

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.34 OF 2019
IN
FAMILY COURT APPEAL NO.30 OF 2019**

Dr.Rajesh Basudeo Kumar	 Applicant
versus	
Mrs.Shimul Prasad	... Respondent

.....

- Mr.Nikhil Karnawat a/w Mr.Viraj Maniar a/w Ms.Sneha Patil i/b. Maniar Srivastav Associates for Applicant
- Mr.Sachindra B. Shetye, Advocate for Respondent.

**CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 20th MARCH, 2019.**

P.C. :

1. Rule.
2. Learned Counsel Mr.Shetye waives Rule.
3. The application is taken up for final disposal. The Applicant-Husband seeks stay of the judgment of Family Court, Mumbai, dated 23/07/2018 passed in Petition No.A-2937/2011 & C-23/2012. The operative portion of the judgment of the Family Court reads as under;

- “1. Petition No.A-2937/2011 stands dismissed with costs.*
- 2. Petition C-23/2012 is partly allowed.*
- 3. The respondent-husband is hereby directed to pay Rs.1,00,000/- (one lacs) per month to the petitioner-wife towards maintenance allowance from the date of filing of C-Petition i.e. since 20.2.2012.*
- 4. The respondent-husband is further directed to provide separate accommodation to the petitioner-wife in Mumbai.*
- 5. The respondent-husband is also directed to pay costs of Rs.50,000/- to the petitioner-wife and bear his own.”*

4. As per the said order, the Family Court dismissed the husband's Petition for dissolution of marriage. In the wife's application for maintenance, the husband is directed to pay Rs.1,00,000/- per month by way of maintenance from the date of filing of the Petition No.23/2012. Further direction is about requiring the husband to provide separate accommodation to the Petitioner-wife in Mumbai.

5. Having heard learned Counsel for the parties what emerges is that the husband is a Medical Practitioner and has sizable monthly income. His income tax returns were produced before the Family Court. Learned Counsel for the husband however stated that the wife is a partner in a partnership firm. There, however, does not appear to be any concrete proof of the considerable income derived by the wife from such partnership.

6. Looking to the yearly earning of the husband, we do not find that the directions for payment of maintenance of Rs.1,00,000/- to the wife, needs to be stayed. Stay against such direction is therefore refused. With the respect to the directions for providing separate accommodation to the wife we find that such direction is vague and not possible of being implemented. The area, location or the size of the accommodation to be so provided are not specified. This direction is therefore stayed.

7. We are informed that the wife presently resides with

her parents. Under such circumstances even by staying the direction for providing suitable accommodation at Mumbai, we do not see any reason to mould the direction and order payment of monthly rent to the wife. However, at any stage, if the wife resides separately from her parents, we do not preclude her from filing application for rent. In such an eventuality all objections of the husband shall also be taken into account.

8. The last issue survives is in respect of arrears of maintenance. We notice that the order was passed by the Family Court on 23/07/2018. The order of maintenance is from the date of the Petition i.e. 20/02/2012. Looking to the sizable arrears arisen out of the said order, we would give sufficient time to the husband to clear the same. Learned Counsel for the husband states that a sum of Rs.20 lakhs would be deposited in the account of the wife latest by 25/04/2019. This would be towards the arrears. Remaining arrears shall be cleared in 12 equal monthly installments to be deposited in the account of the wife before 10th of every month. Along with the said arrears, the

husband shall continue to pay prospective monthly maintenance as falling due.

9. With these directions, Civil Application is disposed of.

(SARANG V. KOTWAL, J.)

(AKIL KURESHI, J.)