

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 119 OF 2016
IN
FAMILY COURT APPEAL NO. 95 OF 2015

Dr. Sangita Manish Ganvir .. Applicant
Vs
Dr. Manish Bapurao Ganvir .. Respondent

WITH
CIVIL APPLICATION NO. 291 OF 2018
IN
FAMILY COURT APPEAL NO. 95 OF 2015

Dr. Manish Bapurao Ganvir .. Applicant
Vs
Dr. Sangita Manish Ganvir .. Respondent

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- Mr. Ravindra Sankpal for the Wife
 - Mr. Bhushan Joshi for the Husband
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CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : APRIL 10, 2019.

P.C.:

1. These applications arise out of the Family Court Appeal No. 95 of 2015. FCA No. 95 of 2015 is filed by the husband - Dr. Manish Bapurao Ganvir. He has challenged the judgment of the Family Court, Mumbai dated 16.3.2015, operative portion of which reads as under:-

ORDER

- 1) Petition No. A-2234 of 2009 is partly allowed.

- 2) The prayer for dissolution of marriage on the grounds of cruelty is dismissed.
- 3) The prayer for injunction restraining the respondent from calling him or giving him SMS messages and from disturbing his privacy, stands rejected.
- 4) The prayer of custody of the children stands rejected.
- 5) Alternatively, prayer for access of the children is allowed in terms of consent terms dated 16.3.2015 at Exh. 57.
- 6) The petitioner is ordered to pay Rs. 5000/- per month each to the respondent and two minor daughters Kanchan and Jasmit, from the date of this order.
- 7) The prayers of the respondent for separate accommodation and return of stridhan stands rejected.
- 8) The petitioner is directed to pay Rs. 25,000/- as cost of the litigation to the respondent, within one month from today.
- 9) The maintenance order shall be complied by the petitioner on or before 10th day of every month without fail.
- 10) He shall obtain the ECS and bank account number of the respondent for depositing the same into her bank account.
- 11) Decree be drawn up accordingly.

2. Pending such FCA, the wife has filed Civil Application No. 119 of 2016 seeking a sum of Rs. 1,50,000/- per month towards maintenance for herself and two daughters from the

husband. Her case is that the respondent is an engineer and has done doctorate and is employed in a company on handsome salary. She herself is a trained physiotherapist employed in a Corporation Hospital but on fixed salary basis and not on regular pay scale. She points out that two daughters Kanchan and Jasmit are aged about 16 and 14 years respectively and would now enter 12th and 10th standards respectively. According to the applicant, the total sum of Rs. 15000/- directed by the Family Court, Mumbai to be paid by the husband is inadequate.

3. The husband has filed Civil Application No. 291 of 2018. His case is that the wife and the daughters are not entitled to any maintenance at all on account of the conduct of the wife principally and also reluctance of the daughters to meet the father. The husband, therefore, has prayed for refund of the sum of maintenance paid by him.

4. We have heard learned counsel for the parties at considerable length. Learned Advocate for the wife submitted that the husband drew gross salary of more than

Rs. 1 Lakh per month as far back as in April 2016 as is visible from his salary slip produced at Exh. D along with reply of the husband to the Civil Application. He submitted that the husband has no other liabilities. His parents are both retired from Government service drawing sizable pension. They also have immovable properties. On the other hand, wife has to support two growing daughters with all attendant requirements for education and other expenses. She herself is drawing fixed salary of approximately Rs. 26,000/- per month. She is on a full time duty between 9.00 a.m. to 5.00 p.m. Due to the responsibility of growing up daughters, she is unable to do any private work. In response to the husband's application for cancellation of maintenance and refund of maintenance already paid, learned counsel submitted that the said application has no basis.

5. On the other hand, learned counsel for the husband opposed the wife's application. He submitted that the wife herself is earning sizable income which is not disclosed to the Court. The husband has the responsibility to look after his aged parents. The crux of his opposition, however, was the

conduct of the wife to disentitle her and her daughters from claiming any maintenance from the husband. He submitted that despite the orders passed by the Family Court on consent regrading husband's visitation rights, the wife did not permit the daughters to visit the father. He, therefore, submitted that on account of such conduct, the order passed by the Family Court for maintenance should be rescinded and the amounts already paid should be refunded to him. In support of his contentions, he placed reliance on following decisions:-

- i. Decision of Division Bench of Calcutta High Court in case of **Mousumi Banerjee Vs. Bidyut Kumar Banerjee**¹ in which the Court had made a provision for father to meet the son on regular basis. It was provided that, *"If the son refuses to comply with the direction of staying with his father for a day in a week, he will not be entitled to get the maintenance ordered by us by this order."*
- ii. Decision of the Supreme Court in the case of **Padmja Sharma Vs. Ratan Lal Sharma**² in which it was held that when the father and mother are both earning members, they are jointly liable to contribute for the maintenance of the children in proportion of their income.

6. Having thus heard learned counsel for the parties and having perused the documents on record, what clearly

¹ (Judgment dated 11.9.2009 in FA No. 7 of 2007)

² (2000)4 SCC 266

emerges is that the husband was receiving gross salary of Rs. One Lakh per month as far back as in April 2016. With passage of time, seniority and devaluation of Rupee, the same would have gone up proportionately. Even if taken the figure of husband's monthly gross salary of Rs. One Lakh at present, looking to the current Income Tax structure, his take home salary after tax would be easily more than Rs. 90,000/- per month. There is no evidence of the husband having any other liability except to maintain himself. His Advocate's bare submission that he does and needs to look after his parents is not supported by any evidence. He does not deny that both the parents are retired Government servants and they are receiving pension. They also own immovable properties. On the other hand, so far as the wife is concerned, she is stated to be drawing salary of Rs. 26,000/- per month. She has to discharge full time service. There is no evidence that she is working privately outside of her duty hours. Even otherwise with two growing daughters, it is unreasonable to expect the wife to do overtime work. In absence of any evidence to the contrary, we accept her earning of Rs. 26,000/- per month.

7. It is also not in dispute that the daughters would now been entering in 12th and 10th standards respectively. We must bear in mind the financial capacity of the husband, the earning of the wife and the requirements of two growing daughters while passing the final order. In this context, we may recall, the Family Court had directed the husband to pay Rs. 5000/- each per month to the wife and two daughters. The Family Court did notice that the wife has independent source of income, however, an amount of Rs. 5000/- was awarded towards rent for accommodation. Learned counsel for the husband argued that the wife now has bought a flat. It can be easily imagined that to buy an immovable property in city like Mumbai, the wife would have had to raise funds through borrowings. Merely because, the wife now has purchased the flat, would not automatically mean that this component of Rs. 5000/- should be ignored.

8. Before passing the final order on the application of the wife, we would deal with the husband's application for declaration of no maintenance and refund of maintenance

already paid. In our opinion, the said application is thoroughly misconceived and merit-less. Firstly, there is nothing on record to suggest that the wife did not allow the daughters to meet the husband. Secondly, in order to ensure that whatever be the bitter disputes between the husband and the wife, at least the daughters should have connect the father, we had requested the presence of the daughters before us. Accordingly, in privacy of our Chamber, we have spoken to the daughters for a long time. They had shown disinclination to meet the father. They cited the reasons which are not necessary for us to record in this order. Suffice it to say, from our dialogue with the daughters, it was not possible for us to conclude that the daughters' reluctance to meet the father was engineered by the mother. Whatever be their hurt, disappointment or even teenage imprudence, in our opinion, no law liberates the father from the responsibility to take care of the children and to support them. Secondly, we do not think that the Calcutta High Court in the said judgment in case of Mousumi Banerjee (supra) has laid down any proposition of such a nature. Under these circumstances, we reject the contention of the

learned counsel for the husband that since the mother is not allowing the father to meet the daughters, or that since the daughters are refusing to meet the father, he should be relieved from the responsibility of paying the maintenance.

9. Coming back to the application of the mother for maintenance pending the appeal, while continuing the component of Rs. 5000/- to the wife towards her requirement of accommodation, we direct the respondent to pay additional sum of Rs. 15,000/- each for the two daughters. Thus, the husband shall pay a total sum of Rs. 35,000/- per month to the applicant and the daughters. This direction will take effect from the date of this order. Till such date, the husband shall abide by the directions contained in the Family Court Judgment. In other words, till that date he shall pay Rs. 5000/- each for the wife and two daughters. The husband has without any order from the Court discontinued making such payment, arrears of which shall be cleared latest by 15.5.2019. With these directions, both the applications are disposed of.

10. At this stage, learned Advocate for the husband requested that this order be stayed to enable the husband to take further remedy. Request is refused.

[SARANG V. KOTWAL, J.]

[AKIL KURESHI, J]