

Mr. Iqbal Usman Khan		Petitioner
<u>Vs.</u>		
Yasmin Khan		Respondent

Mr. R.S. Apte, Senior Counsel a/w Ms. Bhakti Sutar i/by Mr. Vikas Mahangare for Petitioners in WPs Nos. 5335 of 2013, 2264 of 2016 and 3090 of 2014.

Mr. Saeed Akhtar a/w Mr. Hitesh A. Thorat & Mr. Rehman Ansari for Petitioners in WP 6216 of 2013 and for Respondents in WP Nos. 2264 of 2016, 5335 of 2013 and 3090 of 2014.

Coram : NITIN W. SAMBRE, J.

Date : 21st February, 2020

P.C.:

1. Writ Petitions Nos. 5335 of 2013 and 6216 of 2013 are arising out of the order passed by the Principal Judge, Family Court, Mumbai at Bandra on 13th March 2013 below Interim Application No.49 of 2012 (Exhibit 7) is subject matter of challenge.

2. After matrimonial discord, the wife initiated proceedings for divorce under Islamic Law and in which a prayer was made for grant of interim maintenance of Rs.60,000/- per month with costs. The Family Court, considering the rival claims awarded interim maintenance of Rs.20,000/- per month to the wife. The husband has questioned the same in Writ Petition No. 5335 of 2013 on the ground that he is incapacitated in payment of maintenance as he has no source

of income. An alternate contention is that the maintenance of Rs.20,000/- awarded by the Family Court is on much higher side.

3. Shri. Apte, learned Senior Counsel appearing for the husband would urge that the account extract of the wife depicts a single entry for an amount of Rs.60.00 lakhs. He has urged that the documents which were placed on record to substantiate the income of wife and no source of income of husband are not taken into account. Learned counsel then would invite attention of this Court the advance age of the parties and submits that the wife is getting maintenance from the grown up children, begotten out of the aforesaid marriage and that being so the award of maintenance is liable to be set aside.

4. Shri. Apte, learned Senior Counsel would also urge that the husband has incapacitated in paying maintenance as he has stopped earning. As such the prayer from the wife for grant of enhanced maintenance is liable to be rejected and as such he sought dismissal of Writ Petition No. 6216 of 2013.

5. While countering the aforesaid submissions, learned counsel for wife would urge that the marriageable daughter is in the custody of wife. Wife and daughter are entirely dependent on the amount of maintenance. According to him for last about more than 5 years inspite of assurances and orders of this Court, amount of arrears are not deposited. He would urge that the entry of an amount of Rs.60.00 Lakhs in the account is of the year 2011 and the said amount was held by the wife in trust for somebody else. Further submissions are, considering the fact that the husband is in overseas business of aluminum ladder manufacturing and he is holding substantial piece of immovable property in Lonavala and Goa etc., not only the award of maintenance of Rs.20,000/- is meager but same needs to be enhanced to Rs.60,000/- per month. So as to substantiate her claim, he has relied on the admission given in paragraph 36 of the written statement.

6. Considered rival submissions.

7. The pleadings in the application for maintenance depicts that the parties were married on 26th September, 1978. There are

grown up children born out of the aforesaid marriage and that the wife is custodian of marriageable daughter.

8. The two children of the parties to the petition are residing overseas and the wife is getting some maintenance from them, as admittedly, the husband has not cleared the maintenance as was ordered.

9. In the aforesaid background, we have to consider the source of income of husband and whether he is incapacitated in payment of maintenance. Based on retirement deed dated 29th August, 2012, husband who was in a ladder manufacturing business and having overseas sale of same, claim to have retired from the same.

10. Though the husband has claimed that he has retired on 29th August 2012 from the aforesaid business, however, Court below so also for this Court it is difficult to accept said contention, particularly in the backdrop of observations of the Family Court. The petition before the Family Court was initiated on 17th January, 2012 and the interim

maintenance prayer was moved on 5th March, 2012. It is, in this background, so as to frustrate the claim for maintenance the husband has taken steps for creation of the retirement deed thereby showing that he has retired from the active business, which was / is running in profit. There is no convincing reason as to why the husband has retired from the aforesaid business and as such, the Family Court was justified in holding that the deed of retirement is created by the husband so as to frustrate the claim of wife for maintenance. In my opinion said findings of Family Court cannot be faulted with.

11. As such the aforesaid findings are sufficient enough for this Court to infer that the husband actively participated in the profit making business of manufacturing and selling ladder and was having substantial earning from the same.

12. Apart from above, the Court cannot be oblivious to the fact that the husband holds immovable property at Fonda in Goa, so also at Lonawala. Both these destinations are tourist destination and the object of investments in the properties at both destinations speak volumes

about the source of income of the husband and his capacity to pay maintenance.

13. In the aforesaid background and considering the balance amount as shown in the account of husband as on 20th October, 2011, which is more than Rs.5,00,000/-, the Family Court was not only justified in awarding maintenance of Rs.20,000/- per month but in my opinion, the factual matrix and the conduct of the husband warrants calls for enhancement as is prayed by wife.

14. The Family Court awarded maintenance of Rs.20,000/- per month, this Court cannot be oblivious of the fact that a marriageable daughter is maintained by the wife and husband is in the profit making business and also enjoying various properties.

15. In the aforesaid background, in my opinion, the above amount of maintenance awarded i.e. Rs.20,000/- per month from the date of application i.e. 5th March, 2012, is liable to be enhanced to Rs.35,000/- per month, however, such enhancement in my opinion

needs to be restricted from 1st January, 2016 as the petitioner so as to show his bonafides, has deposited an amount of Rs.1,00,000/- in this Court, which amount was already withdrawn by the wife.

16. This Court is also required to note the conduct of the husband of not honouring various orders passed by this Court directing him to clear arrears of maintenance.

17. In the aforesaid background and the conduct of the petitioner of not complying with the last order passed in the present proceedings, it will be appropriate in my opinion to direct the respondent-husband to clear entire arrears of maintenance in three equal instalments.

18. The entire arrears of maintenance as such be divided in three equal parts before the Family Court and the first instalment of arrears be cleared in any case by 15th March, 2020, second instalment by 15th April, 2020 and third instalment by 15th May, 2020.

19. A single default on the part of the husband in clearing the arrears of maintenance shall entitle the wife to initiate contempt proceedings for intentional disobedience of the order of this Court.

20. As such, for the reasons recorded hereinabove, Writ Petition No.5335 of 2013 initiated by the husband stands dismissed, whereas Writ Petition No. 6216 of 2013 initiated by the wife stands partly allowed in above terms.

Writ Petition No. 3090 of 2014:

21. In case, if the petitioner-husband clears aforesaid arrears as is directed by this Court without the wife requiring to take recourse to proceedings under the Contempt of Courts Act, the husband will be entitled to submit his defence before the Family Court, the Family Court shall consider the case of husband based on such defence. If the order of payment of maintenance and clearing of arrears as directed hereinabove, is not complied with, the order of striking out of defence against the husband, which is subject matter of Writ Petition No. 3090 of 2014, shall govern the proceedings.

22. Needless to clarify that if the order of clearing the arrears and regular payment of maintenance ordered is complied with, the order of striking out of defence shall be considered to be quashed and set aside.

23. The Petition is partly allowed.

WRIT PETITION NO. 2264 OF 2016:

24. As far as Writ Petition No.2264 of 2016 is concerned, Counsel for the wife, on instructions, submits that till Petition No.A-207 of 2012 initiated for divorce under the provisions of Muslim Law is decided, no third party interest in the flat which is occupied by her will be created. Let there be injunction against the husband in relation to property referred to in the petition i.e. the flat which is occupied by wife. He is restrained from creating third party interest.

25. As far as claim of the husband for permitting him to stay in the said flat is concerned, I see no reason which calls for interference in the order of Family Court below Exhibit 24, whereby the prayer for

granting him entry and permission to stay in the flat where the wife, as per her contention, is residing alongwith her daughter, should be granted.

26. As such, the said prayer, in my opinion is rightly rejected by the Family Court.

27. As such the Writ Petition No. 2264 of 2016 stands rejected in the aforesaid terms.

28. In view of disposal of the Writ Petition No. 5335 of 2013, Civil Application Nos. 1397 of 2013 and 1453 of 2014 do not survive. The same are accordingly disposed of.

(NITIN W. SAMBRE, J.)