IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.8 OF 2017
IN
FAMILY COURT APPEAL NO.212 OF 2015

Smt.Pallavi Dinesh Savenkar .... Appellant

versus

Dinesh Raghunath Savenkar ... Respondent

…....

- Mr.Manoj Bhatt, Advocate for Applicant.
- Mr.Seema Sarnaik a/w Mr.Ameya Tamhane, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 18th APRIL, 2019.

P.C. :

1. Heard learned Counsel for the parties for final disposal. This Civil Application is filed by the Appellant-Wife seeking interim maintenance pending Family Court Appeal. The Family Court Appeal is directed against the judgment of Family Court, Mumbai, granting the decree of dissolution of marriage to the husband on the ground of cruelty and rejecting wife's

Petition for restitution of conjugal rights. Pending such Appeal, the wife has prayed for interim maintenance.

2. Learned Counsel for the Applicant submitted that the husband has admitted his taxable income for the assessment year 2017-2018 at Rs.38.31 lakhs. The wife is 12th standard pass and has no source of income. Their 21 years old son is residing with the wife. He has completed graduation and proposes to study further. Though in law as a major, he may not have independent right to claim maintenance from the father, nevertheless the mother has to look after him and his educational requirements. He submitted that the Family Court had granted decree of divorce on the ground of cruelty since wife could not substantiate her allegations of husband's adultery. He pointed out that the husband has remarried with the same woman, in respect of whom the Applicant has made allegations of adultery. He submitted that the said marriage has taken place before the expiry of the period of limitation for filing Appeal and therefore is a void marriage. He agreed that the wife

is occupying the residence, which is of co-ownership of husband and wife. He also agreed that the husband even after the judgment and decree of the Family Court, has being paying Rs.30,000/- per month for the needs of the son.

3. On the other hand, learned Counsel for the husband opposes the application. She pointed that the wife is residing in the residence owned by the husband, for which the society maintenance is also borne by the husband. The husband has always looked after the requirement of the son, whether so directed by the Court or not, which the husband even presently undertakes to do. She pointed out that out of second marriage of the husband, there is a child born. The husband also has to look after his aged mother. Counsel further submitted that the Applicant has suppressed her source of income. She is engaged in painting job from which she earns sizable income. Our attention was drawn to the impugned judgment of the Family Court in which it was noticed that the Applicant's mother though is stated to be a housewife, had received a sum of Rs.12

lakhs in span of three years between year 2009 to 2012. The Family court believed the same to be the income of the wife.

4. Having thus heard learned Counsel for the parties and having perused documents on record, what emerges is that the husband admittedly has sizable regular income. In his additional affidavit dated 15/06/2018, he has admitted that for the assessment year 2017-2018, he had total taxable income of Rs.38.31 lakhs. On the other hand, there is no reliable evidence of the income of the wife. For the present in this application for interim maintenance pending Appeal, we do not have any documentary or other evidence suggesting the wife's independent income. Regarding the observations of the Family Court with respect to her source of income, we may observe that firstly the same is related to the period between year 2009-2012. Presently there is no evidence of the wife's earnings. Secondly, the amount of Rs.12 lakhs was received in a span of about 3 years. Thirdly, there is no prima facie evidence to suggest that the same represented income of the wife and lastly even if the

same is considered as her gross income, the person would have to incur expenditure in order to earn such income. All in all, presently we proceed on the basis that the wife has no independent source of income.

5. At the same time, the husband's taxable income of Rs.38.31 lakhs cannot be equated to his take home income. As is well known, in the highest tax bracket, the income tax liability would be in excess of 30% of such income. Nearly third of the declared income, therefore would be consumed by tax liability. Further, the husband also has the responsibility of supporting his current partner as well as the child born out of such co-habitation. He also supports his aged mother.

6. We may bear in mind the fact that the wife occupies the residence free of rent. The son of the couple is aged about 21 years. In strict legal principal he may not be able to enforce maintenance claim as a matter of right. Nevertheless, admittedly, he has still not started earning. The husband does

not grudge paying for his maintenance and educational requirements. The wife as a mother also we are sure, under whichever head maintenance comes, would look after the son in the best possible manner.

7. Keeping in mind such overall facts and circumstances of the case, we dispose of this Civil Application with the following directions;

<u>ORDER</u>

(i) The Respondent shall pay interim monthly maintenance of Rs.50,000/- to the wife.

(ii) He shall separately and directly pay society maintenance for the wife's residence.

(iii) These directions shall take effect from the date of the order.

(iv) It would not be necessary for the husband to pay any amount separately for the son's maintenance, which would be subsumed in the directions issued earlier.

(v) Civil Application disposed of accordingly.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**