to these entries later. Her Income Tax returns for the AY 2004-2005 showed her gross total income of Rs.3,00,992/- on which she had paid tax of Rs.59,279/-; for

AY 2005-2006, the gross total income was Rs.1,57,000/-; for AY 2006-2007, her gross total income was Rs.2,27,000/- and her tax liability was Rs.17,000/-. In AY 2007-2008, the gross total income was Rs.24,311/-.

19. Most of these returns had shown income from other sources indicating interest income. The wife was maintaining accounts with one M/s.Raj Enterprises, with whom she had invested some money on which she would be paid regular interest. As on 31.3.2007, in this account, she had a balance of Rs.11.45 lakhs.

20. The Counsel for the wife submitted that she was investing small amounts in the firm which was of her relative so that she can earn some interest income. He submitted that the entries of Rs.5,50,000/- and Rs.7,50,000/- were relating to the security deposits made by the licensees while executing lease agreements from time to time of the immovable property which was in the joint names of the husband and the wife. Upon completion of the lease period, the deposit would be returned. He pointed out that the same was in fact returned to the lessees whenever they vacated the premises. He further submitted that the wife was also receiving money from her brother to help her sustain herself.

21. These documents would thus, indicate no independent source of income of the wife nor any sizeable investments. At best, she had invested a sum of approximately Rs.11.50 lakhs with Raj Enterprises on which she would be paid interest at the prevailing rate. The entries of Rs.5,50,000/- and Rs.7,50,000/- in her bank accounts in 1997 and 2004 respectively, would not show any source of income of perennial nature. Firstly, as pointed out by the Counsel, these were deposits made by the lessees taking the immovable property on lease which would be refundable upon completion of the lease period. Secondly, these are only two entries of considerable size during the entire period for which documents are available on record. We may recall, one was in the year 1997 and second was in the year 2004.

22. On the other hand, the record would reflect that the husband was in a high income group. For the years 2007-2008, his yearly income from his employment was in crores and not lakhs. We are conscious that a part of his earning must be coming from bonuses or commissions. Neither of these could be permanent. Nevertheless, he was even otherwise drawing a handsome salary.

He had purchased a flat at a prime location in Mumbai admeasuring 1220 sq.ft. of carpet area which approximates to 1648 sq.ft of built up area in the year 2008 for a consideration of Rs.3.48 crores. He had mutual fund investments which in the year 2013 or thereabouts was valued in excess of Rs.3 crores. The learned Judge of the Family Court ignored all these documents and awarded a mere Rs.20,000/- by way of permanent alimony.

23. We are conscious that the husband had left his job and started his own consultancy company. The salary that he was drawing from the company had dipped as compared to his previous salaries. However, when he himself was a director and his son another director of the said private limited company, his earnings and rewards would not be limited to the salary that he may draw from the company. Increase in the networth of the company would be in the nature of his earnings, whether he immediately encashed it or not. He had left his high paying employment and ventured into his own business obviously for better financial prospects. There is nothing on record to suggest that the company did not do well or ran into losses. Had it been the case, the husband with his experience and qualifications could

have gone back to private sector job. Even otherwise, he was expected to and had in fact made savings and investments out of high income that he generated year after year for which evidence is available on record from 2002. He is residing in a flat owned by him / his son, which was acquired by him and was gifted to his son, retaining full power to deal with the property in the manner in which he wishes. The Family Court has awarded a consolidated sum of Rs.20,000/-, without any provision for residence. We have noted that the wife may be having some savings, the same would not generate even a fraction of the amount needed to enable the wife to maintain a lifestyle even remotely similar to what the husband is enjoying. We must, therefore, enhance the maintainance payable to the wife by way of interim measure pending the appeal.

24. Coming to the wife's another prayer for injunction against the transfer of the said flat, we may recall that the husband has executed a gift deed dated 29.8.2012 in favour of the son transferring the flat in his name. On the same date, the son has executed a power of attorney giving all rights to the father to deal with the property including to create a mortgage or even to transfer

it. In order to safeguard the interest of the wife, we must prevent the transfer of this property pending appeal.

25. Under the circumstances, this application is disposed of with the following directions:

(i) Respondent No.1 – husband shall by way of interim maintenance pending appeal pay to the wife additional sum of Rs.55,000/- per month from the date of the application over and above the sum of Rs.20,000/- awarded by the Family Court by way of maintainance.

(ii) The arrears as per this order shall be cleared in three equal monthly installments falling due on 1st September, 2019, 1st October, 2019 and 1st November, 2019.

(iii) The respondents shall not sell, transfer, lease, mortgage or in any manner create third party interest or charge over the said flat, without the leave of the Court.

26. Civil Application is disposed of accordingly.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**