

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 14354 OF 2018

Sameer Datta Kadam

...Petitioner

Versus

Supriya Sameer Kadam

...Respondent

....

Mr. S.M. Gorwadkar, Senior Advocate a/w. Mrs. Taubon F. Irani, Advocate for the Petitioner.

Mr. R.T. Lalwani, Advocate a/w. Mrs. Sadhana Jaikar Lalwani i/b. Prakash Mahadik, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 10th JANUARY, 2019

P.C.

1. Heard Mr. S.M. Gorwadkar, learned Senior Counsel for the petitioner and Mr.R.T. Lalwani, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 12.9.2018 passed by the learned Judge, Family Court No.4, Mumbai below Exhibit-6 in L.A. No.3201/2014. By that order, the learned trial Judge has partly allowed the application made by the respondent under Section 24 of the Hindu Marriage Act, 1955 (for short, 'Act') and directed the petitioner herein to pay interim maintenance @ Rs.5 Lakhs per month to the respondent from the date of the application i.e. 4.12.2014 till final

decision of the petition. The respondent's claim of residence was rejected.

3. The respondent had filed application under Section 24 of the Act on or about 4.12.2014 *inter alia* claiming interim maintenance of Rs.10 Lakhs per month; for direction to the petitioner to provide 3 B.H.K. flat to her in Bandra, Mumbai worth Rs.10 Crores towards her claim of residence.

4. In support of this Petition, Mr. Gorwadkar submitted that by the impugned order, the learned trial Judge has directed the petitioner to pay maintenance from the date of the application i.e. 4.12.2014. Mr.Gorwadkar submitted that if the petitioner is directed to pay maintenance @ Rs.5 Lakhs per month from the date of the application, he will be required to pay Rs.2.5 Crores. That direction is issued without recording any reasons. He submitted that under Section 125(2) of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the Court has discretion to award maintenance either from the date of the application or from the date of the order. In any case, the Court has to record reasons as to why it is awarding maintenance from the date of the order or as the case may be, from the date of the application. In the present case, though the learned trial Judge has directed payment of interim maintenance from the date of the application, no reasons are assigned for passing that direction. In support of this proposition, he relied upon following decisions :

- i. **Shail Kumari Devi and another Vs. Krishan Bhagwan Pathak, (2008) 9 SCC 632; and**
- ii. **Jaiminiben Hirenbbhai Vyas and another Vs. Hirenbbhai Rameshchandra Vyas and another, (2015) 2 SCC 385.**

5. Mr. Gorwadkar submitted that written arguments were submitted before the learned trial Judge on 13.11.2017 and the impugned order is passed nearly after ten months on 10.9.2018. He, therefore, submitted that in view of decision of Apex Court in **Anil Rai Vs. State of Bihar, (2001) 7 SCC 381**, the impugned order deserves to be set aside.

6. Mr. Gorwadkar further submitted that the respondent had instituted the proceedings under Section 24 of the Act on 4.12.2014. After service upon the petitioner, he appeared on 16.2.2015. The parties were referred to mediation on 23.7.2015. Mediation report of failure was submitted on 8.3.2016. On 22.4.2016, the petitioner filed reply to the application filed by the respondent. He submitted that the respondent did not press for ad-interim relief till final disposal of the petition. This clearly shows that the respondent's all needs are taken care of by the petitioner. He submitted that the respondent is residing with the petitioner. The petitioner is incurring the medical expenses of the respondent. In other words, all her expenses are well taken care of by the petitioner.

7. Mr. Gorwadkar relied upon Section 23(2) of the Hindu Adoptions and Maintenance Act, 1956 to contend that while determining

the amount of maintenance the Court has to have regard to:

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

8. Mr. Gorwadkar submitted that all reasonable wants of the respondent are taken care of by the petitioner.

9. Mr. Gorwadkar submitted that the respondent is carrying on business of Skimo Ice Cream. Thus, she is earning handsome profit from said business. All Income Tax Returns of the respondent indicate that she is earning minimum Rs.50,000/- per month. He submitted that the learned trial Judge has ignored the material on record while passing the impugned order. He has taken me through paragraph-4(x) of the written submissions filed by the respondent herein in support of her application for interim maintenance. In paragraph-4(x), the respondent contended that though the franchise Baskin Robbins business stands in the name of the petitioner (respondent herein), and the land on which Hotel Shangrila stands is in the joint names of the petitioner and the respondent, all the properties, businesses and financial dealings are under the control of the

respondent (petitioner herein) and the co-respondent and the petitioner (respondent herein) is not getting any income out of that. He submitted that said assertions are contrary to the material on record.

10. Mr. Gorwadkar has also invited my attention to the declaration dated 7.1.2005 made by the respondent to which her mother is a witness. In the said declaration, the respondent admitted that she was talking and meeting one Shekhar Wagh for last 7 to 8 years and this was objected to by her family. Even her parents have objected to this. In short, he submitted that the respondent is having relations with said gentleman.

11. Mr. Gorwadkar has invited my attention to the Income Tax Returns submitted by the respondent for the Assessment Years 2015-16, which shows gross-total income of Rs.5,06,593/-. Profit and loss account of Skimo Ice Cream for the period 1.4.2014 to 31.3.2015 shows sales of Rs.34,07,650/- and the net profit of Rs.4,09,034/-. He, therefore, submitted that apart from the fact that the petitioner is taking due care of all the expenses and reasonable wants of the respondent, she is earning handsome amount from the business of Skimo Ice Cream. The learned trial Judge was, therefore, not justified in awarding maintenance @ Rs.5 Lakhs per month. In short, he submitted that it is not the case of the respondent that she is without any source of income or that she is not

unable to maintain herself.

12. Mr. Gorwadkar has taken me through the impugned order. In the impugned order, the learned trial Judge has observed in paragraph-7 that after considering the fact that the petitioner is running several businesses in the metro city like Mumbai which is economical capital of India and capital of State of Maharashtra, his probable monthly income from these businesses would not be less than Rs.30 Lakhs. He submitted that said finding is without any basis and in fact is absurd.

13. He has also invited my attention to the affidavit dated 9.1.2019 made by the petitioner showing his readiness and willingness to deposit an amount of Rs.50 Lakhs within a period of 15 days, without prejudice to his rights and contentions in the petition as one-time settlement till the petition is decided on merits. He, therefore, submitted that the petition requires consideration.

14. On the other hand, Mr. Lalwani supported the impugned order. Mr. Lalwani has invited my attention to :

- i. Statement of account No.CAPU3/1001895 of the petitioner maintained with Saraswat Co-operative Bank and in particular entries dated 10.1.2017, 13.2.2017, 10.3.2017, 10.4.2017, 10.5.2017 and 9.6.2017 which show that the amount of Rs.15,75,000/- is transmitted in petitioner's account by

Hardcastle Restaurant which is running Macdonald Restaurant.

- ii. Statement of Account No.00261011000625 of the petitioner maintained with Bank of India and in particular entries dated 19.8.2016, 7.9.2016, 6.10.2016 and 7.11.2016 which show that every month Burger King India Private Limited is transmitting Rs.14,17,500/- in the account of the petitioner.

15. Mr. Lalwani submitted that thus, the petitioner is getting monthly income of Rs.14,17,500/- from Burger King India Private Limited and Rs.15,75,000/- from Hardcastle Restaurant. Thus, this itself comes to approximately Rs.30 Lakhs per month. The learned trial Judge, therefore, rightly came to the conclusion that the probable income of the petitioner per month is Rs.30 Lakhs which is to say is in fact on the lower side. He submitted that the petitioner is living in relationship with Jagruti Dave (Kothare). He has invited my attention to the statement of account of the petitioner with Saraswat Bank being A/c. No.ODPUB/20658 with Vile Parle (West) Branch. In particular, he invited my attention to the entries dated 20.7.2016, 26.10.2016, 1.12.2016 which show that the petitioner has remitted Rs.2,00,000/-, Rs.2,70,028.75 and Rs.6,00,057.50 respectively to Ms. Jagruti Dave (Kothare).

16. Mr. Lalwani submitted that the petitioner has purchased flat No.1701 on the 17th floor in building by name 'Raheja Exotica', Malad

(West), Mumbai. He has taken me through the communication dated 23.11.2013 addressed by Raheja Universal (Private) Limited to the petitioner and Ms. Jagruti Dave (Kothare) as also the joint application. He submitted that in the column of personal details, the petitioner has disclosed names of his children, namely Sagar Kadam and Shivali Kadam who are born out of wedlock of the petitioner with the respondent and Mohnish son of Ms. Jagruti Dave (Kothare) as his children.

17. Mr. Lalwani also invited my attention to the letter dated 23.10.2013 addressed by Lalani Group, Builders and Developers to the petitioner herein and Ms. Jagruti D. Dave informing them that in respect of flat No.B-1202 of “Lalani Grandeur”, the total consideration is Rs.78,76,400/- and that they have received Rs.33,27,779/-. Said flat is 2 BHK having carpet area 606.00 sq. ft. He also invited my attention to the letter dated 21.5.2014 addressed by Le Cordon Bleu, London confirming that Mr. Mohnish Kothare is enrolled in the Grand Diploma Course at Le Cordon Bleu, London. Le Cordon Bleu, London are a professional culinary training institute with Diploma programmes in both Cuisine and Patisserie. Mr. Lalwani submitted that the petitioner spent more than Rs.1 Crore in enrolling and prosecuting the studies by Mr.Mohnish Kothare, son of Ms.Jagruti Dave (Kothare).

18. Mr. Lalwani also invited my attention to various properties shown as tenanted properties, namely,

- i. Pamposh Restaurant wherein Icre Cream business is carried out in addition to Burger King India Private Limited.
- ii. Sangdatta Lodge & Restaurant
- iii. Numaish Art Gallery

19. The properties owned by the petitioner include part of the land where Shangrilla is constructed. Exotic Palms Hotel is in the joint name of the petitioner and the respondent. Apart from that the petitioner has hotel Exotic Palms at Calangute, Goa. Shop No.14 which is situate on Carter Road where Cafe Coffee Day restaurant is situate. In short, he submitted that apart from the fact that the petitioner is earning handsome amount per month, he has several properties. The petitioner is also having several vintage cars which shows his financial condition. Considering all these aspects, the learned trial Judge has awarded maintenance of Rs.5 Lakhs per month in favour of the respondent.

20. Mr. Lalwani also invited my attention to Section 354(6) of Cr.P.C. which lays down that every final order made under Section 125, among others, shall contain the point or points for determination, the decision thereon and the reasons for the decision. He submitted that it is in that context, the decisions of Apex Court in **Shail Kumari Devi** (supra)

and **Jaiminiben Vyas** (supra) are required to be considered.

21. In the present case, while passing the order of interim maintenance, the learned trial Judge has given reasons. He submitted that for awarding maintenance from the date of the application, express order is necessary. The learned trial Judge has passed order in consonance with the dictum laid-down in **Shail Kumari Devi** (supra) and **Jaiminiben Vyas** (supra). He, therefore, submitted that no case is made out for interfering with the impugned order.

22. In rejoinder, Mr. Gorwadkar submitted that the contention that the petitioner is getting Rs.15,75,000/- from Hardcastle Restaurant ignores the other entries which show that amount of Rs.13,50,000/- per month is remitted by the petitioner in the account of Hardcastle Restaurant. The petitioner has obtained loan of Rs.7 Crores from Hardcastle Restaurant and the petitioner is regularly repaying the loan amount by remitting Rs.13,50,000/- per month in their account.

23. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the statement of account of the petitioner in respect of Current Account with Saraswat Bank, Linking Road Branch, shows that every month amount of Rs.15,75,000/- is remitted by Hardcastle Restaurant in the account of the petitioner. Not only that the

amount of Rs.14,17,500/- is remitted by Burger King India Private Limited in the account of the petitioner being account No.ODPUB/20658 with Vile Parle (West) Branch of Saraswat Bank.

24. Apart from this, the petitioner has several assets and businesses, details whereof are as under :

- (a) M/s. Sangdatta Lodge and Restaurant, above McDonalds Restaurants, Linking Road, Mumbai.
- (b) Numaish Art Gallery, Kudpi House, V.P. Road, Khar (W), Mumbai.
- (c) Hotel Kadamb Residency, Linking Road, Khar (W), Mumbai.
- (d) Plot of land and hotel at Goa viz. Exotic Palms.
- (e) Plot of land and building containing hotel Shangrila at Vile Parle, Mumbai.
- (f) Property from which McDonalds Restaurant at Linking Road, Mumbai is run.
- (g) Property from where Burger King, Baskin Robbins shops are run.
- (h) Pan shop situated on plot No.284, Linking Road, TPS III, Bandra, Mumbai.
- (i) Land admeasuring 1502 sq. mtrs. or thereabout at Survey No.308 and 423 of village Danda, CTS No.D-1101B/26 of Bandra (W), Mumbai granted by Govt. on lease to Gagangiri Premises Co-op. Society Ltd.. This property is situate on the Carter Road where Coffee Day Restaurant is run.
- (j) Land admeasuring H8-82 area in Gut No.14 at village Ambavane, Pune, Sub-District Mulshi.
- (k) Several other pieces of land at Lonavala, Pune, Nagothane, Palegaon etc.

25. It has also come on record that the petitioner is having several vintage cars. The learned trial Judge has considered this aspect in paragraph-7 of the impugned order. The learned trial Judge has also referred to businesses of the petitioner, his wealth accumulated by way of investments and his visits to abroad. After considering the material on record, the learned trial Judge held that the probable monthly income of the petitioner from this business would not be less than Rs.30 Lakhs. I do not find that the learned trial Judge has committed any error in arriving at this conclusion. The finding is based upon the material on record. The learned trial Judge has arrived at modest income of the petitioner. As mentioned earlier, the petitioner has transmitted amount of Rs.2,00,000/-, Rs.2,70,028.75 and Rs.6,00,057.50 in the account of Ms. Jagruti Dave (Kothare). He has also purchased property in 'Raheja Exotica', Malad (West), Mumbai, has booked a 2 BHK flat being flat No.B-1202 of "Lalani Grandeur" admeasuring 606.00 sq. ft. carpet area and has also enrolled Mr. Mohnish Kothare, son of Jagruti Dave (Kothare) in Le Cordon Bleu, London. This shows the financial status of the petitioner. Even if I accept the submission of Mr. Gorwadkar that the Court has to have regard to Section 23(2) of the Hindu Adoptions and Maintenance Act, 1956 while fixing interim maintenance, one of the criteria under that provision is the position and status of the parties.

26. Section 24 of the Act reads thus:

“24. Maintenance *pendente lite* and expenses of proceedings.-- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

"Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

27. In the case of **Neeta Rakesh Jain Vs. Rakesh Jeetmal Jain, (2010) 12 SCC 242**, the Apex Court observed in paragraphs-9 and 10 thus:

“9. Section 24 thus provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may apply to the court to direct the respondent to pay the monthly maintenance as the court may think reasonable, **regard being had to the petitioner's own income and the income of the respondent.** The very language in which Section is couched indicates that wide discretion has been conferred on the court in the matter of an order for interim maintenance. Although the discretion conferred on the court is wide, **the Section provides guideline inasmuch as while fixing the interim maintenance the court has to give due regard to the income of the respondent and the petitioner's own income.**

10. In other words, in the matter of making an order for interim maintenance, **the discretion of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like**

social status; the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute.”

[emphasis supplied]

Mr. Gorwadkar submitted that the petitioner has obtained loan of Rs.7 Crores from Hardcastle Restaurant and is regularly remitting Rs.13,50,000/- per month in their account. This aspect is ignored by the learned trial Judge. I have already dealt with the financial position of the petitioner. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order.

28. Mr. Gorwadkar relied upon the decision of **Shail Kumari Devi** (supra) and **Jaiminiben Vyas** (supra) to contend that while passing the order of payment of maintenance from the date of the application, the learned trial Judge has to record reasons as to why he is awarding maintenance from the date of the application and not from the date of the order. I do not find any merit in this submission. That question was considered by the Apex Court in **Shail Kumari Devi's** case (supra). In that case, appellant No.1 wife and appellant No.2 daughter of the respondent before the Apex Court had challenged the order dated 3.5.2007 passed by the High Court of Judicature at Patna. By that order, the High Court partly allowed the Revision filed by the respondent

husband and modified the order dated 30.10.2006 passed by the Court of Principal Judge, Family Court, Bhojpur. On 21.7.1997, the appellants had filed a case for maintenance in the Court of Chief Judicial Magistrate, Bhojpur under Section 125 of Cr.P.C. claiming maintenance of Rs.500/- per month for appellant No.1 and Rs.500/- per month for appellant No.2. On 20.11.1999, an application was filed by the appellants for granting interim maintenance during pendency of the proceedings before the Court. The learned Chief Judicial Magistrate allowed that application, granted the prayer and fixed interim maintenance @ Rs.300/- per month for each of the appellants w.e.f. 12.2.1998. The parties closed their evidence on 3.9.2001. The case was adjourned for final arguments. During pendency of the proceedings, the Family Court was established and the case was transferred to the Principal Judge, Family Court, Bhojpur. The matter was finally disposed of by the Family Court on 29.11.2006. The learned Judge of the Family Court directed respondent to pay maintenance of Rs.2,000/- per month to appellant No.1 wife and Rs.1,000/- per month to appellant No.2 minor daughter with effect from the date of the application i.e. 21.7.1997 and further allowed to pay arrears within three months after deducting the amount which had already been paid under the interim order passed by the Court. The respondent was dissatisfied by the order of the Family Court and preferred

Criminal Revision Application No.67/2007 in the High Court. The High Court allowed the revision and modified the direction issued by the Family Court. High Court reduced the amount of maintenance from Rs.2,000/- to Rs.750/- to appellant No.1 wife and from Rs.1000/- to Rs.750/- to appellant No.2 daughter. The High Court also directed that the amount of maintenance would be payable to the appellants from the date of the order i.e. 29.11.2006 and not from the date of the application i.e. 21.7.1997. Said order was under challenge before the Apex Court. In paragraph-27, the Apex Court referred to the direction issued by the Family Court. The Family Court held that this order (29.11.2006) will be effective from the date of the application i.e. 21.7.1997.

29. In paragraph-29, the Apex Court has extracted the reasoning of the High Court while setting aside that part of the order of the Family Court, which reads thus:

“ On a consideration of the aforesaid arguments of the parties, this Court finds that the court below has not considered the present matter in a proper manner and keeping in view the purpose of the provisions of Section 125 of the Code. As held in a catena of decisions, the purpose of the said provision is to prevent vagrancy and destitution and essentially to financially support the deserted wife or other to say that her own son has grabbed the property and that she will sit back and will take no steps in the matter. As a matter of fact, under Section 125 of the Code of Criminal Procedure itself, it is the duty of the son to maintain his father and mother, if they are unable to maintain themselves;

whereas the court has not even considered the said fact. When the petitioner has raised the issue that the opposite party has income from the land and house of her matrimonial village, the same ought not to have been ignored by the Court in the manner, which has been done. It raises the strong suspicion that the Court below had made up its mind to disbelieve everything that was stated on behalf of the petitioner and believe the contention of the opposite party, which is not the correct way of looking at the evidence that comes in course of the said proceedings. It is for the court, in such matter, to consider the probability of the facts and then to come to a fair conclusion as to what is the real state of affairs. From the impugned order, it does not appear that any such attempt has been made by the Court below and even the important admission made by the opposite party No. 1 has been lost sight of by the Court below.”

30. After extracting the passages from the High Court judgment, it was observed that according to the High Court there must be justification on the part of the Court in making order of maintenance from the date of the application rather than from the date of the order. As there was no sufficient reason for granting maintenance from the date of the application, the Family Court was not justified in doing so. To that extent, therefore, the order passed by the Family Court was vulnerable and accordingly it was set aside by granting maintenance from the date of the order passed by the Family Court. The Apex Court thereafter considered several decisions of different High Courts.

31. In paragraphs-39, 40, 42 and 43, the Apex Court observed

thus :

- “39. Our attention was also invited to a decision in *K. Sivaram v. K. Mangalamba and Ors*, 1990 Cri. LJ 1880 (Andhra Pradesh). In *K. Sivaram*, a single Judge of the High Court of Andhra Pradesh negatived the argument on behalf of the husband that the maintenance could be awarded from the date of the order and such maintenance could be granted from the date of the application only by recording special reasons. The Court held that it is the discretion conferred on the Court by the Code to award maintenance either from the date of the order or from the date of the petition as per the circumstances of the case. The Code also noted that wherever Parliament wanted special reasons to be recorded for passing a particular order, specific provision has been made to that effect [See Sub-section (3) of Section 167 of the Code (default bail), Section 361 (refusal to grant probation) etc].
40. In our considered opinion, the High Court is not right in holding that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order. As observed in *K. Sivaram*, reasons have to be recorded in both the eventualities. The Court was also right in observing that wherever Parliament intended the Court to record special reasons, care had been taken to make such provision by requiring the Court to record such reasons.
42. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a *moral* obligation but is also a *legal* duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified

to live separately from her husband and still claim maintenance from him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of 'special reasons' though he must record reasons as envisaged by Sub-section (6) of Section 354 of the Code in support of the order passed by him.

43. We, therefore, hold that while deciding an application under Section 125 of the code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. In our Judgment, no such requirement can be read in Sub section (1) of Section 125 of the Code in absence of express provision to that effect.”

32. Thus, the Apex Court held that **it is open to the Magistrate to award maintenance from the date of the application and there is nothing which requires recording of “special reasons” though he must record reasons as envisaged by sub-section (6) of Section 354 of Cr.P.C. in support of the order passed by him.**

[emphasis supplied]

33. This case was considered in **Jaiminiben Vyas** (supra). In paragraph-6, it was observed thus:

“6. In *Shail Kumari Devi v. Krishan Bhagwan Pathak*, (2008) 9 SCC 632; Para's 39-41 this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In *Shail Kumar Devi*, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such Order. Thus, such maintenance can be awarded from the date of the Order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.”

34. In the present case, the learned trial Judge has given reasons while awarding maintenance. The learned trial Judge has passed express order directing payment of maintenance from the date of the application. In view thereof, it has to be held that the learned trial Judge has substantially followed the dictum laid down by the Apex Court in these two decisions. I, therefore, do not find any merit in the submission of Mr. Gorwadkar.

35. Mr. Gorwadkar submitted that written submissions were submitted before the learned Family Court Judge on 13.11.2017 and the impugned order was passed on 12.9.2018. Thus, there is delay of more

than ten months in passing the impugned order. On the other hand, Mr.Lalwani submitted that the earlier Smt. M.R. Kale was presiding over Family Court No.4 and Shri Makarand M. Adwawnt took over the charge on 12.6.2018 and the impugned order is passed on 12.9.2018. The parties had submitted written arguments and the learned trial Judge after considering the material on record has passed the impugned order. I do not find any merit in this submission for more than one reason. Firstly, I have considered the entire material on record carefully and after considering the material on record, I do not find that the learned trial Judge has committed any error in passing the impugned order. Merely because there is delay of ten months in delivering the judgment from submitting the written arguments, that by itself is not sufficient ground for setting aside the impugned order more so when it concerns grant of interim maintenance. Secondly, during the course of hearing, I suggested that if the petitioner is ready and willing to pay entire arrears of amount to the respondent, this Court is inclined to set aside the order and direct the trial Court to decide the application afresh after hearing the parties and in accordance with law. The suggestion was, however, not accepted by Mr. Gorwadkar. Thirdly, the Apex Court in paragraph-38 of **Surya Dev Rai Vs. Ram Chander Rai and others, (2003) 6 SCC 675** summed up the conclusion in a nutshell. Clauses (5) and (7) read thus:

- “(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.
- (7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.”

36. In the light of the aforesaid decision, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, petition fails and the same is dismissed. The arrears of maintenance shall be paid within four weeks from today. Order accordingly.

(R. G. KETKAR, J.)