

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11564 OF 2018
IN SA/568/2010

SWATI W/O DEEPAK JOGDAND
VERSUS
DEEPAK S/O BHASKARRAO JOGDAND

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Mr. S. S. Manale, Advocate for applicant.
Mr. R. S. Sarvadnya and Mr. M. S. Tekale, Advocates for the respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 09.08.2021

Pronounced on : 15.09.2021

ORDER :-

. Present application has been filed by the appellant – original petitioner for directing the respondent – husband to pay monthly maintenance of Rs.20,000/- to the applicant and her daughter during pendency of the second appeal. So also, he be directed to pay amount of Rs.50,000/- towards the expenses of second appeal.

2. Present applicant – original petitioner had filed H.M.P No.33 of 2004 for restitution of conjugal rights before learned Joint Civil Judge Senior Division, Beed. The said petition came to be allowed on 14.06.2007. The respondent – husband had filed Regular Civil Appeal No.182 of 2007 before the learned Principal District Judge, Beed

challenging the judgment and decree passed by the learned Lower Court. The said appeal came to be allowed on 23.06.2010 by setting aside the judgment and decree passed by the learned Lower Court and dismissed the petition filed by the present appellant. Hence, she filed the present second appeal. The second appeal was admitted by framing substantial questions of law on 14.11.2011 and it is pending for its final decision. In the meantime, this application has been filed under Section 24 of the Hindu Marriage Act for maintenance and expenses of the proceedings during pendency of the second appeal.

3. Heard learned Advocate Mr. S. S. Manale for the applicant. Learned Advocate Mr. R. S. Sarvadnya and learned Advocate Mr. M. S. Tekale were absent. The real record would show that they had obtained adjournments to file say/reply. So also, in view of the decision of the Hon'ble Supreme Court in ***Rajnish Vs. Neha and another, [(2021) 2 SCC 324]***, they were directed to file affidavit in respect of the income. Sufficient time was given to the respondent to file the affidavit, however, it has not been filed.

4. The relationship between the parties is not disputed. Further, the learned Advocate for the applicant has submitted that in another proceedings i.e. Miscellaneous Civil Application No.381 of 2015 by

judgment dated 19.12.2017, the maintenance awarded to appellant No.1 – wife has been enhanced to Rs.8,000/- per month and to appellant No.2 – daughter, it is enhanced to Rs.4,000/- per month w.e.f. 10.08.2015, however, it has also not been regularly paid by the respondent. There is no source of income for the appellant and, therefore, that amount deserves to be enhanced. In fact, when the petition for restitution of conjugal rights was allowed, there was no such directions regarding payment of maintenance and thereafter, the first Appellate Court has reversed the decree. Therefore, in order to survive, the applicant has no alternative, but to file this application. Further, at the time when the maintenance was enhanced in Miscellaneous Civil Application No.381 of 2015, the salary of the respondent was less i.e. it was to the tune of Rs.34,386/-, however, thereafter, now it has been increased in view of the fact that 7th pay commission has been made applicable to the respondent. The respondent is serving in MAHAVITARAN i.e. Maharashtra State Electricity Distribution Company Ltd. Thereafter, this Court by order dated 17.06.2021 had directed the appellant to produce current salary slip of the respondent on record. The salary slip of the respondent (true photocopy) issued by the employer on 03.05.2021 shows his gross salary at Rs.72,440/- and the deduction is to the extent of Rs.20,415/-. The applicants are staying in

rented premises. The landlord is charging Rs.6,000/- per month. Under such circumstance, the maintenance deserves to be enhanced.

5. As aforesaid, the respondent has not challenged whatever the documents have been produced. Now, the fact remains is that in Miscellaneous Civil Application No.381 of 2015, the learned Joint Civil Judge Junior Division, Beed in the said application under Section 25 of the Hindu Adoption and Maintenance Act had granted maintenance at the rate of Rs.8,000/- per month to the applicant wife and Rs.4,000/- per month to the daughter. The wife appears to have filed the execution proceedings also as that maintenance is also not paid regularly. Now, definitely, the current pay slip shows enhancement in the salary. Note can also be taken about the enhancement in the prices of daily commodities. So also, the rent agreement shows that landlord is charging Rs.6,000/- per month for the said rented premises and, therefore, definitely it requires that some amount should be given in this application under Section 24 of the Hindu Marriage Act, as the second appeal is pending. We cannot ignore the order that has already been passed regarding maintenance under Section 25 of the Hindu Adoption and Maintenance Act and, therefore, taking into consideration that amount, the applicant is entitled to get some enhancement. Amount of Rs.15,000/- per month to the applicant wife till the hearing and final

disposal of the second appeal would suffice. Further, that amount will have to be granted from the date of this application i.e. 17.07.2018 and not prior to that. Hence, the following order :-

ORDER

- I) Civil Application stands partly allowed.
- II) The respondent is directed to pay amount of Rs.15,000/- per month to applicant – Swati w/o Deepak Jogdand from the date of the application i.e. 17.07.2018 till the final hearing and disposal of the second appeal.
- III) It is clarified that this amount is apart from the amount that has already been granted in Miscellaneous Civil Application No.381 of 2015.

[SMT. VIBHA KANKANWADI, J.]

scm