

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

**INTERIM APPLICATION NO.18678 OF 2022
IN
FAMILY COURT APPEAL NO.95 OF 2015**

Dr. Manish Ganvir

..... Applicant

In the matter of

Dr. Manish Bapurao Ganvir

...Appellant

Vs.

Dr. Sangita Manish Ganvir

..... Respondent

Mr. Chandrakant Joshi i/b Mr. Bhushan C. Joshi for the Applicant.
Mr. Ravindra Sankpal i/b R. V. Sankpal & Associates for
Respondent.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : 10th JULY 2023.

P. C. (Per Sharmila U. Deshmukh, J.)

1. This Interim Application has been preferred by the applicant-husband seeking modification of the maintenance order dated 10/4/2019 passed by this Court in Civil Application No.119/2016 in the present Family Court Appeal. Civil Application was filed by the respondent-wife seeking maintenance of sum of Rs.1,50,000/- for herself and her two daughters. *Vide*

Corrected pursuant to speaking to the minutes order dated 10/7/2023.

order dated 10/4/2019 this Court directed the applicant to pay a sum of Rs.15,000/- each to the two daughters and to pay a sum of Rs.5,000/- to the respondent-wife towards her requirement for accommodation.

2. The applicant-husband is before this Court seeking modification of the order primarily on three grounds: a) that as the access of the daughters is not being given, there is no liability on the part of the applicant to pay maintenance in respect of the daughters b) income of the respondent-wife is to be taken into consideration and proportionate maintenance is required to be paid and c) that the applicant's father is a cancer patient and he has to spend for his treatment and as such seeks modification of the order.

3. Upon perusal of the order dated 10/4/2019, it is crystal clear that all the grounds which are being taken by the applicant-husband in the present application seeking reduction in the amount of the maintenance were canvassed before this Court during the hearing of Civil Application No.119/2016 along with

Civil Application No.291/2018. Learned counsel for the applicant has not been able to demonstrate any change of circumstances which would warrant modification of the order dated 10/4/2019.

4. The issue of non access of the child had been dealt with by this Court in the earlier round of litigation between the parties. *Vide* order dated 10/4/2019 this Court had recorded that there was interaction with the daughters in the chamber and the daughters showed disinclination to meet the father. Based upon interaction with the daughters, this Court held that there is no reason to conclude that daughters reluctance to meet the father was engineered by the mother. The decision of the Calcutta High Court in the case of *Mousumi Banerjee Vs. Bidyut Kumar Banerjee, Judgment dated 11/9/2009 in FA No.7/2007* on which reliance was placed by the learned counsel for the applicant in the earlier round of litigation was considered and this Court held that the decision of the Calcutta High Court did not lay down any proposition liberating the father from the responsibility of taking care of the children on ground of non-access.

5. In rejoinder, learned counsel for the applicant has pointed out that a complaint was made to the police as respondent-wife assaulted applicant and his mother when they went to take access of children as per the Consent Terms entered into before the Family Court. Complaint is of the year 2015 and there is no cognizance taken of the said complaint and no further steps were taken to pursue the said complaint. For this reason, we do not deem it fit to take into consideration the said complaint while appreciating the submission of non access of children.

6. The second submission which has been canvassed before us i.e. the submission of proportionate maintenance considering income of the respondent-wife was also before this Court in the earlier round of litigation. In the present proceedings affidavit of Asset and Liabilities of the parties has been placed on record. Perusal of the affidavit of Assets and Liabilities of the applicant-husband shows that the monthly income of the applicant-husband for the year 2020-21 was Rs.57,806/-. However it is pertinent to note that the general monthly expenditure of the applicant is shown to be Rs.60,000/- p.m. for general household

and sundry expenses and Rs.25,000/- additional expenses p.m. for travel for the purpose of court cases. We do not find any explanation in the affidavit resolving this anomaly as the income is shown to be less than the expenses incurred by the appellant-husband. Respondent-Wife has disclosed her income @ Rs.30,000/- p.m. and has stated that the respondent-wife is employed with Kalyan Dombivli Municipal Corporation on contract basis. While dealing with the earlier application for grant of maintenance, this Court had considered the salary of respondent-wife which at that point of time was Rs.26,000/- p.m. and had rejected the contention of the applicant-husband. The contention is that apart from this service on contract with Kalyan Dombivli Municipal Corporation, the respondent-wife is engaged in private practice outside her duty. In the application before us for modification, there is no fresh material which has been brought on record by the applicant-husband to demonstrate otherwise. The third submission which has been canvassed is that the applicant's father is a cancer patient. Learned counsel for the petitioner has pointed out to this Court the document of Tata Memorial Center showing Case number of the petitioner's father and he having been

diagnosed with cancer. The contention of learned counsel for the applicant is that in the earlier round of litigation, this Court had rejected the submission of the applicant that he has responsibility to look after his aged parents. It was necessary for the Applicant to demonstrate that the applicant's father does not have any source of income and is dependent on the applicant for his medical expenses. There is no pleading to that effect in the Interim Application. Even if the said fact is accepted for the sake of argument, there is nothing which has been produced on record to show the expenses which are being incurred by the applicant towards the treatment of his father. On the other hand, we find that the respondent-wife has to support two grown up daughters, elder daughter being 20 years and younger daughter 18 years of age. It begs of no debate that the daughters undergoing their education are required to expend substantial amount towards their fees apart from their day to day expenses.

7. Submission of the applicant-husband that no access has been given is countered by the learned counsel for Respondent stating that no attempt was made to seek access and respondent-

wife has no objection to grant of access. The decision of the Apex Court in the Case of *Ajay Kumar Rathee vs. Seema Rathee, (2022) 4 Supreme 463* was pressed into service by the learned counsel for the applicant to support his contention that if access is not given the liability of father to pay maintenance ceases. The decision of the Apex Court is rendered in the facts of that case in which daughter who was about 20 years of age did not wish to have any relationship with the appellant-father and in that facts and circumstances, the Apex Court, while determining the amount to be paid as permanent alimony to the wife, held that daughter is not entitled to any amount. The decision of the Apex Court is distinguishable as the Apex Court was considering the grant of permanent alimony to the wife and the daughter had refused to have any relationship with the father.

8. As far as decision in the case of *Padmja Sharma vs. Ratan Lal Sharma, (2000) 4 SCC 266* relied upon by the learned counsel for the applicant, the said decision was before this Court in the earlier round of litigation and was duly considered.

9. The present application although seeking modification of the order dated 10/4/2019 does not bring forth any change of circumstance to warrant modification of the maintenance order. In that respect there was a query by this Court earlier as to maintainability of the application to which the response of the learned counsel for the applicant is that the provisions of section 22 of the Hindu Marriage Act, 1954 permits the application. What is required to be considered is whether the application brings out any change of circumstances and as such is maintainable. Answer to the same is emphatic "No" in as much as issues which were earlier canvassed in the earlier round of litigation by the learned counsel for the applicant is again presented for consideration before this Court. We find that the grounds on which modification is sought had already been canvassed and already considered by the Court in the earlier round of litigation. As such what the applicant essentially seeks is rehearing of the entire issue which is impermissible in law.

10. For the reasons set out, we do not find any merit in the submission of learned counsel for the applicant and deem it appropriate to dismiss the application.

11. During the hearing of this application *vide* order dated 10/2/2023, this Court had directed the applicant to pay part of the arrears of maintenance i.e. sum of Rs.7,80,000/- which came to be deposited in this Court. It was further recorded that the balance amount payable to the respondent-wife would be considered by this Court after considering the interim application for modification of the order dated 10/4/2019. Having come to a conclusion that the application for modification deserves to be dismissed, we deem it appropriate to direct the applicant-husband to pay balance arrears of maintenance within a period of 4 weeks from the date of this order. According to the applicant, the arrears are in the sum of Rs.10,00,000/-, the said amount is being disputed by the learned counsel for the wife. As the applicant admits arrears to the tune of Rs.10,00,000/-, we deem it fit to direct the applicant-husband to deposit admitted amount of Rs.10,00,000/- within a period of 4 weeks as stated above. The actual quantum of arrears is left open to be decided at the appropriate stage and in appropriate proceedings.

12. For the reasons stated above, the Interim Application stands dismissed.

SHARMILA U. DESHMUKH, J.

NITIN W. SAMBRE, J.