

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 54 OF 2019
WITH
CIVIL APPLICATION NO. 57 OF 2019

1. Mrs. Deena Rajnikant Dhokia

Age - 59 Years,

2. Ms. Toral Rajnikant Dhokia

Age - 28 Years,

Both residing at C/o. Amrutlal Popatlal Dholakia,
40, Rita Niketan, Teli Galli, Andheri (E),
Mumbai 400 069.

.. Appellants

Versus

Rajnikant Maneklal Dhokia

residing at 4/8, Amrut Tara Co-operative Housing
Society Ltd., Yari Road, Andheri (W),
Mumbai - 400 069.

.. Respondent

-
- Ms. Neeta Karnik for the Appellants
 - Ms. Deepti Chand for the Respondent
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CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : MARCH 27, 2019.

ORAL JUDGMENT (Per Akil Kureshi, J.)

1. The Family Court Appeal is heard finally with consent of learned counsel for the parties.

2. The Family Court Appeal is filed by the wife and daughter challenging the judgment of the Family Court,

Mumbai dated 29.4.2017 passed in CIV. M.A. No. 192 of 2011.

3. This litigation has a long history. Facts in brief may be noted which are as under:-

3.1 Appellant No. 1 - wife and respondent husband had matrimonial disputes due to which, appellant No. 1 along with her daughter i.e appellant No. 2 started residing separately. In the year 1997, appellant No. 1 filed the maintenance petition seeking maintenance for herself and her minor daughter. On 5.1.2007, the parties signed the consent terms pursuant to which the husband would pay maintenance of Rs. 2000/- per month to the wife and Rs. 1000/- per month to the daughter. The daughter was admitted in medical course in June 2007. The wife filed application for enhancement of the maintenance sometime in August 2008. The Family Court passed the order dated 13.4.2010 enhancing the maintenance in favour of the wife to Rs. 4000/- and in favour of the daughter to Rs. 5000/-. This order of the Family Court was challenged by the husband before the High Court by filing FCA No. 82 of 2010.

He prayed for interim stay. The High Court by speaking order dated 15.11.2010 rejected the application for interim relief. Subsequently, the Family Court Appeal came to be dismissed for default on 22.6.2012. There was no attempt to have the said appeal restored. The husband's challenge to the order of the Family Court enhancing maintenance in favour of the wife and the daughter, thus, stood terminated.

3.2 In the meantime, the husband had filed Civil Misc Application No. 192 of 2011 on 5.8.2011 in which he had alleged that the wife has regular substantial income which was suppressed by her from the Court. He relied on the bank statements which showed certain movement of amounts in joint bank account of wife and daughter. According to the husband, thus, the wife had withheld the vital information of her source of income at the time when the consent terms were settled as well as at the time when the Family Court passed the order for enhancement of the maintenance. He, therefore, prayed that the order dated 13.4.2010 passed by the Family Court enhancing the maintenance be cancelled.

3.3 The wife had filed written statement to such application in which she denied the allegations of having any source of income. She stated that her father died on 7.9.2009. After his death, certain amount due towards his investments were credited to her account. The account was maintained by her brother. The amount in question is, therefore, not her income.

3.4 Both sides led oral evidence before the Family Court in such proceedings. The husband stated that he was working in bank from where he retired in January, 2016. At the time of retirement, he was drawing salary of Rs. 55,000/- to Rs. 60,000/- per month. He does not get any pension after the retirement. He had received amount of Rs. 35 Lakhs in lump sum at the time of retirement from the investment of which he receives monthly interest of Rs. 15,000/- to Rs. 17,000/-.

3.5 The wife in her examination-in-chief had stated that she had studied only upto SSC. She had not taken any job. She did not have income and therefore, had not filed income tax returns.

3.6 The daughter who had by that time became major was also examined. In her cross-examination, she admitted that she started getting stipend in the year 2014 which initially was Rs. 5000/- per month. She was in the year 2017 receiving stipend of Rs. 42,000/- to Rs. 43,000/- per month.

3.7 On the basis of such pleadings, the Family Court passed the impugned order. Learned Judge was principally influenced by the fact that the daughter was receiving sizable stipend. He also noticed that the wife was maintaining a bank account in which there was some movement of money other than the maintenance amount paid by the husband and that she had not declared such bank account to the Court when the proceedings for maintenance were going on. Principally on such ground, the Family Court passed the impugned order. Operative portion of which reads as under:-

ORDER

Civ. M.A. NO. 192 of 2011 is hereby allowed as under:-

2. The maintenance agreed by consent terms on 05/01/2007 in Petition No. C-62/1997 and further enhanced in Civ. Misc. Appln. No. 150/2008 by judgment dated 13/04/2010 is hereby cancelled from the date of filing of this application i.e 05/08/2011.
3. No order as to costs."

4. Learned counsel for the appellant submitted that appellant No. 1 wife had no independent source of income. All through out, she had looked after her daughter who had persuaded her medical course. Only after getting admission in the Post MBCC course, she started receiving stipend. In the meantime, the maintenance paid by the husband was totally inadequate to meet with the requirements of the mother and daughter, particularly looking to her education needs. She submitted that in the meantime, her father and thereafter her brother were helping her financially. She pointed out that the daughter started receiving stipend only from the year 2014. In any case, the stipend is paid by the college for a student to meet with her educational and other requirements and cannot substitute for the husband's liability to maintain the wife.

5. She stated that from the year 2014 onwards, the husband has stopped paying maintenance both to the mother and daughter altogether and that the appellants have not instituted any proceedings for recovery. She stated that both the appellants are present before the Court and

stated that they do not wish to initiate any recovery proceedings against the husband. She stated that the daughter recently got married, she is well settled and the daughter and her husband would look after the mother.

6. On the other hand, learned counsel for the respondent opposed the appeal contending that the appellants had deliberately withheld the relevant information from the Family Court. The wife was a partner in the family business from which clearly she was receiving sizable income. This could be seen from her bank account. Had such information been produced on record, the Family Court would not have granted maintenance to the appellants. She further submitted that having retired from non-pensionable service, the respondent relies on the interest income for his survival.

7. From the record, it emerges that initially under the consent terms and thereafter, by an order passed by the Family Court enhancing the maintenance, the husband was required to pay monthly maintenance of Rs. 4000/- per month to the wife and Rs. 5000/- per month to the daughter.

After this order was passed by the Family Court on 13.4.2010, the husband had challenged the same before this Court by filing an appeal. When such appeal was pending, the present proceedings for recall of the maintenance order came to be filed. Thus, when the appeal was pending, the husband had already received the documents which according to him would suggest that the wife had independent source of income which she had withheld. Even in the Family Court Appeal, his one of the main grounds was that the wife is a partner in the family partnership business from where she earns income. If that be so, nothing prevented the husband from pursuing the Family Court Appeal with such additional information available to him. He instead, allowed the Family Court Appeal to be dismissed without prosecution and no attempt was made for restoration.

8. Quite part from this, we do not find any evidence of the wife's independent income. Merely because the wife is maintaining the bank account and that there was some movements of the amounts in the said bank account, that

itself could not establish that such amounts represent the wife's income. In this context, the submission of the learned counsel for the appellants that the maintenance of total of Rs. 9000/- per month was wholly inadequate to sustain the mother and daughter, particularly looking to the daughter's education in medical course and therefore, her relatives were supporting her, needs to be appreciated. Further, the Family Court committed serious error in relying upon the factor of the daughter receiving stipend. Firstly, she started receiving such stipend in the year 2014. Secondly, as is well known, stipend is usually granted by the College to enable the student to pursue post graduation courses . Since these studies normally require extended period and students would be of comparatively advanced age, the stipend is paid to cover their fees, other education requirements and their sustenance. Such stipend cannot substitute for the husband's responsibility to maintain the wife who does not have any independent source of income. In any case, by the time the daughter started receiving stipend, she has crossed the age of about 25 years and in any case, the daughter is not seeking any maintenance from her father at that stage.

9. The Family Court, therefore, in our opinion committed serious error in cancelling the order of payment for enhancing the maintenance from inception. To reiterate, there was no evidence of the wife's independent source of income and the stipend being paid to the daughter in the year 2014, cannot be a ground to recall the maintenance order passed in the year 2010. Under these circumstances, subject to the statement made by the learned counsel for the appellants about no further recovery of maintenance from the husband, the impugned judgment of the Family Court is set aside. In other words, there shall be no recovery by the respondent from the appellants.

10. In view of the above, the Family Court Appeal and the connected civil application disposed of.

11. Decree be drawn up accordingly.

[SARANG V. KOTWAL, J.]

[AKIL KURESHI, J]