

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL (ST.) NO.11266 OF 2021

WITH

INTERIM APPLICATION NO.1265 OF 2021

CAPT. SUNDEEP PIARELY LAL SHARMA)...PETITIONER

V/s.

RADHA SUNDEEP SHARMA)...RESPONDENT

Mr.Anand Jondhale, Ms.Rajnandini Jondhale, Ms.Yashodha Jondhale, Mr.Ajay Jondhale, Mr.Raj Jondhale, Mr.Abdul Kadir and Mr.Sunil Lala, Advocate for the Appellant/Applicant.

Mr.Rohan Cama a/w. Mr.Pheroze Mehta i/b. Vivek Pandey and Ridhima Mangaonkar, Advocate for the Respondent.

**CORAM : A. A. SAYED &
 S. G. DIGE, JJ**

DATED : 21ST SEPTEMBER, 2021

P.C.:

1 The Family Court Appeal is filed by the Appellant-husband impugning that part of the order dated 30th March 2021 of the

Family Court at Bandra, Mumbai, in Petition No.A-2161 of 2011, which directs the Appellant-husband to pay an amount of Rs.1.05,000/- per month to the Respondent-wife as permanent maintenance from the date of the order. The operative part of the impugned order dated 30th March 2021 reads as follows :

“

ORDER

- 1) The Petition is partly allowed as under.
- 2) The marriage between petitioner and respondent solemnized on 19.06.1995 is hereby dissolved u/s.13(1)(ia) of Hind Marriage Act, 1955.
- 3) Claim of custody is rejected.
- 4) Claim of one third partition of matrimonial house flat no.2103, B Wing, Cosmic Height, Bhakti Park, Wadala (E), and parking space thereof stands dismissed for want of legislation.
- 5) Claim of Streedhan under Exhibit D stands dismissed.
- 6) Claim of bank account and Fds amount stands dismissed for want of legislation.
- 7) Claim for duplicate key of lockers No.284 and 240 with State Bank of India Branch Wadala, Indian Overseas Bank, Bombay Central Branch and collect things therein stands dismissed for want of legislation.

- 8) The respondent is directed to pay petitioner an amount of Rs.1,05,000/- (Rs.One Lakh Five thousand Only) per month as permanent maintenance from the date of order.
- 9) Decree be drawn up accordingly.”

2 Learned Counsel for the Appellant-husband submitted that the Respondent-wife had filed an Application along with certain documents on the date of the final arguments on 26th March 2021 before the Family Court. The documents were stated to be the Income Tax Returns and 26 AS Form of the Appellant-husband. It is contended that the Appellant-husband was not granted an opportunity to file his say to the Application. It is contended that the current salary of the Appellant-husband is Rs.1,02,374/- and it is beyond his reach to pay permanent maintenance of Rs.1,05,000/-. It is pointed out that the two children of the parties are residing with the Appellant-husband. Learned Counsel for the Appellant-husband submitted that the interim maintenance paid by the Appellant-husband was Rs.18,000/- per month.

3 Learned Counsel for the Respondent-wife submitted that the documents viz. Income Tax Returns and the 26 AS Form show that the Appellant-husband is currently receiving monthly salary of Rs.4,50,000/- and the Appellant-husband did not object to the Application filed by the Respondent-wife or to the documents that were produced.

4 We have heard learned Counsel for the parties. We find substance in the contention of the Appellant-husband that the Appellant-husband has not been granted proper opportunity to file his say to the Application of the Respondent-wife and to deal with the documents produced by her. The Family Court was not working on 27th March 2021 (4th Saturday), 28th March 2021 (Sunday) and 29th March 2021 (Holi) and the judgment has been delivered by the Family Court on the next day i.e. on 30th March 2021. In these circumstances, in our opinion, an opportunity ought to have been granted to the Appellant-husband to file his say to the Application of the Respondent-wife and to deal with the documents produced by her in respect of the income of the

Appellant-husband. We are, therefore, inclined to remand the matter to the Family Court on the issue of payment of maintenance.

5 Having regard to the facts and circumstances of the case, in our view, the following order would meet the ends of justice :

ORDER

- i) The impugned order of the Family Court to the extent of direction to the Appellant-husband to pay maintenance of Rs.1,05,000/- (Rs. One Lakh Five Thousand only) per month as permanent maintenance is set aside. The matter is remanded to the Family Court only on the limited issue of maintenance.
- ii) The Application of the Respondent-wife dated 26th March 2021 shall stand revived. The Appellant-husband is granted an opportunity to file his say to the Application and to deal with the documents produced by the Respondent-wife.

- iii) The Family Court would be free to decide the further course of the proceedings including the aspect of oral evidence.
- iv) Without prejudice to the rights and contentions of the parties and subject to further orders and adjustments, as and by way of ad-hoc arrangement, we direct the Appellant-husband to pay an amount of Rs.50,000/- per month to the Respondent-wife from 30th March 2021 i.e. the date of the order of the Family Court, which shall be continued to be paid till the decision of the Family Court.
- v) We make it clear that unless the aforesaid amount is paid by the Appellant-husband, the benefit of this order shall not be available to him.
- vi) Needless to say that, the parties would always be entitled to file appropriate proceedings, in the event they are aggrieved by the decision of the Family Court.

vii) The Family Court Appeal and the Interim Application are disposed of in the aforesaid terms. The Family Court shall take a decision expeditiously.

viii) We make it clear that we have not gone into the merits of the matter and all the contentions of the parties are kept open.

(S. G. DIGE, J.)

(A. A. SAYED, J.)

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