

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FAMILY COURT APPEAL No. 7 OF 2016**

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Meghna Sanjeev Ranade)
Age: 54, Occupation Nil,)
Resident of 10/3A/1, Near Kailas)
Jeevan Company, Dhayari,)
Pune - 411 041)...Appellant

Vs.

1.Sanjeev Vyankatesh Ranade,)
Age 57 Years, Occupation Business,)
Resident of 17/A/6, Vijay Bungalow,)
Near Ashwamedh Hall, Karve Road,)
Erandawane, Pune - 411 004)
2. Indian Overseas Bank)
Erstwhile, Shree Suvarna Sahakari)
Bank Ltd.,)
Resident of Deccan Gymkhana)
Branch, Pune)...Respondents

Mr. Pramod R. Arjunwadkar a/w. Mrs. Prabha U. Badadare a/w.

Mr.Omkar Nagvekar, Advocates for the Appellant

Mr. Hitesh P. Vyas, Advocate for the Respondent No.1

Mr. Tejesh Dande a/w. Mr. Bharat Gadhavi a/w. Mr. Vishal Navale
a/w. Mr. Vikrant Khare a/w. Mr. Chinmay Deshpande i/by Mr.Tejes
Dande And Associates, Advocates for Respondent No.2-Bank

**CORAM:- R.D. DHANUKA &
M.M. SATHAYE, JJ.**

**RESERVED ON 17TH FEBRUARY, 2023
PRONOUNCED ON 2ND MARCH, 2023**

JUDGMENT - (PER R.D. DHANUKA, J.)

1. Admit.
2. Mr. Vyas waives service for Respondent No.1. Mr. Dande waives service for Respondent No.2. By consent of parties, matter is taken up for final hearing.
3. The Appellant (Decree-holder) has filed this Appeal under Section 19 of the Family Court Act r/w. Section 96 and Order 41 of the Code of Civil Procedure, 1908 whereby impugning the judgment and order dated 24th July, 2015 passed by the Learned Family Court No.5 on Application below Exhibit '3' filed by the Appellant for executing the order passed by this Court in Family Court Appeal No. 85 of 2003.
4. Some of the relevant facts for the purpose of deciding this Appeal are as under.
5. On 8th February, 1993, the Appellant married with Respondent No.1 according to the religious rituals of Hindu Law. On 16th October, 1998, the Appellant initiated the petition for restitution of conjugal rights against Respondent No.1 in the Family Court, Pune bearing PA No. 813/1998. In

the said proceedings, Respondent No.1-Husband filed counter claim, inter alia, praying for divorce against the Appellant. On 3rd August, 1999, the Appellant filed application for maintenance in the PA No. 813/1998. The Family Court by an order dated 3rd August, 1999, awarded maintenance of Rs.1,000/- p.m. in favour of the Appellant. On 6th October, 1999 the Appellant challenged the said order of maintenance passed by the Family Court by filing Writ Petition No. 5672/1999 before this Court. This Court by an order dated 9th December, 1999 enhanced interim maintenance from Rs.1,000/- granted by the Family Court to Rs.10,000/- per month with effect from October, 1999 till disposal of PA NO. 813/1998.

6. On 26th November, 2000, the Family Court passed the judgment and decree and allowed the petition for restitution of conjugal rights filed by the Appellant and rejected the counter claim of Respondent No.1 for divorce. On 29th May, 2001, the Appellant filed a Petition No. C-55 / 2001 before the Family Court, Pune, inter alia, praying for lump sum permanent maintenance of Rs.10,00,000/- and for purchase of house Rs.15,00,000/-, aggregating to

Rs.25,00,000/-. On 13th December, 2002, the Family Court passed an order in the Petition No. C-55/2001 and awarded maintenance of Rs.7,000/- p.m.

7. In the year 2003, the Appellant challenged the said order before this Court by preferring Family Court Appeal No. 85 of 2003. Respondent No.1 did not challenge the said order dated 13th December, 2002 passed by the Family Court in Petition No. C-55/2001 awarding maintenance of Rs.7,000/- in favour of the Appellant.

8. On 1st February, 2003 since Respondent No.1 neglected to pay the maintenance amount as per order of this Court, the Appellant preferred Execution Application bearing Darkhast No. 23/2003 for execution of the judgment and decree and order dated 13th December, 2002 passed by this Court. In the said proceedings, the property of Respondent No.1 was attached for the amount of the maintenance due till then. The Appellant also preferred execution proceeding for execution of the Judgment and decree and order dated 13th December, 2002 passed by the Family Court granting maintenance at the rate of Rs.7,000/- p.m.

9. On 7th November, 2003, Respondent No.2 Bank intervened in the said execution proceedings and objected for attachment of the said property belonging to Respondent No.1 and claimed exclusive rights on the said property. On 7th November, 2003, the Family Court, Pune rejected the claim of Respondent No.2 Bank and held that the dues of the Appellant has got priority over claim of Respondent No.2 Bank. Respondent No.2 did not challenge the said order dated 7th November, 2003 passed by the Family Court.

10. On 25th November, 2003, the Appellant preferred Civil Application No. 8/2004 in Family Court Appeal No. 55/2003 and prayed that charge of maintenance be placed on the property belonging to Respondent No.1, known as Aram Fast Food and Snack Bar at Pune. On 8th July, 2004, application for creation of the charge on the building known as Aram Fast Food and Snack Bar at Pune came to be allowed by this Court. The Appellant preferred Civil Application No. 184/2004 in Family Court Appeal No.85/2003 and prayed for an order and direction to retain the amount of Rs.25,00,000/- from the sale proceeds of the property for the satisfaction of the claim of the Appellant and for an order and direction to

disburse the balance amount as per the priorities decided by the Family Court by its order dated 7th November, 2003.

11. On 18th October, 2004, this Court passed an order of auction of the property of Respondent No.1 and prohibited disbursement of auction proceeds indicating that this Court had granted the prayer of not disbursing the amount of Rs.25,00,000/- . On 21st August, 2007, Respondent No.2 Bank preferred intervention application before this Court bearing Civil Application No. 16 of 2006 in CA No. 184/200. This Court passed an order directing Respondent No.2 Bank to auction the said property and deposit the sale proceeds in the Court.

12. On 15th January, 2008, this Court rejected the application filed by Respondent No.2 Bank and observed that if the Bank has any dues to be recovered from the Respondent, their remedy is to proceed in the appropriate court of law. These proceedings cannot be remedy for the Bank.

13. On 6th May, 2008, the Special Recovery Officer of Respondent No.2 Bank auctioned the property of Respondent No.2 and kept the said amount with Respondent No.2 Bank

instead of depositing the said amount in this Court. It is the case of the Appellant that the said amount could not have been retained by the Bank itself and ought to have been deposited in this Court.

14. In the meanwhile, in the year 2006, the Appellant filed application in the Executive Proceeding No. 55/2006 to put Respondent No.1 in civil prison for non-payment of maintenance amount. This Court passed that order on 25th April, 2007 in Civil Application No. 87/2007 in Family Court Appeal No. 85/2003 and directed that the Respondent No.1 to be put in civil prison for non-payment of maintenance amount. The Respondent No.1 challenged the said order by preferring Special Leave Petition, which was converted into Civil Appeal No. 6914/2007 before the Supreme Court. On 1st December, 2008, the Supreme Court passed an order dated 1st December, 2008 r/w. order dated 24th July, 2009 thereby setting aside the order of civil prison passed by this Court and observed that the Family Court will see that the entire outstanding amount of maintenance is paid to the wife out of the sale proceeds.

15. Respondent No.2 filed Review Application before

the Supreme Court bearing D-17208/2011 contending that the impugned order is passed without notice to Respondent No.2 Bank.

16. On 21st July, 2011, this Court allowed the Family Court Appeal No. 85/2003 filed by the Appellant challenging the refusal of lump sum maintenance and granting meager maintenance of Rs.7,000/- p.m. and upheld the right to claim maintenance by Appellant and allowed the appeal granting lump sum maintenance of Rs.10,00,000/- and Rs.15,00,000/- together with interest at the rate of 18%.

17. Since Respondent No.1 failed and neglected to pay the maintenance amount in compliance with the judgment and order dated 21st July, 2011 in Family Court Appeal No. 85/2003 passed by this Court, the Appellant preferred Executing Proceeding bearing Regular Darkhast No. 195/2011 for execution of the judgment and order dated 21st July, 2011. The Appellant claimed a sum of Rs.56,55,000/- against the Respondent No.1 and Respondent No.2 Bank along with interest.

18. The Appellant preferred application at Exhibit 3 in Regular Darkhast No. 195/2011 and contended that

Respondent No.1 and Respondent No.2 Bank, are responsible for the satisfaction of the execution proceedings and further pointed out that Respondent No.2 Bank as per order passed by the Supreme Court, was under obligation to pay the said decreetal amount and as Respondent No.2 Bank had collected Rs.1,50,00,000/- out of sale proceeds of the property of Respondent No.1, Respondent No.2 Bank had to deposit the decreetal amount in the Family Court at Pune for the purpose of disbursement to the Appellant.

19. On 24th July, 2015, the Family Court Pune rejected the said application filed by the Appellant. The Appellant, thus, preferred this Family Court Appeal.

20. Mr. Pramod R. Arjunwadkar, learned counsel for the Appellant has invited our attention to various orders passed by this Court as well as the Family Court, awarding various amounts of maintenance in favour of the Appellant and against Respondent No.1 and also the order passed by the Supreme Court against Respondent No.2. He submitted that the Bank was already granted liberty to file an independent proceedings for recovery of their claim, if any, against Respondent No.1. Respondent No.1 was directed to be

arrested by the Division Bench of this Court.

21. Learned counsel relied upon the order dated 1st December, 2008 passed by the Supreme Court in Special Leave Petition filed by Respondent No.1 and submitted that the Supreme Court had clearly held that the entire outstanding amount of maintenance was to be paid to the Appellant out of the sale proceeds recovered by Respondent No.2 Bank upon sale of the property of Respondent No.1. He submitted that the review petition filed by Respondent No.2 Bank is already dismissed by the Supreme Court on merits. He submitted that the order passed by the Supreme Court on 1st December, 2008, thus attained finality and was enforceable against Respondent No.2 Bank.

22. It is submitted that the said order dated 1st December, 2008 would include the order of maintenance decided by this Court subsequently and thus the said amount awarded by this Court by modifying the order passed by the Family Court ought to have been paid by Respondent No.2 Bank out of the sale proceeds and not only the amount which was outstanding as on the date of the said order dated 1st December, 2008 passed by the Supreme Court.

23. Learned Counsel for the Appellant invited our attention to the order dated 21st July, 2011 and submitted that Respondent No.2 admittedly has recovered a sum of Rs.1,56,00,000/- from sale proceeds. He submitted that this Court had already decided the priority for payment of the dues of the Appellant and others. According to the said order, the maintenance dues of the Appellant ought to have been paid first, out of the sale proceeds. He submitted that as on 1st December, 2008, the outstanding amount at the rate of Rs.7,000/- p.m., was at Rs.6,18,500/-. He submitted that in spite of the said order passed by this Court, Respondent No.2 Bank adjusted the amount of Rs.1,47,45,000/- towards Bank dues out of the sale proceeds dues and paid sum of Rs.8,55,000/- to Pune Municipal Corporation. Learned counsel for the Appellant invited our attention to the reply filed by Respondent No.2 Bank and submitted that the stand taken by Respondent No.2 Bank is contrary to the orders passed by this Court and the Supreme Court.

24. Mr. Tejesh Dande, learned counsel for Respondent No.2 Bank invited our attention to the decree passed by the Family Court, awarding maintenance on 13th December, 2002.

He submitted that since Respondent No.1 did not pay the amount of maintenance, the Appellant had filed Darkhast Application for which the Respondent No.1 was arrested. He submitted that Respondent No.2 was not party to the Special Leave petition filed by Respondent No.1-Husband against the order passed by this Court. He submitted that the review petition filed by his client, however, came to be dismissed on 24th July, 2009.

25. Learned counsel for the Bank invited our attention to the order passed by this Court on 24th July, 2015 and submitted that when this Court passed a decree of divorce, this Court decided the Family Court Appeal on 21st July, 2011 and this Court was fully aware of the order passed by the Supreme Court. This Court in paragraph 54 held that already the charge created on the said property, was wound up. No further relief was granted in the said Civil Application. He submitted that all the interim orders passed in the Family Court Appeal came to be vacated.

26. It is submitted by the learned counsel for the Bank that liability of Respondent No.2 to pay the maintenance from the outstanding sale proceeds out of the property of

Respondent No.1 is not to be adhered for indefinite period. It is submitted that the amount was deposited by Respondent No.2 Bank before the Family Court Pune towards maintenance as awarded by the Family Court. The said amount was admittedly withdrawn by the Appellant. He submitted that pursuant to the order dated 27th February, 2017, Respondent No.2 has also paid Rs.1,00,000/- to the Appellant without prejudice to the rights of Respondent No.2 out of sympathy.

27. It is submitted by the learned counsel for Respondent No.2 Bank that on the basis of the order passed by this Court, subsequently, after the order of the Supreme Court, enhancing the maintenance awarded by the Family Court, cannot be the basis for the claim of the Appellant for maintenance to be paid out of the sale proceeds. It is submitted that the Executing Court has rightly held in the order dated 24th July, 2015 that, the Supreme Court in the order dated 1st December, 2008 nowhere mentioned that the Bank is required to deposit the dues of the maintenance as per the decree and also did not direct the Bank to deposit the maintenance amount which become due after passing of the order dated 1st December, 2008.

28. Mr. Arjunwadkar, learned counsel for the Appellant in his rejoinder arguments submitted that the Review Petition filed by Respondent No.2 Bank was rejected by the Supreme Court on merits and thus, the order passed by the Supreme Court earlier has attained finality.

29. The questions that arises for consideration of this Court is as to whether the Appellant could claim payment of maintenance against Respondent No.2 Bank also, in respect of the liability crystallized after 1st December, 2008 out of sale proceeds of the property of Respondent No.1 Husband sold by Respondent No.2 Bank. Though the Supreme Court had directed that the entire outstanding amount of maintenance is required to be paid to the Appellant-Wife out of the sale proceeds as on the date of the said order dated 1st December, 2008, whether additional liability of maintenance adjudicated upon subsequently by order passed by the Division Bench on 21st July, 2011 in Family Court Appeal No. 16 of 2003 and other connected matters also has to be paid by the Respondent No.2 Bank out of the sale proceeds.

30. The Family Court, Pune had passed an order on 13th December, 2002 in Petition C-No. 55 of 2001 for maintenance

filed by the Appellant under Section 18 of the Hindu Adoptions and Maintenance Act and thereby directed the Respondent-Husband to pay Rs.7,000/- towards maintenance since the day of presentation of the petition i.e. since 29th May, 2001. The said order dated 13th December, 2002 was challenged by the Appellant in the Family Court Appeal No.16/2003. The Respondent No.1 also challenged the said decree by filing Family Court Appeal No. 16 of 2003. On 21st July, 2011, a Division Bench of this Court directed to pay a sum of Rs. 10,00,000/- along with interest thereon at rate of 12% p.a. from 29th May, 2001 till its realization, which amount be invested in the name of wife in appropriate Fixed Deposit Scheme in a bank of her choice, towards lumpsum permanent maintenance amount, in lieu of monthly maintenance.

31. This Court by order dated 15th January, 2008 also dealt with the application filed by Respondent No.2 Bank and held that the Application filed by Respondent No.2 Bank does not survive. This Court dismissed the Family Court Appeal No. 16/2003 filed by Respondent No.1 Husband against the judgment and decree dated 13th December, 2002 in Petition

A-No.28 of 2000 passed by the Judge, Family Court, Pune. So far as Family Court Appeal No. 85 of 2003 filed by the wife for enhancement of amount of maintenance is concerned, this Court modified the judgment and decree passed by the Family Court dated 13th December, 2002 and directed Respondent No.1-Husband to pay within three months from the date of the said order, Rs.10,00,000/- along with interest thereon at the rate of 12% per annum with effect from 29th May, 2001 till the date of its realization.

32. It is thus clear that the decree passed by the Family Court, directing Respondent No.1 to pay maintenance @ Rs.7,000/- p.m. was substituted by lumpsum amount of Rs.10,00,000/- with interest @ 12% p.a. with effect from 29th May, 2001 till the date of realization. The said order passed by the Division Bench of this Court substituted the order passed by the Family Court as the said order was passed after the order of the Supreme Court on 1st December, 2008. It is not in dispute that the outstanding amount of maintenance as on the date of the said order dated 1st December, 2008 has already been paid by Respondent No.2 Bank out of the sale proceeds to the Appellant.

33. The Appellant did not apply for clarification of the order dated 1st July, 2008 before the Hon'ble Supreme Court passed in Civil Appeal No. 6914 of 2008 filed by Respondent No.1 Husband against the Appellant-Wife, towards liabilities of maintenance of Respondent No.1 towards the Appellant-wife that would arise in future or enhance in future and that will have to be borne by Respondent No.2 Bank out of the sale proceeds after additional amount is already payable by Respondent No.1 Husband in favour of the Appellant-wife by virtue of the judgment dated 21st July, 2011 passed by the Division Bench of this Court.

34. It is common ground that it is not disputed by the Appellant that Respondent No.2 was allowed to sell property of Respondent No.1 for realizing the debts of Respondent No.1 towards Respondent No.2 in respect of the loan transaction in which Respondent No.1 had mortgaged his flat in favour of Respondent No.2. The liability of Respondent No.1 towards Respondent No.2 was crystalized and Respondent No.2 was allowed to sell the said immovable property of Respondent No.1 for realization of amount payable by Respondent No.1 to Respondent No.2 Bank. After

order of the Division Bench of this Court, Respondent No.2 has already appropriated the amount due to Respondent No.2 out of the sale proceeds from the property of Respondent No.1 and also paid certain amount to the Pune Municipal Corporation.

35. The Appellant ought to have applied for recovery of the balance amount, if any, against Respondent No.1. Respondent No.2 was not expected to pay the dues of Respondent No.1 subsequently adjudicated upon by enhancement out of the sale proceeds against which Respondent No.2 was entitled to adjust and recover its dues against Respondent No.1.

36. In our view, the Learned Counsel for Respondent No.2 Bank is right in his submission that the order of the Supreme Court passed on 1st December, 2008 in Civil Appeal No. 6914/2008 filed by Respondent No.1 against the Appellant did not direct the Respondent No.2 to pay the liability that has accrued subsequently.

37. The Executing Court in its impugned order dated 24th July, 2005 has rightly held that the Appellant had filed the

Darkhast Application for recovery of total amount of Rs.6,18,500/- which was outstanding against Respondent No.2 and after considering the order of the Hon'ble Supreme Court and the request of Respondent No.1, the then Judge of the Family Court had issued notice to Respondent No.2 with a direction to deposit an amount of Rs.6,18,500/- towards arrears of maintenance of decreeholder as per the direction of the Hon'ble Supreme Court. It was rightly held by the Executing Court that the order passed by the Supreme Court on 1st December, 2008 did not mention that the Respondent No.2 Bank is required to deposit the dues of the maintenance as per the decree or to pay the dues hereinafter passing of the order dated 1st December, 2008.

38. The Executing Court has rightly construed the word " Outstanding", which was construed by the Supreme Court in the order dated 1st December, 2008, means the outstanding maintenance dues till the order of the 1st December, 2008 and not later on. The Executing Court thus rightly directed Respondent No.2 that Bank is liable to deposit due maintenance amount till the order dated 1st December, 2008 of the Hon'ble Supreme Court and not later

on. The Executing Court held that the decreeholder has right to proceed and take steps for recovery of remaining dues of maintenance.

39. Respondent No.2 has admittedly deposited the said amount as directed by the Family Court by order dated 24th July, 2015. The Appellant has admittedly withdrawn the said amount. We do not find any infirmity in the order passed by the Family Court dated 21st July, 2015. Hence we pass the following order:

ORDER

- (i) Family Court Appeal No. 7 of 2016 is dismissed.
- (ii) There shall be no order as to cost.

(M.M. SATHAYE, J.)

(R.D.DHANUKA, J.)