IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 186 OF 2019

IN

FAMILY COURT APPEAL NO. 201 OF 2018

Sou. Bhagyashri Aniket Katkar ... Applicant

IN THE MATTER BETWEEN :

Shri Aniket Sudam Katakar ... Appellant

Versus

Sou. Bhagyashri Aniket Katkar ... Respondent

ALONG WITH

FAMILY COURT APPEAL NO. 207 OF 2018

Mr.S.S.Redekar for the Appellant husband.
Ms.Prachana Pise I/b. P.D. Pise for the Respondent wife.
Shri Aniket Sudam Katakar – Appellant husband, present in person.
Sou. Bhagyashri Aniket Katkar – Respondent wife, present in person.

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

DATE : 19TH JULY, 2019

P.C.:

1. This Civil Application is filed by the Respondent wife of Family Court Appeal No. 201 of 2018. The said Family Court Appeal is filed by the Appellant husband challenging the judgment and decree of the Family Court, Kolhapur rejecting his Petition for dissolution of marriage.

2. This Civil Application is taken out by the wife seeking interim maintenance at the rate of Rs.40,000/- per month for herself and the minor daughter aged about eight years. Previously, pending the Family Court Petition, the wife was receiving interim maintenance of Rs.15,000/- per month for herself and her daughter. Since disposal of the Family Court Petition, the same has stopped. Pending this Appeal, she has therefore prayed for interim maintenance at enhanced rate. The Applicant has averred that the daughter is a school going child, studying in 2nd standard, her yearly fees is about Rs.24,000/-, she has to further spend Rs.2,000/- towards transportation costs, recently when the daughter was unwell she had to spend Rs.50,000/- for medical treatment. She has also contended that she has to pay rent of Rs.4,800/- per month. She has averred that the husband is a Software Engineer earning income of over Rs.1 Lac per month. In view of such grounds, the Applicant seeks interim maintenance pending Appeal.

3. The Appellant husband has filed a detailed reply opposing the prayer. He has contended that wife is educationally qualified, she previously had a job. Presently, according to the husband, she is running a cloth shop at Kagal, District Kolhapur in the name of "Sanvi Collection". He has further contended that his salary is approximately Rs.73,000/- per month, out of which he has substantial committed expenses, such as medical insurance premium for his aged parents, rent of Rs.9,000/- and the deductions made by the employer. In support of his stand that the wife is gainfully employed, he has produced few photographs of the shop from where he

alleges that his wife is doing her business. He has also produced the extracts of the bank passbook of the wife, which she had produced before the Family Court. On the basis of these documents, the husband wishes to canvass that wife has independent source of income.

4. At the outset, we record that the husband has not produced his salary slip. However, at our request, he has made a copy thereof available, which is taken on record and marked 'X' for identification. A copy of the said salary slip is kept in a sealed covered. The said salary slip shows that his monthly gross salary is more than Rs.1,08,000/-. Out of this, there is income tax deduction in the vicinity of Rs.12,000/-. Rest of the deductions are voluntary. His health insurance plan, his savings, his rent liability etc., would not go to shrink his take home salary. We therefore take into account his take home salary is of Rs.96,000/- per month.

5. Regarding his liability to maintain his aged parents, he admitted that his father was working in ICICI Bank as a Cashier, when he retired. His mother was Teacher in Nagarpalika school and was a pensionable service. He has a brother, who is a Hardware Engineer, employed in a private company and is posted at Pune.

6. These factors would show that the husband cannot claim any substantial liability of supporting his parents. Firstly, as noted, the father was in a good position when he retired. His mother was also working as Teacher in Nagarpalika school, she retired in pensionable service. She obviously therefore draws pension currently. The husband's bother is also bound to support the aged parents and share his

responsibilities.

7. There is no evidence of the wife's income. Mere photographs of a shop named "Sanvi Collection" would not imply that the wife is running business from the said place or that she earns sizable income out of it. The Advocate for the wife stated that the said shop is run by her father from where he is doing his regular business. The bank passbook reveals nothing beyond credit of a sum of Rs.15,000/- almost every month. Besides, his monthly credit entry of Rs.1,5000/- in her account, we find the rest of the entries of sundry insignificance sums. The wife explained that said amount was either received from the husband by way of interim maintenance awarded by the Family Court or in some cases since there was delay in paying the same, received from her father. She pointed out that she has repaid such borrowed sums to her father upon receipt of interim maintenance from the husband. In any case, in absence of any concrete evidence, we are not prepared to presume any income of the wife who any way has a responsibility looking after eight years old daughter.

8. On this one hand, the husband has a sizable regular monthly income of Rs.96,000/- per month, the wife and her daughter having currently provided is no financial assistance.

9. Under the circumstances, the Respondent of this Application, the husband is directed to pay monthly interim maintenance at the rate of Rs.25,000/- per month to the wife and Rs.10,000/- per month in favour of daughter. He shall thus pay a total sum of Rs.35,000/- per month by way of interim maintenance pending Appeal. This

shall be done from the date of the Application. Whatever amounts in the meantime he has paid will be adjusted towards this liability.

10. Before closing, we may notice that according to the Advocate for the wife, "Sanvi" had to undergo medical treatment. The learned Advocate for the husband stated that the husband has taken out medical insurance of the daughter. If necessary bills and documents are provided to him, he may claim the same from the insurance company and reimburse it to the wife as and when received.

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