

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

CIVIL APPLICATION (CAO) NO. 995 OF 2016
IN
FAMILY COURT APPEAL NO. 50 OF 2017

Sau. Manisha Indrajeet Rathod
Vs.
Indrajeet Baliram Rathod

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.R. Chavhan, Advocate for applicant/appellant
Shri D.P. Dapurkar, Advocate for non-applicant/respondent

CORAM : A.S.CHANDURKAR & N.B.SURYAWANSHI, JJ.
DATED : JANUARY 11, 2021

1. This is an application filed by the wife seeking pendente lite maintenance and cost of the litigation. The wife in Family Court Appeal 50 of 2017 has challenged the decree of restitution of conjugal rights passed by the Family Court, Amravati in Petition No. A-165 of 2011. This Court has stayed the said decree vide order dated 29/06/2018.

2. In the application it is contended that the wife and the son both are getting maintenance @ Rs. 6,000/- per month in accordance with the orders passed in the proceedings filed under Section 125 of the Code of Criminal Procedure. By orders in Domestic Violence Act proceedings the wife was awarded Rs.1500/- as house rent and Rs.1,000/- as financial aid. The learned advocate for the wife

contends that the son is taking education and requires money for his educational expenses. The wife is suffering from ailment. The amount of 6,000/- and 2,500/- is not sufficient and the same is also not being paid by the husband regularly.

3. The learned Advocate for the husband vehemently opposed the application contending that a decree for restitution of conjugal rights is passed in his favour and still the wife has not joined for cohabitation, therefore, she is not entitled for maintenance. He further submitted that his salary is attached in recovery proceedings and Rs. 6,000/- per month is deducted from his salary. He further argued that the amount is sufficient and the wife and the son are not entitled for further amount of maintenance.

4. By placing reliance on the decision of the Hon'ble Supreme Court in the case of **Sudeep Chakravarti vs Radha Chaudhary** reported in **1999 CRI.L.J.466**, he contended that maintenance amount awarded under Section 125 of Code of Criminal Procedure is adjustable against the amount awarded in matrimonial proceedings under Section 24 of the Hindu Marriage Act as alimony to the wife.

5. After considering the arguments and the record, it is clear that the husband's gross salary is Rs.40,895/- per month. Son Utkarsh is required to pay Rs.25,000/- per year towards his school fees. Apart from the same the wife has to incur other educational expenses for Utkarsh. Except the wife

and Utkarsh nobody appears to be dependent on the husband. Considering all these aspects we deem it appropriate to award maintenance @ ₹ 10,000/- per month jointly to wife Manisha and Son Utkarsh during the pendency of the present proceedings and Rs.7,500/- towards cost of the litigation.

6. Civil application is allowed and disposed of on abovesaid terms.

7. Needless to mention that the maintenance awarded to the wife and son would be adjustable against the amount awarded in the present proceedings.

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8. The learned advocate for the husband/respondent undertakes to file private paper book within four weeks. After filing the private paper book the hearing of the appeal is expedited.

JUDGE

JUDGE