

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

**CIVIL WRIT PETITION NO.12543 OF 2022
WITH
CIVIL APPLICATION NO.34 OF 2023**

Mrs. Mansi Bhavin Dharani

...Petitioner.

V/s.

Bhavin Jagdish Dharani

...Respondent.

**WITH
CIVIL WRIT PETITION NO.10127 OF 2019
WITH
INTERIM APPLICATION NO.1161 OF 2023**

Bhavin Jagdish Dharani

...Petitioner.

V/s.

Mrs. Mansi Bhavin Dharani

...Respondent.

Mr. Krishna K. Holambe Patil for the Petitioner in WP No.12543/2022 and for Applicant in CAW No.34/2023 and for Respondent in WP No.12543/2022.
Mr. Abhishek L. Tripathi for Petitioner in WP No.10127/2019 and for Respondent in WP No.12543/2022.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 15th DECEMBER, 2023.

P. C.:-

1. Petition No.12543 of 2022 has been preferred by the wife seeking enhancement of maintenance granted by the impugned order dated 28/6/2019 and Petition No.10127/2019 has been preferred by the husband seeking quashing and setting aside the order of the family Court granting maintenance. For sake of convenience the wife is referred to as petitioner

and husband is referred to as Respondent.

2. Briefly stated the facts of the case are that petition was filed by the wife seeking divorce and maintenance in the sum of Rs.80,000/-. Application came to be filed for interim maintenance which was allowed by the Family Court *vide* order dated 28/6/2019 directing the Respondent to pay interim maintenance of Rs.20,000/- p.m. to the wife and Rs.20,000/- p.m. to the minor child from the date of the Application till date of decision. By order of this Court, there was stay to the maintenance granted to the wife, however the maintenance of the child was continued. This Court is informed that Respondent is paying the maintenance towards the child.

3. At the outset, frequent requests were made by the learned counsel of the parties for adjournment. This Court is not inclined to grant any adjournment as petitions have been pending since the year 2019 and by order of this Court, maintenance granted to the wife has been stayed.

4. Heard Mr. Krishna K. Holambe Patil for the Petitioner-wife and Mr. Abhishek L. Tripathi for respondent-husband.

5. Mr. Holambe Patil, learned counsel for the petitioner-wife

submits that wife has candidly disclosed the income from her investment made in the past viz. Rs.40,000/- - Rs.50,000/- p.m. He submits that the Respondent is a Doctor serving as Senior Consultant. Pointing out to the findings of the Family Court, he would submit that income tax returns produced by husband shows income as Rs.12,71,329/- and there is an admission that he is getting monthly salary of Rs. 1,93,000/-. He would further point out the pleading of the Respondent stating that his monthly expenses are in the sum of Rs.1,78,000/- p.m. As such, his contention is that it is evident that there is suppression of income by the Respondent-husband. He further submits that petitioner is seeking maintenance of Rs.80,000/- for her and her son. He submits that expenses of the petitioner-wife includes monthly rent of Rs.26,000/-. He submits that during the pendency of this proceedings the petitioner-wife's father has expired and she has lost her sole support. He further submits that the Family Court has granted Rs.20,000/- to the wife and Rs.20,000/- to the child. However the said amount is not sufficient considering the fact that admittedly the respondent- husband is earning a monthly income of Rs.1,93,000/-. He would further point out that the respondent-husband is living in a flat ad-measuring about 1000 square feet whereas the wife is residing in a rental flat and paying rent of Rs.26,000/- per month.

6. *Per contra*, Mr.Tripathi, learned counsel for the respondent-husband has pointed out the income tax returns filed before the Family Court and would submit that as per the income tax return his income is Rs.12,71,329/- for the Assessment Year 2018-19. He would further submit that subsequently due to Covid he has lost his job and Application will be made before the Family Court for modification of the order. He submits that the respondent-husband is not able to even pay maintenance for the child and seeks quashing of the order of the Family Court. He would further submit that the petitioner-wife has not disclosed her actual income. He submits that the wife is admittedly well educated lady holding a degree of M.Com, PHD. He further submits that the disclosure affidavit of the wife would indicate that there are number of investments made by her from which she is deriving income and as such she is not entitled to maintenance. He submits that all the money which was invested by her in the various investment schemes are in fact given by the husband and over period of three years sum of Rs.11 lakhs has been paid. Pointing out to the affidavit of disclosure filed by the respondent-wife he submits that the bank account shows regular income and that the affidavit will indicate that various investments have been made. He reiterates that the invested amount has been given by him to her over a period of time. In addition, he would

submit that the petitioner is having gold ornaments and other jewellery worth Rs.20 Lakhs and the same can be utilized for her maintenance.

7. Considered the submissions and perused the record.

8. The impugned order is passed by the Family Court on 28/6/2019. Application was for interim maintenance of the wife and the child. The submission of the petitioner- wife about the monthly rental of Rs.26,000/- for the flat is not disputed by the respondent-husband. He has also not disputed that the wife is also incurring expense for the child. Petitioner-wife has candidly come before this Court and submitted that she is earning commission on her earlier investments which are in the range of Rs.40,000/- to Rs.50,000/- per month. It is not disputed that she is a well qualified lady. Her submission is that she is entitled to same standard of living and therefore requires Rs.80,000/- per month for herself and her child. As far as respondent is concerned he has produced his income tax returns which shows returns of Rs.12,71,329/- for the Assessment Year 2018-2019. At the same time, he admits that he is getting salary of Rs.1,93,000/- and after deduction of taxes the same is Rs.1,73,800/- The comparative analysis of the income of both the parties would indicate that as far as the petitioner- wife is concerned there is an admitted monthly

income of Rs.40,000/- to Rs. 50,000/- and the financial liability of maintaining herself and her child which includes paying rental for her flat which at that point of time was Rs.26,000/- and after a gap of almost 2-3 years must have definitely escalated. On the other hand, the Respondent-husband's admitted salary is of Rs.1,93,000/- which even after deduction is considered is a sum of Rs.1,73,800/-. For a salary of this amount, the income tax return of Rs.12,71,329/- produced on record is clearly questionable and as such cannot be relied upon. The Respondent has sought to portray that he has to pay the maintenance for his flat, medical claim policy and hospital bills of his parents. While doing so, he has forgotten the fact that he also has responsibility of maintaining his child and his wife. Surprisingly, now he seeks to shirk of his responsibility even towards minor child who is now aged 6 years and will obviously be studying in school and as such petitioner-wife will also have to bear additional educational expenses of the child. The Family Court on the basis of the evidence which has come on record has rightly granted a monthly interim maintenance of Rs.20,000/- to the wife and Rs.20,000/- to the child from the date of Application till the decision of the petition. No doubt, wife is well educated and at the relevant time she was working. However there is no material on record to indicate that even subsequently she is gainfully employed with any establishment

and receiving salary. She is dependent on the income which she is receiving from the investment which she has wisely made. If the contention of respondent- husband is that all the money which was invested has been given by him to her, it lends credence to her financial inability inasmuch as even when she was working she was unable to make such kind of investment. It is well known that investment made in the mutual fund unless sold cannot be utilized and the investments depend on the market volatility which will in turn determine the return she would receive from her mutual fund investment. At the same time, it also needs to be noted that her estimated returns on the investment are in the sum of Rs.40,000/- to Rs.50,000/- and as such with the grant of additional Rs.40,000/- she is now getting a sum of Rs.80,000/- Rs.90,000/-, which in my opinion is sufficient at the interim stage.

9. At the stage of grant of interim maintenance there is certain *prima facie* assessment which is done by the Family Court on the basis of material which has been brought on record. Neither party has been able to show any infirmity or any error in the findings of the Family Court based on the material brought on record. Even if it is assumed that the respondent-husband subsequently has faced some financial problems due to reduction in his income, the issue before this Court is the impugned order of

28/6/2019 and this Court therefore cannot take into consideration any subsequent event. It is for the parties in case of change of circumstances to apply to the Family Court for modification, if so advised.

10. In light of above, I do not find that the Family Court has erred in the grant of interim maintenance. The issue as to the final amount of maintenance is required to be adjudicated after the evidence has been led by the parties. No infirmity can be found in the order of the Family Court. Petition stands dismissed.

11. At this stage, a request of stay of this order for a period of 4 weeks is sought. Said request is opposed by learned counsel for respondent. As issue is regarding grant of maintenance to the wife I am not inclined to grant stay.

12. In view of disposal of the petition, Interim Application does not survive and stands disposed of.

(SHARMILA U. DESHMUKH, J.)