

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.390 OF 2018
IN
FAMILY COURT APPEAL NO.134 OF 2009

Anita Satbir Thukral .. Appellant
Versus
Satbir Singh Thukral .. Respondent

Mr. Subhash Jha with Sanjana Pardeshi I/b. Law Global for
respondent
Ms. Taubon F. Irani for applicant/ original appellant.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : 25th April 2019.

P.C.

Heard learned Counsel for the parties for final
disposal of civil application.

2] This civil application is filed by the wife, who is
appellant in family court appeal No.134 of 2009. The
respondent- herein the husband and appellant wife having had
bitter matrimonial fall out, the present proceedings have arisen
out of the judgement of family court.

3] A Division Bench of this Court while admitting the family court appeal No.134 of 2009 passed a detailed order in C.A.No.204 of 2009. Interim arrangement was made for the maintainance of wife. Separate directions were given for her medical treatment looking at her physical condition. Relevant portion of this order reads as under:-

“25. The last and important question is : how equities can be adjusted between the parties. For that we will have to keep in mind the finding recorded by us holding that the husband's income is atleast Rs.One Lakh per month in addition to the properties possessed by him including his residential house in posh colony at Delhi. He is also involved in business of export and import and is a frequent traveller abroad. We have also noticed that the applicant wife may have some source of income but would still require additional financial support. We would think it appropriate to provide atleast Rs.30,000/- per month as additional financial support to the applicant wife to be paid by the Respondent husband, so as to facilitate her not only to enjoy the standard of life, which she enjoyed during stay with the respondent husband at Delhi. Besides her maintenance, she may also require to spend on legal expenses on account of pending proceedings and moreso, on the medical expenses on account of ill-health. In our opinion,additional financial support of Rs.30,000/- per month must be provided to the applicant wife. That should be in addition to the liability of the Respondent-husband to reimburse all medical expenses of the Appellant wife which she is required to incur for her ailment. That may subserve the ends of justice.

26. To effectuate this order we think that the Respondent

husband must open a separate bank account in a scheduled bank jointly in the name of Respondent husband and applicant wife. In that account an initial amount of Rs.3 Lakhs be deposited which can be utilised by the applicant wife only in case of emergency medical expenses on actual basis. She can avail of the said amount by using debit card facility issued against the said account. We have provided for this arrangement as the applicant wife may require immediate financial assistance, if she has to undergo cervical surgery at short notice and the possibility of emergency situation arising therefrom. The said account or debit card can be operated only by the wife. The wife shall file undertaking that she shall withdraw amount from that account only for paying medical expenses. The account shall be replenished by the respondent husband within one week from the production of the receipts towards medical bills of hospital or doctor and/or of medicines purchased as per the doctors/Hospital prescription. On receipt of such medical bills within one week the Respondent will be obliged to credit the commensurate amount in the said account, so as to maintain the average balance of around Rs. 3 Lakhs in the said account, which can be utilised by the applicant wife in emergency situation during her life or till pendency of the appeal, whichever is earlier. In case, the Respondent husband has any doubt with regard to any particular medical bill submitted/furnished by the applicant wife for reimbursement, even then, the respondent husband in the first place shall deposit the amount referred to in the said bill in the joint account to replenish the said account and if so advised may take out application before this Court for appropriate direction, which can be considered on its own merits. In the event, the Court were to opine that the expenses so incurred by the applicant wife were not for medical expenses incurred on her medical treatment or was avoidable expenses, in that case, the amount so spent by the applicant wife can be adjusted against the monthly interim maintenance amount in the sum of Rs.30,000/- payable by the Respondent to the applicant wife. This arrangement in our opinion, would sub-serve the ends of justice and adjust the equities between the parties.

27. Dictation of this order continued even after court hours upto

5.08 p.m., but even till now no one appeared for the Respondent husband.

28. Accordingly, we propose to pass following order on this application.

(i) In so far as interim relief of stay of operation of the impugned Judgment and Decree dated 9th June, 2009 for dissolution of Marriage is concerned, the same is granted only for the purpose of considering the claim of the applicant for interim monthly maintenance.

(ii) The interim relief of stay of rejection of maintenance Petition is rejected, as ill-advised.

(iii) We direct the Respondent to abide by the arrangement referred to above towards interim monthly maintenance amount as well as to secure maintenance and support to the applicant wife. Interim monthly maintenance at the rate of Rs.30,000/- per month shall be paid on and from August, 2009, when this application has been filed. The monthly maintenance amount be paid on regular basis on or before 7th of every English calendar month.

(iv) The arrears of maintenance in terms of this order shall be paid by the respondent husband within six weeks from today.

(v) In addition, the Respondent husband shall open joint account in a scheduled bank where debit card facility would be available to the applicant wife against the said account, which will be in the name of the applicant wife. That account will be operated by the wife only for incurring medical expenses. Further, initial amount of Rs. 3 Lakhs be deposited in the said

account and the Respondent husband shall regularly replenish the said account against the bills to be provided by the applicant wife to the respondent husband from time to time within one week from receipt of such bills irrespective of the fact whether particular claim in that medical bill is not acceptable to him. It will however, be open to the Respondent husband to approach this Court for suitable relief in case there is any dispute regarding the correctness of the claim of any medical bill given by the Appellant wife.

(vi) The respondent husband shall pay costs of this application to the applicant wife quantified at Rs.10,000/- to be paid within four week from today.

(vii) Application allowed on the above terms.”

4] It appears that the applicant wife had claimed medical expenses for her imminent survival surgery. However, admittedly such surgery was not undertaken. According to her, however, she had to spend considerable amount on her medical bills for her other requirements. In Civil Application No.388 of 2015, the Division Bench of this Court passed an order dated 30th June 2016. The Court referred to earlier order dated 11th August 2000 and recorded the submission of the Counsel of the husband that the medical bills were not genuine and passed the following order:-

“2. The issue whether the bills submitted by the wife are fabricated or not will have to be in any case decided by the Court. However, inquiry will involve recording of evidence. Hence, it will be appropriate if inquiry is held by the Family Court”.

3. We, therefore, direct the parties to appear before the learned Principal Judge of the Family Court at Bandra, Mumbai, on 25th July 2016 at 11.a.m. The Registry will immediately forward the writ of this order to the learned Principal Judge of the Family Court at Bandra, Mumbai. The parties and their Advocates will submit an authenticated copy of this order before the learned Principal Judge of the Family Court at Bandra, Mumbai.

4. We direct that a photocopy of the list marked “X1” for identification shall be forwarded by the Registry along with the writ of this order to the Family Court. We direct the husband to produce copies of the bills which are furnished to him by the wife which are listed in list marked “X1” before the learned Principal Judge of the Family Court at Bandra, Mumbai on the date fixed for appearance.

5. The learned Principal Judge of the Family Court at Bandra, Mumbai may herself make an inquiry on the issue of genuineness of the said bills or may transfer to any other Judge of the Family Court.

6. The learned Judge of the Family Court at Bandra, Mumbai will be entitled to direct production of original bills if found necessary.

7. After giving an opportunity of being heard to adduce the evidence on the issue of genuineness of the said bills and after hearing the parties, the learned

Judge will record necessary findings.

8. The evidence recorded before the learned Judge and the findings of the learned Judge shall be forwarded to this Court. The findings shall be recorded by the learned Judge as expeditiously as possible and preferably before the end of September 2016. If the learned Judge finds that the parties are not co-operating for early conclusion of the inquiry, it will be open for the learned Judge of the Family Court to submit a report to this Court. If such a report is received, the Registrar (Judicial-I) shall forthwith place the report before this Court.

9. Place the Application on 17th October 2016.

10. We, however, make it clear that we have not made any adjudication on the rival contentions of the parties and the issues raised in this Application. Appropriate order will be passed by this Court after taking into consideration the order of the learned Judge of the Family Court at Bandra, Mumbai and record of the case.

5] On 17th October 2016, the Division Bench passed further order in the said civil application, which reads as under:-

1. In terms of the order dated 30th June 2016, an inquiry has been made by the learned Judge of the Family Court No.2, Mumbai. The report of the learned Judge of the Family Court dated 30th September 2016 is forwarded to this Court by the learned Principal Judge of the Family Court at Mumbai along with the evidence adduced by the parties.

2. The report shall remain in the sealed envelope in the custody of the Registrar

(Judicial-I) of this Court. However, on the application being made by the parties to the Application, the Registrar (Judicial-I) shall provide to them photocopies of the report along with the accompanying documents subject to payment of copying charges.

3. Place the Civil Application for hearing on 18th November 2016.

6] On 18th April 2017, on the said application following further order was passed :-

“1. Civil Application No.388 of 2015 is taken out by the husband for various prayers, including modification of order dated 11.08.2010 in an admitted Appeal.

2 Considering the submissions so made by the counsel appearing for the parties, we have noted the fact that there is no issue that the Applicant-husband has been paying maintenance of Rs.30,000/- per month and until April 2017 he has made the payment of Rs.2,79,000/- towards the same. The Applicant has also paid a sum of Rs.10 lakhs and odd as medical expenses as on date, apart from depositing of Rs.2,50,000/- in the Court pursuant to order dated 18.10.2016 in Writ Petition No.10867 of 2016 in view of the fact that the Respondent-wife had made specific averments on 10.08.2010 that she was to undergo urgent cervical surgery. However,till today no such surgery took place and, therefore, we see there is no reason at this stage either to consider the Application so filed by the Applicant or the oral submission of the Respondent to withdraw the amount so deposited.

3. However, we are inclined to fix this matter for

final disposal subject to filing requisite paperbook in Appeal within eight weeks along with short synopsis and written submissions. All contentions are kept open.

4. The interim order passed by this Court to continue till the disposal of the Appeal. Liberty is granted to the Respondent-wife to make an application in case of urgent requirement of some amount on medical ground.

5. The Applicant has offered to take out a mediclaim policy for the alleged ailment/disease, if any. The Applicant is therefore at liberty to exchange the correspondence in this regard. The Respondent to consider the same in the interest of both the parties. “

7] The wife had initiated coercive recovery against the husband in the family court. The husband, therefore, filed a petition being Writ Petition No.1086 of 2016. Learned Single Judge in this petition passed an order on 18th October 2016, the relevant portion of the same reads as under:-

“3] Learned counsel for respondent No.1, on basis of instructions from respondent No.1, has stated that at least as of now, there are no arrears insofar as payment of maintenance amount is concerned. However, he submits that insofar as the amount spent towards medical expenses is concerned, there are arrears which run to the extent of Rs.5 Lacs or thereabouts. This is inclusive of amount of Rs.3 Lacs which the petitioner is required to maintain in the joint

account in terms of the directions issued in paragraphs 26 and 28 of the interim order dated 11 August 2010 made by this Court.

4] It appears that some dispute was rised by the petitioner with regard to genuineness of the medical bills submitted by the respondent – wife and on basis of such dispute, the petitioner had urged that the petitioner, in purported compliance with the interim order, cannot be made liable to pay additional amounts to the respondent wife. Since, this dispute involved determination of factual disputes, the Division Bench of this Court, by its order dated 30th June 2016 directed the family court at Bandra to adjudicate upn the rival contentions of the parties and thereafter submit a report.

5. In pursuance of the order dated 30 June 2016, a report is stated to have been submitted to the Division Bench taking up Application No. 388 of 2015 in Family Court Appeal No. 134 of 2009. According to the learned counsel for respondent No.1, the report confirms that the medical bills submitted by the respondent-wife are genuine and therefore, the petitioner is liable to pay amounts referred to therein. He also submits that upto the date of filing Regular Darkhast No. 555 of 2015, the amounts towards such medical bills are in the range of Rs.2.5 Lacs or thereabouts.

6. Since, the issue of genuineness of the medical bills and the consequent compliance or non-compliance with the directions contained in the interim order dated 11 August 2010 is being considered by the Hon'ble Division Bench of this Court in Family Court Appeal No. 134 of 2009, in my opinion, it would be more advantageous to have the present matter taken up along with the proceedings in Family Court Appeal No.134 of 2009. Accordingly, the Registry is

directed to place this matter before the Hon'ble the Chief Justice to obtain appropriate orders for placing this petition before the Division Bench taking up Family Court Appeal No.134 of 2009.

7]

8] In the meanwhile, it will not be appropriate that the petitioner suffers either a distress warrant or a detention warrant. The execution of such warrants is, therefore, stayed until 18th November 2016. This stay is subject to the petitioner depositing in this Court to the account of Family Court Appeal No.134 of 2009, an amount of Rs.2.5 lakhs within a period of two weeks from today. In case, there is a default in the matter of deposit of this amount, then the interim relief/ stay now granted shall stand vacated without any further reference to this Court.”

8] According to learned Counsel for wife, husband has not fulfilled the directions issued by this Court by regularly paying for medical bills of the wife. She would contend that the husband had to maintain minimum balance of Rs.3 lakhs in the wife's bank account, which could be used for emergency medical requirement. She pointed out further that the family court has, pursuant to the directions issued by this Court, furnished a report holding that the bills submitted by the wife were genuine. This was done after detailed enquiry and examination and cross examination of witnesses. She

submitted that the wife had produced bills for Rs.3,01,320/-. In this context, she presses for her prayers made in civil application granting permission to wife to withdraw Rs.2.50 lakhs deposited by the husband pursuant to the order of learned Single Judge in the writ petition. She further presses for relief that the husband should be directed to deposit a sum of Rs.3 lakhs in the bank account of the wife.

9] On the other hand, learned Counsel for husband opposes this application. His contentions were as under:-

(I) The Division Bench of this Court in its order dated 11th August 2010 had only directed the husband to take care of wife's emergency surgery or medical expenses;

(ii) In the present case, emergency was shown as survival surgery for which amount was claimed. The wife, however, never underwent such surgery.

(iii) Husband has been regularly paying maintenance of

Rs.30,000/- per month to the wife. He cannot be saddled with false medical bills;

(iv) The report of the family court is defective. The husband has filed civil application for recalling the witnesses. This application is still pending.

10] Having thus heard learned Counsel for parties and having perused the documents on record, we may recall, the interim arrangement pending family court appeal is provided by this Court in the order dated 11th August 2010. The Court directed the husband to pay monthly maintainance of Rs.30,000/- Besides the maintainance, the Court noted that she may also be required to spend on medical expenses on account of her ill health. It was, therefore, provided that “in our opinion, additional financial support of Rs.30,000/- per month may be provided to the applicant wife. That should be in addition to the liability of the respondent husband to reimburse all medical expenses to the appellant- wife which she is required to incur for her ailment.” In the later portion of this

order, the Court also directed the husband to maintain a balance of Rs.3 lakhs in the account of the wife. From such account, the wife could draw through debit card after paying the medical bills without permission from the Court. Even if the husband were to dispute the bills, the same could be done later and if the objections are found valid then the withdrawn amount can be adjusted towards husband's liability to pay maintenance.

11] It is thus clear from this order that the husband was to cover for wife's medical bills, irrespective of the fact whether it was an emergency situation or not. The permission for the wife to withdraw from the account where the husband would maintain a balance of Rs.3 lakhs, was for emergency. This did not mean that the husband can avoid his liability to pay wife's medical bills by citing the reason that the same was not an emergent medical situation.

12] We now come to the question of genuineness of the wife's claim. The respondent was permitted to object to any

such claim, which in the present case, he has. This court required the family court to collect evidence and make a report. Such a report has been made, which we have perused. The report certifies that all bills produced along with list at Exh.24 are genuine. This was done after recording evidence of various witnesses produced before the family court, majority of them by the husband.

13] As stated by the Counsel for the husband, he has filed an application for recall of the witnesses. The pendency of this application would not detain us from giving suitable directions in this application. Firstly, this Court in its order dated 17th October 2016 while providing that a report of the family court should remain in sealed envelope had permitted on an application by either party to take out copies of the same. No such effort has so far been made by either side. The husband is, therefore, criticising the report even without perusing it. His attempt to prevent the wife from withdrawing the amount on the ground of pendency of the recall application is only a delay tactic. Even if he were to succeed in his application for recall of

witnesses, the amount that the wife may withdraw presently can be adjusted towards husband's liability towards future maintainance.

14] This Court in the order dated 18th April 2017s in C.A.NO.388 of 2015 had not passed any order contrary to what we propose to do just now. The court noticed that the wife had not undergone surgery and therefore, at that stage the court thought not proper to release any further amount in favour of wife. The report of the family court was not brought to the notice of the court. In any case, the court had not passed any final opinion.

15] Under these circumstances, this civil application is disposed of with following order:-

(a) the applicant wife will be allowed to withdraw a sum of Rs.2.50 lakhs with accrued interest, if any, deposited by the respondent husband before this court as per the order dated 18th October 2016 passed by learned Single Judge in

W.P.No.190867 of 2016.

(b) The respondent shall then deposit a sum of Rs.3 lakhs in the account of wife latest by 20th May 2019, which amount the wife could withdraw only as per provisions made by this Court in order dated 11th May 2010.

(c) Civil application disposed of;

16] At this stage learned Counsel for husband requests for stay of the order. Request is refused.

(SARANG V. KOTWAL, J)

(AKIL KURESHI, J)