

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.526 OF 2019
IN
NOTICE OF MOTION NO.9 OF 2017
IN
PARSI SUIT NO.18 OF 2017
WITH
INTERIM APPLICATION NO.601 OF 2019**

Naavroze Sarosh Turel ... Appellant
Versus
Bakhtawar Engineer (Turel) ... Respondent

Ms. Pallavi Bali with Ms. Anju Singh i/by Bali Associates, for Appellant.
Mrs. Taubon F. Irani with ms. Disha Shetty, for Respondent.

**CORAM: S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE: 25th OCTOBER, 2021

P.C.:

1. The above Appeal was initially filed by Mr. Naavroze Sarosh Turel – Appellant husband, impugning the Order dated 15th October, 2019 passed by the Learned Single Judge directing the Appellant to pay an amount of Rs.45,000/- towards maintenance, along with the arrears to the Respondent wife Bakhtawar Engineer (Turel) and their six years old daughter, pending the Suit filed by the Respondent wife seeking dissolution of her marriage with the Appellant. Later the Appellant has informed the Court that he is accepting the Order to the extent of paying maintenance to his wife and child at Rs.45,000/- per month, but is contesting

the Order to the extent that it directs him to make payment of arrears of maintenance to his wife and daughter within two weeks from the date of passing the Order dated 15th October, 2019.

2. The Appellant is the Vice President of Kotak Mahindra Bank at Ahmedabad. The Respondent wife and their minor daughter reside at the residence of the parents of the Respondent wife at Andheri, Mumbai.

3. Prior to the marriage, i.e. in August, 2013, the Respondent wife had taken up a job at Dubai. Since the marriage was fixed on 1st December, 2014, she had to leave her job at Dubai and return to India on 6th October, 2014. She therefore, hardly worked for a year in Dubai. Since she did not work for a statutory period of two years, her employer at Dubai deducted DHS 4300 from her final wage settlement account.

4. The Appellant and the Respondent got married on 1st December, 2014 as per Zoroastrian Parsi Rites and Rituals at the Shahenshai Atash Behram, Surat. At the time of the marriage, the Appellant was a divorcee and the Respondent was a spinster.

5. Disputes arose between the parties and several allegations and counter allegations are on record with respect to the same. However, at this stage, we are not required to set out, or deal with the same, save and except that the Respondent wife who was pregnant and had come to Mumbai to her parent's house on 5th June, 2015,

delivered a baby girl on 30th August, 2015, who is now about six years old since then.

6. Admittedly, the Appellant husband has intermittently paid Rs.5,000/- p.m., to the Respondent wife towards maintenance. The Respondent wife filed a Suit seeking dissolution of their marriage only on 1st August, 2017. The prayer clause (c) of the Suit is reproduced hereunder :

“(c) This Hon’ble Court be pleased to direct the Defendant to pay maintenance towards the Plaintiff minor daughter of Rs.70,000/- per month till the decision of the present Suit;”

It is obvious that there is a typographical error in the above prayer clause in the Suit to the extent that the word ‘**and**’ is missing between the words ‘**Plaintiff**’ and the ‘**minor daughter**’, which is correctly typed in the prayer clause set out in the Notice of Motion filed on the same day, i.e. 1st August, 2017.

7. From the year 2018, the Respondent wife started working in a charitable organization on a salary of Rs.25,000/-, which by April, 2019 was Rs.30,600/-. As stated earlier, the Respondent wife had hardly received any maintenance during the period prior to the filing of the Suit, i.e. between 5th June, 2015 and 1st August, 2017 and the only amount that she had intermittently received from the Appellant husband was Rs.5,000/- a month.

8. It is trite that maintenance is granted to an Applicant from the date of filing of the application seeking maintenance and the Applicant is entitled to the

arrears of maintenance only from the date of her Application seeking maintenance and not for the period prior to the same. It is also not unknown that a spouse who is not getting along with his/her spouse may not rush to Court immediately, to seek a divorce. Therefore, in the present case too, though the Respondent wife had sent an Advocate's Notice to the Appellant husband as far back as on 20th November, 2015, she filed a Petition seeking divorce only on 1st August, 2017, and on the same day also took out a Notice of Motion being Notice of Motion No.9 of 2017 inter alia seeking interim maintenance from the Appellant.

9. The said Notice of Motion No.9 of 2017 filed on 1st August, 2017 was finally heard by the Learned Single Judge of this Court on 15th October, 2019 and the impugned Order was passed directing the Appellant husband to pay maintenance of Rs.45,000/- to the Respondent wife and their daughter from the date of his Order and also pay the arrears between the date of the Application, i.e. 1st August, 2017 and 15th October, 2019. The Learned Single Judge after hearing the Advocates for the Appellant husband, as well as the Respondent wife, and after going through the income tax returns/records, arrived at the aforestated figure, in support of which the Learned Single Judge has in paragraphs 12 to 16 of the impugned Order recorded as under :

“12. A perusal of salary certificate produced by the Plaintiff indicates that the plaintiff has been earning a sum of Rs.30,600/- per month and has been working with 'The Framjee D. Petit Parsee

Sanatorium'. The income tax returns of the defendant placed on record by the defendant prima-facie indicates that the salary of the defendant in the assessment year 2018-19 was Rs.13,94,552/- per year excluding the amount of deductions of Conveyance Allowance in the sum of Rs.19,200/- and House Rent Allowance in the sum of Rs.2,93,004/-, Rs.2,400/- towards the professional tax.

13. A perusal of the said income tax return also indicates that the defendant has deposited various amounts in the fixed deposit with the Housing Development Finance Corporation Limited and Canara Bank and has been earning interest of Rs.18,107/- and Rs.16,568/- on such fixed deposits. The defendant has been depositing a sum of Rs.1,50,000/- in a year in Public Provident Fund and Rs.70,319/- in Provident Fund. The cumulative payslip of the defendant for the year 2019-2020 produced by the defendant indicates that the defendant has received total allowances in the month of July, 2019 only at Rs.1,61,033/- inclusive of salary. The defendant is paid annual incentive by his employer in the sum of Rs.1,80,000/-. His designation is Associate Vice President in Kotak Mahindra Bank, Ahmedabad. The income of the defendant is thus much more than the income of the plaintiff. The minor daughter of the plaintiff and the defendant been in care and custody of the plaintiff as on date and is schooling. The plaintiff is incurring various expenses for maintaining herself and minor daughter. At this stage, I am not inclined to go into the authenticity of each and every voucher or bills produced by the plaintiff in support of the claims of Rs.70,000/- per month towards maintenance as against monthly salary of the plaintiff of Rs.30,600/-.

14. In my view, Ms.Irani, learned counsel for the plaintiff is right in her submission that if the defendant claims to spend Rs.40,000/- per month on himself and equal amount on his mother staying at Surat, the expenses of maintaining the plaintiff and minor

daughter at Mumbai would be much more that the said expenditure alleged to have been incurred by the defendant. The defendant has not produced any document in support of his case that he has been spending Rs.40,000/- per month while staying at Ahmedabad and Rs.40,000/- per month on his mother, who is also staying at Surat.

15. The amount of Rs.10,000/- offered by the defendant without prejudice to his rights and contentions to the plaintiff and for their minor daughter is not a reasonable amount of maintenance considering the expenses being incurred by the plaintiff. However, in view of the fact that the plaintiff is also employed and has been getting a salary of Rs.30,600/- per month as indicated from the salary certificate dated 15th July, 2019 produced by the plaintiff, in my view the maintenance of Rs.70,000/- per month demanded by the plaintiff also is not a reasonable amount.

16. Considering the totality of circumstances set out aforesaid, I am of the prima-facie view that interest of justice would be met with if the defendant is directed to pay maintenance to the plaintiff for herself and her minor daughter at the rate of Rs.45,000/- per month inclusive of medical expenses towards the plaintiff and minor daughter.”

10. Being aggrieved by the said Order, the Appellant husband filed the above Appeal impugning the said Order dated 15th October, 2019. However, on 8th November, 2019, he moved an Application seeking ad-interim stay of the impugned Order (without giving notice to the Respondent wife) before the Division Bench of this Court and submitted that it is difficult to clear the said amount of arrears within a period of two weeks. In the Interim Application taken out by the Appellant in the above Appeal, he has in the alternative prayed that he be “granted six months time to pay the arrears subject to the orders that may be passed in the above Appeal”. The

Appellate Court granted an ex-parte stay on the impugned Order to the extent of payment of arrears by the Appellant husband to the Respondent wife until the next date of hearing i.e. on 17th December, 2019. However, the Interim Application taken out by the Appellant in the above Appeal was thereafter, adjourned from time to time.

11. The Appeal was ultimately placed before this Bench on 16th September, 2021. This Court made several attempts to assist the parties in arriving at a permanent settlement. However, the parties gave proposals and counter-proposals but could not arrive at a final settlement.

12. As recorded in our Order dated 11th October, 2021, the Advocate for the Appellant on instructions from the Appellant who was present in Court, informed the Court that he accepts the Order of the Learned Single Judge directing him to pay a sum of Rs.45,000/- per month towards the maintenance / alimony payable under the impugned Order and he shall comply with the same and is contesting the Order dated 15th October, 2019 only to the extent of the direction/order of the Learned Single Judge directing the Appellant to pay arrears for the period between 1st August, 2017 and 15th October, 2019 within a period of two weeks from the date of the Order.

13. As stated earlier, the Respondent wife despite living separately from the Appellant husband since 5th June, 2015 filed a Divorce Petition only on 1st August, 2017 and had moved an Application seeking maintenance also on the same day. The said Application/Notice of Motion was decided by the Learned Single Judge by his Order

dated 15th October, 2019. The Respondent wife is therefore, entitled to the arrears of maintenance only for the period between 1st August, 2017 to 15th October, 2019.

14. The only grounds raised in the memo of Appeal qua the payment of arrears of maintenance are as follows :

“GG. The learned Single Judge ought to have clarified that the Appellant was paying ad-hoc payment of Rs.5,000/- per month and that the same had to be adjusted in payment towards arrears.”

“JJ. The learned Single Judge ought to have granted sufficient reasonable time to pay the arrears.”

15. Apart from these grounds, an attempt was also made to submit before us by the Learned Advocate for the Appellant that during the period 2017 to 2019, the child was very small and therefore her expenses would be inconsequential, and there were hardly any bills produced by the Respondent wife to show the amounts spent on the child. We do not accept the submission that because a child is small or very young, the expenses of the child would be less than the expenses incurred on a child 2-3 years thereafter. Infact, if a child is young, the parents are required to spend much more towards the medical as well as other expenses of the child and for every expense so incurred, one of the spouse due to the disputes between them, cannot insist that the other spouse should provide bills for each and every such expense incurred on the child.

16. As far as the grievance qua not being given enough time to pay the arrears is concerned, the Appellant husband had himself earlier sought six months time to clear the arrears. However, on account of pendency of the above Appeal from 15th October, 2019 till date, he now got more than two years time to make arrangements for payment of the arrears of approximately Rs.10 Lakhs. Though his gross salary as on September, 2021 was Rs.1,50,377/- and his net salary was Rs.1,15,712/- and he also receives a bonus every year, which in June, 2021 was an amount of Rs.2,65,630/-, and though he has avoided to produce his income tax return for the financial year 2019-20, and also not produced his balance sheets, his annual information statements in Court, we grant him time to pay the arrears to the Respondent wife in three equal monthly installments i.e. on or before 1st March, 2022, 1st April, 2022 and 1st June, 2022. He will also be entitled to adjust all the ad-hoc payments of Rs.5,000/- paid by him towards maintenance between the period 1st August, 2017 to 15th October, 2019. In view thereof, both the grievances of the Appellant husband raised in the Memo of Appeal have been taken care of. The Appeal as well as the Interim Application are accordingly disposed of.

17. Before uploading the Order, we would like to record that though the Order was prepared earlier, we did not upload the same only in the hope that this being a matrimonial dispute, with the passing of some time, wiser counsel may prevail and the parties may approach the Court with a permanent settlement in the matter.

However, since the differences between the parties stand unresolved, we proceed to upload this Order.

(MILIND N. JADHAV, J.)

(S.J.KATHAWALLA, J.)