

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**FAMILY COURT APPEAL NO. 21/2021**

Shalon Siff Mario Carvalho S/o Joaquim  
Lourenhco Serapiao Carvalho,  
aged about 39 years, Occ. Business,  
R/o C/o Jubilee Bakery, Opp. Durga Mata  
Mandir, Chhaoni, Katol Road, Nagpur-440 013.

**APPELLANT**

**.....VERSUS.....**

Lorraine W/o Shalon Carvalho,  
aged about 34 years, Occ. Nil,  
R/o C/o Ambrose Dalgado,  
Jubilee Bakery, Mohan Nagar, Nagpur.

**RESPONDENT**

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Shri Bhushan Dafle, counsel for the appellant.  
Shri Masood Shareef, counsel for the respondent.

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**CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.**

**DATE : 12<sup>TH</sup> OCTOBER, 2021.**

**ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)**

**ADMIT.** Heard finally with consent of learned counsel for the parties.

2. This appeal under Section 19 of the Family Courts Act, 1984 read with Section 55 of the Indian Divorce Act, 1869 (for short, 'the Act of 1869') takes exception to the order passed by the learned Judge of the Family Court, Nagpur below Exhibit 6 dated 03.08.2021 thereby allowing that application and directing the appellant to pay interim maintenance at the rate of Rs.30,000/- per month to the respondent and Rs.20,000/- per month each to his sons. These payments have been directed to be made from 30.01.2019 which is the date of filing of the said application.

3. The appellant and the respondent were married on 17.01.2009 and from the said wedlock they have two children. On account of marital discord between them some time in April-2018 resulting in disputes arising between them. The respondent started residing separately with her father alongwith her two children. She thereafter filed a petition under Section 10(1)(x) of the Act of 1869 seeking a decree of divorce for dissolving the marriage. Other ancillary reliefs were also sought. On 30.01.2019 an application under Section 36 of the Act of 1869 for grant of alimony *pendente lite* was also filed.

4. The appellant filed his written statement at Exhibit 27 and opposed the claim as made. Similarly by filing reply at Exhibit 21 the prayer made for grant of alimony *pendente lite* was opposed. The parties then filed affidavits and by the order dated 03.08.2021 the learned Judge of the Family Court directed payment of maintenance *pendente lite* as stated above. Hence, this appeal.

5. Shri Bhushan Dafle, learned counsel for the appellant-Husband submitted that the learned Judge of the Family Court erred in granting an exorbitant amount to be paid to the respondent and the children without there being any sufficient material on record to justify that quantum. He submitted that even after separation the respondent was engaged in Bakery business and was earning sufficient amounts on

the basis of which she could maintain herself and the children. Referring to the Income Tax returns filed by the respondent from the assessment years 2014-15 it was urged that the same indicated her earnings which thus disentitled her to grant of any maintenance. He referred to the bank statements pertaining to the respondent to urge that various amounts were credited in the said accounts indicating her regular source of income. By not placing on record the Income Tax returns for the subsequent years after 2019 it was submitted that the respondent had sought to withhold material information from the Court which disentitled her from receiving any amount of maintenance. He then submitted that no reasons whatsoever were assigned by the Family Court to justify the grant of interim maintenance from the date of the application. Considering the prevalent pandemic situation it was submitted that the payment of maintenance ought to have been directed from the date of the order. He also submitted that the appellant was willing to pay the maintenance as directed by the Family Court to his children but from the date of the order and not from the date of the application. He therefore submitted that in the light of material on record indicating that the respondent had sufficient source of income she was not entitled to grant of any maintenance whatsoever. On this count, the impugned order was liable to be set aside.

6. Shri Masood Shareef, learned counsel for the respondent-Wife supported the impugned order. According to him the Bakery business was being conducted by the appellant and the respondent jointly when they resided together. Since separation it was the appellant alone who was in-charge of the said business and all income therefrom was being retained by him. He referred to various documents placed on record including the Bank statements as well as the details pertaining to ownership of vehicles of the appellant. The same indicated his financial status. Though the respondent had filed her Income Tax return earlier, after separation since the respondent did not have any income from the business such returns were not filed. The respondent was also maintaining her two sons and they were all entitled to have the same standard of living and comfort as that of the appellant. It was thus submitted that considering the fact that the learned Judge of the Family Court had considered the entire material on record there was no reason to interfere with the said order. By directing payment of interim maintenance from the date of the application, no error was committed in that regard.

7. The following point arises for determination:-

- (a) Whether the order passed by the Family Court directing payment of interim maintenance deserves to be interfered with?

8. We have heard the learned counsel for the parties and we have perused the material placed on record. The marital relations between the parties and the fact that since April-2018 the parties are living separately is not in dispute. The filing of proceedings of divorce and the application seeking grant of interim maintenance is dated 30.01.2019. Perusal of the proceedings filed by the respondent indicates that in paragraph 120 of the petition for grant of divorce the respondent has given list of immovable properties as well as movable properties of the appellant. In the written statement while dealing with the aforesaid averments, the appellant in paragraph 118 of the written statement has vaguely stated that the shop and movables were purchased by him out of the business run by him and the loans and equated monthly installments were paid by him alone. These averments are vague and do not deny the ownership of various immovable and movable properties mentioned therein. A *prima-facie* perusal of the averments in paragraph 120 gives an idea of the nature of business being conducted by the appellant and the immovables owned by him. Thereafter various Bank statements, Insurance policies and other documents indicate substantial financial transactions by the appellant alongwith his borrowings/ lendings. These documents *prima-facie* indicate the financial standing of the appellant which has been noted by the learned Judge of the Family Court and we do not find any reason to disregard these *prima-facie* findings.

9. As regards the Income Tax returns of the respondent it is undisputed that the last return filed was prior to their separation and thereafter there are no returns filed. It has been found that after separation the appellant has not been able to show that the respondent was earning for maintaining herself. It is further seen that the immovable properties and the movables are in the custody of the appellant. The finding therefore recorded that the respondent was entitled to receive maintenance for herself and her children is again based on the material available on record.

10. As regards the quantum of the interim maintenance as granted, we find that said amount has been determined after taking into consideration the earnings/spending of the appellant. After noting that the respondent and her children were entitled to be maintained at par with the lifestyle of the appellant, the amount of Rs.30,000/- per month for the respondent and Rs.20,000/- per month each for the children has been determined. We do not find any arbitrariness in determining this interim maintenance. Further, grant of maintenance from the date of the application is the rule and granting it from the date of the order is an exception which position is well settled and reiterated in the decision in *Rajnish Versus Neha & Another* [(2021) 2 SCC 324]. We therefore do not find any reason to take a different view at this interim stage since we

are satisfied that all relevant material on record has been adverted to by the learned Judge of the Family Court. The point as framed is answered by holding that there is no reason to interfere with the order passed below Exhibit 6.

11. For the aforesaid reasons we do not find any merit in the challenge as raised to the interlocutory order determining maintenance *pendente lite*. Consequently the Family Court Appeal No.21 of 2021 stands dismissed leaving the parties to bear their own costs.

The arrears of maintenance in terms of the order passed by the Family Court on 03.08.2021 be cleared by 31.12.2021.

It is clarified that observations made hereinabove are only for the purposes of considering the challenge to the order passed below Exhibit 6 and the Family Court shall not be influenced by any observations while deciding the proceedings finally on merits.

Order accordingly.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)