

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 443 OF 2014
IN
FAMILY COURT APPEAL NO. 162 OF 2010

Mrs.Richa Gajendra Kokate ... Applicant
Versus
Gajendra Dhondu Kokate ... Respondent

Mr.S.C.Thatte a/w. Ms. Ketaki A. Asgaonkar for the Applicant.

Ms.Manjula Rao for the Respondent.

Mrs.Richa Gajendra Kokate - Applicant, present in person.

Mr.Gajendra Dhondu Kokate - Respondent, present in person.

CORAM : AKIL KURESHI &

S.J. KATHAWALLA, JJ.

DATE : 16TH AUGUST, 2019

P.C.:

1. This application is filed by the wife seeking interim maintenance at the enhanced rate pending the appeal. The Family Court, Mumbai had passed a common judgment dated 6th May, 2010 disposing of the husband's petition for divorce and wife's petition for maintenance. The decree of dissolution of marriage was granted. The husband was directed to pay permanent alimony of Rs.2,500/- per month to the wife and Rs.1,200/- per month for the child. This judgment has given rise to cross

appeals at the hands of wife and the husband respectively. In civil application no. 301 of 2010, the Division Bench of this Court on 16th June, 2016 enhanced the interim maintenance to the daughter to Rs.5,000/- per month with effect from 1st January, 2013. By the separate order, the wife was granted liberty to file application for enhancement by way of interim maintenance. Consequently, the present application has been filed.

2. The documents on record, would show that the husband is engaged as Hawaldar in the central excise department. His salary for the month of December-2018 shows his basic salary of Rs.33,000/- per month. With allowances such as DA and HRA, his total salary come to Rs.47,814/-. Though his net pay salary was in the sum of Rs.31,334/-, this takes into account a sum of Rs.15,000/- deposited by him towards his provident fund, which obviously is in the nature of his savings. Professional tax can be deducted from his gross salary along with other contributions towards the CGHS, etc. Effectively, his salary was in excess of Rs.47,000/- per month.

3. As against this, there is no evidence that the wife is gainfully employed. The Family Court had proceeded on such basis and therefore awarded permanent alimony. Before this Court, though an attempt is made to suggest that the wife is employed as an accountant in a gym, run by one Ms.Reshma Bhoir, there is no evidence to this effect. At the suggestion of the husband, the Court had issued notices to the said

person, who was not found at the given address. It appears that the wife had produced an affidavit sworn by Ms.Reshma Bhoir declaring that she was engaged for four months in the year 2012 at a salary of Rs.6,500/- per month. However, this affidavit would suggest that the employment was for a brief period. Learned counsel for the husband submitted that the notary who was sworn the affidavit, had subsequently informed the Court in an affidavit suggesting that he had not verified the identity of the deponent. She submitted that Mr. Reshma Bhoir not having come forward before the Court to give the correct version, adverse interference must be drawn against the wife. We cannot accept such contention. Firstly, the declaration of the notary is confined to he himself not having verified the identity of deponent. Further, merely because Mrs.Reshma Bhoir was not found at the address given by the Respondent and therefore did not come before the Court, cannot be a source for drawing adverse interference against the wife. The wife had no responsibility to produce the person, who the husband contended was her employer, which she refuted.

4. On the dependency, the husband admittedly has an aged mother to look after. He has also remarried after the divorce decree was granted by the Family Court. The Court while deciding the Appeal would undoubtedly, decide the validity of the second marriage, at present the husband would have the responsibility of looking after the second wife as well.

5. Before issuing the final directions, we note that the husband who is present

in Court, has agreed that since this Court increased the interim maintenance of the daughter by the said order dated 16th June, 2016, the husband is paying only a consolidated sum of Rs.5,000/- per month to the wife and daughter. This is clearly erroneous. As per the order of this Court, the daughter has to receive Rs.5,000/- per month. This is besides the sum of Rs.2500/- the wife would get by way of permanent alimony under the impugned judgment of the Family Court. The husband therefore had to pay a total sum of Rs.7,500/- per month from 16th June, 2016. The arrears shall therefore have to be cleared by him. Considering the income of the husband and the liability that he has, this application is disposed off with following directions :

- i. From the date of this order, the husband shall pay a total of Rs.10,000/- per month, by way of interim maintenance to the wife (which would be inclusive of Rs.2,500/- awarded by the Family Court.)
- ii. The liability to pay interim maintenance to the daughter, would continue as per the previous order.
- iii. The arrears towards the maintenance to the wife along with interim maintenance to the daughter, would be cleared within a period of two months from today.
- iv. The civil application is disposed off accordingly.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)