

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

WRIT PETITION NO. 12599 OF 2022

Shri. Sachin Sureshchandra Karmuse ...Petitioner

Versus

Mrs. Harshada Sachin Karmuse ...Respondent

Mr. Suresh Arjandas Malkani a/w Mr. Sameer Yadav for Petitioner.
Petitioner Shri. Sachin Sureshchandra Karmuse present in person.
Mr. Ameya Vinay Borwankar for Respondent.

CORAM: DR. NEELA GOKHALE, J.

DATED: 21st September 2023

PC:-

1. The present Petition assails order dated 9th December 2021 passed by the Family Court, Pune, whereby the Petitioner-husband has been directed to pay an amount of Rs. 12,000/- per month each to the Respondent-wife and their daughter viz. Tanishka from the date of application i.e. 16th December 2020 till the disposal of main Petition.

2. The Family Court has also directed that an amount of Rs. 30,000/- paid by the husband towards education expenses of the daughter shall be adjusted against the arrears of maintenance. He was further directed to clear all the arrears of interim maintenance within two months and was also directed to deposit the said amount in the bank account of wife on or before the 10th day of each month.

3. The facts giving rise to the Petition are that, the marriage

between the parties took place on 19th June 2002 at Pune as per Hindu Rites and Ceremonies of the Hindu Marriage Act, 1955 (“**the Act**”). There is one daughter viz. Tanishka born on 4th June 2003 out of the said wedlock. Due to some marital discord between the parties, wife left matrimonial home in or about 2011 along with the daughter. The wife and daughter have been residing with the father of wife since then.

A Petition for divorce under Section 13(i-a) of the Act was filed by the wife against the husband. She alleged that the husband has treated her with utmost amount of mental and physical cruelty and he even failed to maintain her and their daughter and in these circumstances, she was left with no alternative but to file Petition for divorce bearing Petition No. A-93/2020 in the Family Court, Pune and also seek permanent alimony and maintenance to the tune of Rs. 50,000/- per month for herself and the daughter. She also made an application seeking interim maintenance under Section 24 of the Act and also sought interim maintenance for the daughter under Section 26 of the Act.

The husband appeared in the matter before the Family Court and filed his reply to the interim maintenance application. According to him, the wife has suppressed the material fact that she had voluntarily and without a substantial cause left the matrimonial home and willfully refused to live with him. He contended that he

always wanted to take care of his wife and daughter and had also tried to convince her to receive cohabitation, but the wife refused to come back. He, however, admitted that he is a doctor by profession but went on to say that he never practiced medicine to earn a livelihood. He thus contested the application filed by the wife for maintenance and sought dismissal of the same.

4. The prayer of husband in his reply is that his wife refused to live with him without any just or sufficient reason. He thus prays that the maintenance application be dismissed on the grounds contemplated by the provisions of Section 125(4) of the Criminal Procedure Code, 1973. The husband has also filed the separate reply to the prayer of wife seeking maintenance for the daughter on same grounds.

5. I have heard the learned Counsels of both the sides and with their assistance perused the documents filed on record.

6. By order dated 20th October 2022, this Court recorded the statement of Counsel for the Petitioner made on instructions that a sum of Rs. 1,00,000/- will be paid to the Respondent within a period of 4 weeks from the date of that order and another sum of Rs. 1,00,000/- will be paid within a period of 8 weeks from the date of that order. This Court accepted the statement and directed that the

impugned order shall not be enforced till the next date.

7. At the outset, Mr. Ameya Borwankar, the learned Counsel for Respondent-wife draws my attention to the fact that there are still arrears of interim maintenance to the tune of Rs. 5,62,000/- as on date.

8. Mr. Suresh Malkani, learned Senior Counsel for the Petitioner assails order of the interim maintenance on the grounds that *firstly*, the application made by the wife was only under Section 24 of the Act and hence, the Family Court could not have granted maintenance to the daughter under that provision; *secondly*, daughter Tanishka had attained majority on 5th June 2021 and from that date, he was not liable to pay any maintenance to his major daughter and *lastly*, the Family Court erred in presuming the quantum of income of the Petitioner and ought to have held that the evidence in respect of income is yet to be adduced by the parties. On these grounds, the Petitioner-husband assailed the order granting interim maintenance to his wife and daughter.

9. *Per contra*, Mr. Borwankar, learned Counsel for Respondent-wife draws to my attention paragraph 1 of the impugned order. The Family Court has clearly treated the application for interim maintenance as being one under Sections 24 and 26 of the Act and

hence, the objection of Petitioner-husband is totally misconceived. Insofar as the objection to the direction of payment of the interim maintenance to the daughter is concerned, the learned Counsel for Respondent-wife relies upon a decision of the Supreme Court in the case of ***Jasbir Kaur Sehgal v. District Judge, Dehradun and Ors.***¹. The paragraph 6 of the said judgment reads thus :

“Wife says that the husband has not given true account of his assets and income and has rather suppressed the same. Though the wife has not been able to give any specific evidence to support her contention but circumstances show that the husband has not given true state of affairs of his income. He has pleaded that both his wife, and his elder daughter are earning Rs. 10,000/- per month but there is no basis for such an allegation. The fact remains that the wife has no source of income and she is also maintaining her eldest unmarried daughter. Under the Hindu Adoptions & Maintenance Act, 1956 it is the obligation of a person to maintain his unmarried daughter if she is unable to maintain herself. In this case since the wife has no income of her own, it is the obligation of the husband to maintain her and her two unmarried daughters one of whom is living with wife and one with him. Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife. We are aware of the provisions of Section 26 of the Act providing for custody of minor children, their maintenance and education but that section operates in its own field.”

10. Insofar as the third objection is concerned, the learned Counsel for Respondent-wife states that the evidence is being adduced in the

1. (1997)7 SCC 7.
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main matter and the trial is on-going. The pendency of trial is not a bar for deciding an interim application for maintenance. On these grounds, the Respondent-wife contests the present Petition.

11. It is an admitted position that despite the order of Family Court directing the Petitioner-husband to pay the maintenance as well as the order to deposit the arrears of maintenance within a specified time, the Petitioner-husband has only paid some of the amount and that too only after directions by this Court. The Family Court has considered in detail the bank statement, documents of the fees of daughter and property documents of the Petitioner-husband, as filed by the Respondent-wife. The Family Court has also taken into consideration an amount of Rs. 30,000/- paid by the Petitioner-husband towards the educational expenses of the daughter and has adjusted the same towards the arrears.

12. It is clear from the impugned order that both the parties have filed their affidavits of income and expenditure, as contemplated by the Apex Court in the case of *Rajnish v. Neha and Another*². The Family Court has perused the affidavits and has also clearly noted the basis of determining the quantum maintenance in paragraph 12 of the said order. The husband is a medical practitioner and has stated as much in his affidavit. He has also stated that he is required Rs.

2. (2021)2 Supreme Court Cases 324.
Gitalaxmi

23,000/- per month for his own expenses and admitted that he had not paid any maintenance to his wife or daughter. The Family Court has further noted that although the husband has detailed his income and expenditure in the affidavit, he has not filed any document of his income, neither has he filed details of his bank account or income tax returns. He has also left material columns in his affidavit of disclosure blank. The Family Court thus came to a conclusion that the husband has not disclosed true income.

13. From the other documents on record, the Family Court has averred that the husband is a medical practitioner, having his own clinic and thus, earning substantial amount per month. Thus, the Family Court has considered all relevant aspects and after considering the requirements of wife and daughter and the income of husband, has fairly determined the quantum of maintenance as directed in the impugned order.

14. Insofar as the contention of Respondent-husband to the effect that the Family Court did not have the jurisdiction to award maintenance to the daughter in an application made under Section 24 of the Act, I find that this objection is completely misconceived. The nomenclature of an application will surely not determine the relief sought and the Family Court is vested with the jurisdiction to grant interim maintenance to the daughter irrespective of the

provision quoted in the heading of the application.

15. The other submission that the husband is not liable to maintain his daughter since she has attained majority, is also untenable. The daughter is studying in the 3rd year of B.Com in Saraswati Vidyalaya, Rasta Peth, Pune. It is not disputed that it is the wife alone who is bearing all the expenses of education, food, shelter, medicine and other expenses required for herself and her daughter. Only because the daughter has turned 18 years of age, it cannot be said that the father is free to shirk his responsibility and refuse to pay any amount towards maintenance of his daughter and place the entire responsibility of their daughter on her shoulders. Such an objection made by the father is also totally unacceptable.

16. In view of the above discussion, the Petition is dismissed.

17. The Petitioner is directed to deposit in the bank account of his wife the arrears of maintenance within a period of 8 weeks from the date of this order. He is further directed to pay an amount of Rs. 15,000/- towards cost of litigation within the stipulated period. Respondent-wife will share her bank details with the Petitioner to facilitate the deposit.

(DR. NEELA GOKHALE, J.)