

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 95 OF 2019
IN
FAMILY COURT APPEAL NO. 13 OF 2017

Keya Kapil Shah ... Applicant

IN THE MATTER BETWEEN

Kapil Prakash Shah ... Appellant
V/s.

Keya Kapil Shah ... Respondent

Mrs. Tauben Irani a/w Disha Shetty for the Applicant.
Mr. Kapil Shah Appellant party in person.

**CORAM: K.K.TATED, &
SARANG V. KOTWAL JJ.
DATE : 4th MARCH 2020**

P.C.

1 Heard learned Counsel for the parties.

2 By this Civil Application, the Applicant wife is seeking enhancement in the maintenance charges for herself as well as daughter Asmi who is special child.

3 The learned counsel for the Applicant submits that in the present proceeding, the appellant husband filed divorce petition under Section 13(1)(ia) of the Hindu Marriage Act for dissolution of marriage on the ground of cruelty desertion and also for access of daughter. She submits that in the said petition, the Applicant wife also filed counter claim for restitution of conjugal rights under

Section 9 of the Hindu Marriage Act. She submits that the Family Court by its judgment and decree dated 01.10.2016 dismissed the Appellant's petition for divorce and allowed the Applicant's application for restitution of conjugal rights. She submits that at the time of passing impugned order dated 01.10.2016, the Trial Court directed the appellant to pay maintenance charges @ Rs.5,000/- per month to the wife and Rs.10,000/- per month for the child i.e. total sum of Rs.15,000/- per month.

4 The learned Counsel for the Applicant submits that Family Court erred in coming to the conclusion that Applicant wife and child is entitled to maintenance charges only @ Rs.15,000/- per month. She submits that during the pendency of the petition for divorce before the Family Court, the Applicant preferred application below Exhibit - 14 for interim maintenance for herself as well as child. She submits that application was decided by the Family Court by order dated 25.07.2013 and directed the Appellant husband to pay interim maintenance of Rs.20,000/- per month for the child. She submits that at that time, the age of the child was 6 years only. Now the child is 12 years old. She submits that she has to take the child to Doctor for various reasons. She submits that each time she is spending more than Rs.4,000/- for fees of Doctor as well as medicines. In support of this contention, the learned Counsel for the Applicant placed on record the various vouchers issued by the Doctor and also bills of medicines

purchased by her.

4 The learned Counsel for the Applicant submits that Applicant decided to admit child in Neev Special School at Virar. She submits that for the academic year of 2019-2020, the said school given estimate of fee structure to the tune of Rs.65,000/-. In support of this contention, the learned Counsel for the Applicant placed on record the documents issued by the said school. She submits that in view of these facts, this Hon'ble Court be pleased to allow the present Civil Application directing the appellant husband to pay enhanced maintenance charges for herself as well as the child. She submits that at present, Applicant is not doing anything. She is household wife. There is no source of income. She has to depend on her parents only. Therefore, this Hon'ble Court be pleased to allow the present Civil Application.

5 On the other hand, the Appellant party in person vehemently opposed the present application. He submits that his total income is not more than Rs.25,000/- per month. He submits that in the said Rs.25,000/- he has to maintain his parents. He submits that as per order passed by the Trial Court, he is paying maintenance charges to the Applicant regularly. He submits that the voucher and receipts placed on record by the Applicant are not accepted to the appellant. He submits that in any case, it is not possible for him to pay additional maintenance charges to the Applicant. Therefore, there is no substance in the present application and same to be dismissed with costs.

6 We heard both the sides at length. It is to be noted that in the present proceeding, during the pendency of the divorce petition before the Family Court, the Family Court by its interim order dated 25.07.2013 below Exh. 14 in interim application No. 433 of 2011 in Petition No. A-245 of 2011 directed Appellant to pay Rs.20,000/- per month to the Applicant wife for maintenance of child aged 6 years, now the child is more than 12 years. Apart from that the documents placed on record by the Applicant i.e. vouchers issued by Doctor and clinic and also medical bills shows that Applicant made out a case to allow this application partly.

7 We are of the opinion that in the interest of justice, there should be increased in the maintenance charges of the child. Apart from that, the documents placed on record by the Applicant from Neev Special School shows that they are charging sum of Rs.65,000/- for one academic year. In any case, the child is special child and she requires medical attendance occasionally. We are of the opinion that in the interest of justice, Appellant may be directed to pay the additional charges for the child.

8 At present, there is no question of increase in the maintenance charges payable to the Applicant wife for herself.

9 Considering these submissions, the following order

is passed:

a) Appellant Mr. Kapil Shah is directed to pay sum of Rs.20,000/- per month by way of maintenance to the Applicant wife for minor daughter Asmi from the month of March 2020.

b) Appellant to pay sum of Rs.20,000/- on or before 10th of each month.

c) It is made clear that Appellant to pay the maintenance charges of the Applicant wife as per order passed by the Trial Court.

d) It is also made clear that at present this Court has considered the application only for the maintenance for child and rest of the prayers are kept open.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)