

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.216 OF 2018
IN
FAMILY COURT APPEAL NO.94 OF 2015**

Vasudha Vijay Shinde	...	Applicant
versus		
Vijay Ganpat Shinde	...	Respondent

Mr. Haridas Rajendra Madhukar, for Applicant.
Ms. Seema Sarnaik, for Respondent.

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

DATE: 20th SEPTEMBER, 2019

P.C.:

1. The civil application is taken out by the wife seeking maintenance pending appeal at the rate of Rs.15,000/- per month to be paid by the respondent-husband. The family court appeal is filed by the wife challenging the judgment of the family court granting decree of dissolution of marriage to the respondent husband. In this application, her case is that she has no independent source of income for her sustenance. The husband on the other hand, is employed in ONGC earning sizeable income. She has therefore, prayed for maintenance pending the appeal.
2. This application is strongly opposed by the respondent-husband, who has filed an affidavit and produced certain documents. His advocate submitted that previously the wife had filed similar application No.172 of 2015 in which no

maintenance is allowed to the wife under an order dated 11th January, 2017. She also drew our attention to another order dated 15th February, 2018 passed by this Court in Civil Application No.5 of 2018 concerning the wifes' prayer for enhancement of maintenance in favour of the daughter. She further submitted that the wife has independent source of income. She owns a flat which has been given on rent. She was previously employed. In short, the prayer is strongly resisted by the respondent-husband.

3. The present applicant had moved civil application No.172 of 2015 seeking maintenance for herself and her minor daughter. This application was disposed of by the above noted order dated 11th January, 2017. The Respondent was directed to pay Rs.10,000/- towards maintenance to the daughter. With respect to the wife's prayer for maintenance, the following observations were made :

“5. So far as the issue in respect of maintenance payable to the wife is concerned, the same may not be dealt with at this stage. Hearing of the appeal is expedited. However, in the event of appeal remaining pending beyond one year or on account of any changed circumstances, it would be open for the applicant-wife to revive her prayer for grant of maintenance for herself.”

4. As per this order, thus the wife's request for maintenance was not dealt with at that stage. It was provided that if the appeal is not heard within one year or on account of any changed circumstances, it would be open for the wife to revive the

prayer of maintenance. Firstly, this order does not deal with the wife's prayer for maintenance on merits. She therefore, has a right to re-agitate the prayer and insist on an order on merits being passed by the Court, whether the period of one year as envisaged in the order has lapsed or not and whether she can demonstrate any change in circumstances. The latter observations of the Court are merely therefore, in the nature of giving foothold to the wife to file a fresh application and cannot be seen as debarring her from raising the issue of her demand for payment of maintenance being decided on merits by the Court. In any case, more than a year has passed since the said order is passed by the Court.

5. The order dated 15th February, 2018 passed in civil application No.5 of 2018 concerns only the maintenance payable to the daughter. Maintenance amount was increased from Rs.10,000/- p.m. to Rs.12,50,00/- p.m. The same would have no bearing on the outcome of the present application.

6. Having so noted, we may proceed to decide the wife's prayer made in the present application. There is no evidence on record suggesting that the wife is currently employed. Even in the order dated 11th February, 2017, the Court had recorded the husband's contention that she was earlier employed which she had relinquished. If a single divorced mother bringing up a young daughter is unable to do full time job and is therefore, forced to relinquish the same, it can hardly be a ground to deny her maintenance, more so when the husband himself is earning regular

sizeable income. Even according to the husband therefore, only evidence of the wife's income is sum of Rs.7,000/- per month by way of rent. As against this, the Respondent is employed as a Section Officer – Grade II in the Indian Oil Corporation. His Salary slip for the month of July, 2019 is made available to us, which is taken on record and marked 'X' for identification. This shows his basic salary at Rs.34,940/- with variable DA of Rs.51,256.98, HRA and other allowances, his gross salary for the month in question came to Rs.1,13,230.03. From his gross salary, he suffers tax deduction at source of close to Rs.14,000/- which undoubtedly would reduce his take home salary. However, other deductions such as provident fund and voluntary PF contributions cannot be deducted from his salary to ascertain his net income. The provident fund contribution be in the nature of compulsory or voluntary is always in the form of saving of the employee. The provident fund so collected would be invested in a fund and would be returned to the employee at a specific point of time with accrued interest. His salary slip shows that the respondent is in a capacity to save a sum of Rs.32,000/- every month by way of voluntary contribution to his provident fund account. He at any rate cannot avoid paying a sum as reasonable as Rs.15,000/- per month to the wife. We are not oblivious to the fact that the husband is under obligation to pay a sum of Rs.12,500/- to the daughter. However, even combined with this liability the husband's total outflow would be Rs.27,500/- per month from a net salary of Rs.1,00,000/-, surely he can afford to pay the same. He has not pleaded any

additional liability. Under the circumstances, the Respondent-husband is directed to pay a sum of Rs.15,000/- per month by way of interim maintenance pending appeal from the date of the application. The arrears may be cleared within two weeks from today. The Civil Application is accordingly disposed of.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)