

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.1882/2018 IN
FAMILY COURT APPEAL NO.113/2014

Smt. Nilima w/o Dhananjay Kanhe .vs. Dhananjay s/o Gopalrao Kanhe

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. H. I. Kothari, Advocate for appellant-applicant.
Mr. V. Tunkikar, Advocate for respondent-non applicant.

CORAM : SUNIL B. SHUKRE &
PUSHPA V. GANEDIWALA, JJ.
DATED : APRIL 16, 2019

1. Heard.

2. This application has been filed by the appellant for claiming a sum of Rs.4,04,000/- from the respondent-husband as medical expenses, actually incurred by the appellant on account of treatment, that she has been given for the ailment of cancer of uterus. This application is supported by medical bills. There is no dispute raised to the medical bills filed on record. The only submission of the respondent is that his pension amount is meager, which is about Rs.12,670/-. But, it is the fact that the respondent has contracted second marriage during the subsistence of his marriage with the appellant as it has been informed by the learned counsel for the appellant, that on this very ground the petition filed by the respondent seeking dissolution of the marriage has been dismissed by the

Family Court in the past. If this is the fact, which has come on record, one cannot, prima facie, believe that the income of the respondent is so meager as would disable him from meeting even the medical requirements of his wife, the appellant. Then the respondent is admittedly a retired Government officer and, therefore, would be entitled to claim reimbursement of the medical expenses, which he would incur on his dependents, in accordance with the rules. The appellant has no other source of income as presently the appellant is not working anywhere, at least this is what appears to be as of now. According to the respondent, the appellant is still working and earning sufficient income but, this fact is yet to be proved. No such documents as would enable us to form any prima facie view regarding income of the appellant sufficiently, have been placed on record by the respondent.

3. In these circumstances, we find that when an application was made before the Family Court in this regard, the application ought to have been considered by the Family Court and decided it one way or the other as the principal is that a Court, which has a power to grant final relief also has a power to grant interim relief and this is all the more so when the Court is called upon to consider the applicability of the principle of necessary intendment. We are of the view that the Family Court ought not to have postponed the final disposal of this application to the final hearing.

4. Be that as it may, for the reasons stated earlier, we are convinced that there is compelling need for the appellant to get the medical expenses from her husband and accordingly, we allow this application.

5. The respondent is directed to pay the amount of Rs.4,04,000/- to the appellant or deposit the same in this Court within four weeks from the date of the order.

The application is disposed of.

JUDGE

JUDGE

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