

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

BHALCHANDRA
GOPAL
DUSANE

WRIT PETITION NO.11666 OF 2019

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Jatin Kewal Aggarwal Petitioner
Vs.
Radhika Jatin Aggarwal Respondent

**WITH
INTERIM APPLICATION NO. 2841 OF 2021
IN
WRIT PETITION NO.11666 OF 2019**

Radhika Jatin Aggarwal Applicant
Vs.
Jatin Kewal Aggarwal Respondent

**WITH
WRIT PETITION NO.6672 OF 2021**

Radhika Jatin Aggarwal Petitioner
Vs.
Jatin Kewal Aggarwal Respondent

Mrs. Manjula Rao a/w Ayaz Bilawala and Dhanashree Gaikawai i/by
Bilawala and Co. for Petitioner in WP No. 11666 of 2019 and IA 2841 of
2021.

Mrs. Taubon F. Irani for Petitioner in WP No. 6672 of 2021.

Coram : NITIN W. SAMBRE, J.
Date : 15TH NOVEMBER, 2021

P.C.:

1. In dissolution of marriage proceedings initiated under Section 13 of the Hindu Marriage Act, the Respondent-wife's application for grant of interim maintenance came to be allowed. As against claim of Rs.3,00,000/-, the Petitioner-husband was directed to provide maintenance of Rs.75,000/- per month to the Respondent-wife. As such, this petition.

2. The submissions of Mrs. Rao, Senior Counsel appearing for the Petitioner-husband are, the Court below has failed to consider independent source of income of the Respondent-wife viz. her business income from two firms, which she is operating. My attention is invited to the factual matrix and the evidence on record in regard to Income-Tax returns of the Respondent-wife for the year 2018-2019, membership of Cricket Club of India of the Respondent, cash purchase made, accommodation and travel facility provided by the Petitioner-

husband to the Respondent-wife and also the insurance facility. It is claimed that the Respondent is drawing sufficient income from the fixed deposits, which she had made with the Banks, which according to the Counsel, the Family Court has failed to consider.

3. A specific contention is raised that the Respondent-wife has made incorrect statement of fact that she has no independent earnings and as such prayer for grant of maintenance should have been rejected.

4. While countering aforesaid submissions, Counsel for the Respondent-wife would support the order impugned, however reserve her right to claim enhanced maintenance.

5. Considered submissions.

6. Learned Family Court while dealing with the rival claims as regards independent source of income of each of the parties and quantum has relied on Income-Tax returns of both the parties and has reached to a conclusion that the Petitioner-husband draws gross income which was assessed at around Rs.33,97,105/-.

7. As far as independent source of income of Respondent-wife is concerned, it is apparent that she is drawing income from operation of two business / Firms in which she is shown to be partner. Said fact was taken into account by the Family Court while assessing the income of Respondent-wife, for the year 2018-2019 which is shown to be Rs.7,76,000/-.

8. The Family Court was sensitive to the facilities, which are drawn by the Respondent-wife viz. accommodation, transportation, club membership, insurance facility etc. and has proceeded to award maintenance of Rs.75,000/- per month as against claim of Rs.3,00,000/- per month.

9. The award of interim maintenance of Rs.75,000/- per month is based on the assessment of independent income of both the parties and expenses which the Respondent-wife will be required to meet with.

10. Since the order of award of maintenance is based on appreciation of the material available on record particularly the income of rival parties and expenses, in my opinion, the order impugned cannot be faulted with, which warrants exercise of jurisdiction under Article 227 of Constitution of India. No case for interference is made out. Petition fails and same stands rejected.

11. In view of dismissal of the Writ Petition No. 11666 of 2019, the Interim Application does not survive and same is accordingly disposed of.

12. On instructions, motion is made for withdrawal of the Writ Petition No. **6672 of 2021**. The Writ Petition stands dismissed as withdrawn as the other Writ Petition preferred by the husband being Writ Petition No. 11666 of 2019 is dismissed on merits.

However, withdrawal of the petition will not preclude the wife from moving the Family Court seeking enhancement based on the judgment of the Apex Court in the matter of Rajnish Vs. Neha and

Another, decided in Criminal Appeal No. 730 of 2020 (arising out of SLP (Cri) No. 9503 of 2018.

(NITIN W. SAMBRE, J.)