

AGK

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

WRIT PETITION NO.11423 OF 2023

Manoj Gursahani

... Petitioner

V/s.

Priya Gursahani Alias Sweetee Sai

... Respondent

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Mr. Karl Tamboly with Ms. Dhvani Mehta Desai and
Ms. Sunain Masand i/by DM Law Chambers for the
petitioner.

Mr. Shailesh Raja i/by Mr. Surendra Raja for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 15, 2023

P.C.:

1. By the impugned order, the Family Court, Mumbai directed the respondent to pay Rs.15 lakh to the petitioner in furtherance of clause (4) of the consent terms dated 29 January 2014. Clause (4) of the consent terms reads thus:

“4. Agreed by and between the parties that the Petitioner shall within his financial means take care of all the day to day expenses of the children including their expenses for education and marriage. However the Respondent agrees and undertakes to this Hon’ble Court that she shall solely bear all the day to day expenses and miscellaneous expenses of the children without any contribution of whatsoever nature from the Petitioner when the children are staying with her excluding education and marriage, which is the sole responsibility of the Petitioner.”

2. On perusal of the said clause, it appears that the petitioner agreed to pay day-to-day expenses of children including their expenses for education and marriage “within his financial means”.
3. The material produced by way of conversation between the petitioner and respondent, it appears that indication of financial capacity of parties are made in the said conversation. It is, therefore, necessary for the Family Court to adjudicate as to whether it was within the financial means of the petitioner to pay educational expenses of the daughter as claimed by the respondent.
4. Parties will be at liberty to produce relevant material before the Family Court to show their financial capacity at the relevant time. Based on the said material, the Family Court shall record a finding regarding financial means of the respondent, and if the Trial Court find that the petitioner had financial means to pay for education, the Family Court shall pass appropriate orders.
5. With this clarification, the impugned order is quashed and set aside.
6. Application below Darkhast filed by the petitioner is restored to file. The Family Court shall decide the said Darkhast within three months from today.
7. All contentions of the parties are expressly kept open.
8. The writ petition accordingly stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)