

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

WRIT PETITION NO. 10442 of 2024

Anthony Francis Rodrigues	}	
Age 73 years, Sai Apartment, Plot	}	
No. 18/6, Sai Section Defence	}	
Colony Ambernath (E) Pin- 421501	}	...Petitioner

Versus

Mrs. Celine Maria Rodrigues	}	
803/804, Celebration Tower City	}	
of Joy, JSD Road, ACC Compound	}	
Mulund (w), Mumbai – 400080.	}	...Respondent

Mr. Premlal Krishnan a/w Mr. Siddharth Pimpale and Mr. Prashant Bothre i/b Pan India Legal Services LLP, for the Petitioner.

Mr. Mutahhar Khan a/w Mr. Medhavin Bhatt i/b MV Law Partners, for the Respondent.

CORAM: MANJUSHA DESHPANDE, J.

RESERVED ON : 07th NOVEMBER 2025

PRONOUNCED ON : 14th NOVEMBER 2025

Judgment (Per Manjusha Deshpande, J.):

1. The facts of this case are a reflection of the disheartening state of society today, it is a classic example of breaking up of long marital ties of 41 years, in the evening of the life of a couple, which these days is called as 'Grey Divorce'. The Respondent-wife is claiming maintenance from her husband, during the pendency of the Divorce proceedings. This is a peculiar case where the husband, who is required to stay

abroad, away from his wife and the family on account of his employment, has drifted apart from them, and the gap has now widened to such an extent, that cannot be reduced resulting in breakdown of their marriage, culminating in the filing of Divorce proceedings.

2. The Petitioner challenges the interim maintenance order passed by the Judge, Family Court, Bandra, below Exhibit-9 dated 3rd April 2024, filed in Divorce Petition No. 1802 of 2019. The Respondent-wife had filed a Divorce Petition before the Family Court, Bandra, pending which she has filed an Interim Application for maintenance under Section 36 of the Divorce Act, 1869. In her Interim Application, she had claimed maintenance of Rs.80,000/- per month from the Respondent husband during the pendency of Divorce proceedings. After hearing the parties, the Judge, Family Court, Bandra, has granted maintenance of Rs.8000/- per month, to the Respondent-wife, after taking into consideration her own income of Rs. 12,000/- per month alongwith the financial capacity of her husband.

3. The undisputed facts of the present case are that, the Petitioner and the Respondent married as per the rituals of the Christian Religion on 1st January 1978 at Kurla, Mumbai. They are blessed with three

children, all of them are in their 40s and are leading their own life. The Petitioner worked in Saudi Arabia from 1983 to 1985. After a short break, he again worked in the Middle East in Dubai, from 1992 to 2019. The Petitioner has purchased 1 BHK flat at Badlapur and another flat at Mulund from his earnings in Dubai.

4. The dispute between the parties started when the Petitioner returned from Dubai permanently in the year 2019. According to him, he was thrown out of the house by the Respondent and their youngest son, on account of which, he is forced to take shelter from his various relatives. Since the property bought by him at Mulund, stands in the joint name of the Petitioner and the Respondent, he had filed a suit for declaration to the extent of his 50% share in the said flat. The suit was decreed in his favour against which appeal has been filed by the Respondent before the City Civil Court, Mumbai.

5. The Respondent has filed Divorce proceedings before the Family Court at Bandra on the ground of cruelty and desertion. Pending the Divorce proceedings an application has been filed for alimony by the Respondent, which is resisted by the Petitioner contending that he is a senior citizen of 73 years, without any independent source of income,

except the income of interest on his savings, in the post office, which is Rs.3000/- per month.

6. The Family Court, after hearing the parties allowed the application of the Respondent by granting interim maintenance of Rs.8000/- per month in favour of the Respondent, from the date of application i.e. 14th October 2019, till the disposal of the main Petition alongwith Rs.10,000/- towards provisional expenses of litigation vide order dated 3rd April 2024.

7. This order has been assailed by the Petitioner contending that, he has no source of income to comply with the orders passed by the Family Court. It is further contended that, he has been thrown out of his own house by the Respondent at the behest of their youngest son. He has purchased two flats at Mumbai, from his income generated while staying abroad. All his savings are invested in the two properties purchased by him, and some savings are invested in the Post Office, from which he is receiving interest of Rs. 3000/- per month. Apart from the savings in the Post Office, he has no other income. Therefore, in no way, he is in a position to make any provision for making payment of the maintenance amount, awarded by the Family Court during the pendency of Divorce proceedings.

8. The learned counsel for the Petitioner Mr. Premlal Krishnan contends that, the Petitioner is thrown out of their Matrimonial house i.e. from one of the two houses, where they were residing together, while the other flat has been given on rent from which the Respondent is receiving income. The Respondent is also receiving pension of Rs.12,000/- per month, therefore, the Respondent is leading a much better and comfortable life than the Petitioner from the income as stated hereinabove.

9. According to the learned counsel for the Petitioner, in fact, the Petitioner, who is an aged person, is now in a very vulnerable situation. He has no roof over his head after being thrown out of his own house, the meagre income of Rs. 3000/- received by him is not at all sufficient in these days of inflation. Resultantly he is required to depend on his relatives even for basic necessities like food and shelter.

10. The learned counsel for the Petitioner has further drawn my attention to the order passed by the Appellate Authority, Additional Collector, Mumbai dated 27th May 2024, in the proceedings filed by him under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, directing the Respondent, and their other children to make

payment of Rs. 3000/- per month, each, to the Petitioner by depositing it in his account by fifth day of each month.

11. The learned counsel for the Petitioner submits that, this order passed by the Appellate Authority supports the stand of the Petitioner that, he is not having any source of income and, in fact, he is required to be maintained by his wife and children. Hence, according to him in view of the aforementioned facts and circumstances, the order passed by the Judge, Family Court, Bandra is required to be quashed and set aside.

12. Per contra, Mr. Mutahhar Khan, learned counsel appearing for the Respondent has strongly opposed the prayer made by the Petitioner by contenting that, the Petitioner has not come before this Court with clean hands, the Petitioner has concealed his true and correct income before the Family Court. In fact, considering the resources and financial status of the Petitioner, the Respondent had in fact claimed an amount of Rs.80,000/- per month in her application, against which, she has been granted meagre an amount of Rs. 8000/- per month, which is not at all sufficient. Even the meager amount which has been awarded by the Family Court, has not been paid by him. As on 30th June 2025, the Petitioner is in arrears of Rs.5,52,000/-. In view of the non-compliance

of the order itself, the Petitioner is not entitled for any equitable relief, nor does the present Writ Petition, deserves to be entertained.

13. It is submitted that though the learned Judge, Family Court has given specific directions to file on the record the last three salary slips and the bank statements of the last three years, the Petitioner has failed to place on record the relevant documents pertaining to his income. He has failed to place on record the income tax returns, and other income related documents, omission of which gives rise to adverse inference that, such an omission is with an intent to suppress his true financial status from this Court.

14. It is also alleged by the Respondent that, in order to frustrate and defeat the legitimate claim of the Respondent and to evade compliance of the directions to make payment of maintenance, the Petitioner has taken steps to alienate and transfer his movable and immovable assets, either directly or indirectly in favour of his other family members or third parties, during the pendency of present proceeding.

15. So far as reliance placed by the Petitioner on the order passed by the Tribunal and Additional District Collector, Mumbai, in the proceedings of 'the Maintenance and Welfare of Parents and Senior Citizens Act, 2007' is concerned, it is submitted that the said order is

totally irrelevant and independent of present proceedings. The order relied upon does not absolve the Petitioner from his obligation to pay maintenance as directed under the impugned order in the matrimonial proceedings. The non-payment of maintenance granted by the Family Court without there being any stay to the order reflects his contumacious and defiant conduct.

16. I have heard the respective counsel. Perused the impugned order and the documents placed on record. The application has been filed by the Respondent-wife for interim maintenance during the pendency of Divorce proceedings as provided under Section 36 of the Divorce Act, 1869. The learned Judge, Family Court at Bandra has rightly observed that the merits of the matter are not significant or relevant while deciding the application for interim maintenance. The Application is filed by the party primarily for sustenance during the pendency of Divorce proceeding since the party making the application does not have sufficient means of sustenance during such proceedings. These are the applications which are required to be decided summarily which does not require examination of witnesses.

17. The Respondent has filed an application on 14th October 2019, contending that she is receiving pension Rs.12,000/- per month, which

is not sufficient for her sustenance during Divorce proceeding, hence she may be granted maintenance of Rs.80,000/- per month. In support of her claim she had filed affidavit of assets and liabilities on 5th September 2022. In her affidavit she has disclosed that her pension is Rs.10,000/- to Rs.12,000/- per month, while her monthly expenses are to the extent of Rs.77,000/- per month. She has also given a break up of all the expenses, which includes car-petrol and parking; travel expenses; cellphone bill; housing society contribution; Dental and Ophthalmic treatment; etc. She has further claimed litigation expenses of Rs.5,00,000/- during the pendency of proceedings, however she has not provided any particulars of the expenses actually incurred by her, hence her claim of Rs.5,00,000/- has not been accepted by the Judge, Family Court. Eventually, the learned Judge, Family Court, has come to the conclusion that Rs. 10,000/- would be a reasonable amount towards provisional litigation expenses.

18. Both the parties have filed the affidavit of assets and liabilities before the Family Court. In the affidavit filed by the Petitioner he has disclosed that he is receiving a monthly income of Rs.3,000/- from the deposits in the Postal Department. He has not annexed any documents regarding payment of income tax and bank details of his account in different banks. He has disclosed details about the two flats purchased

by him in Mumbai while he was employed at Dubai. Except for an amount of Rs.3,000/- per month, received by him from the interest of the amount invested by him in the Postal Department, he has not disclosed any other source of income. On the other hand, he has claimed that he requires an amount of Rs.19,753/- for his monthly expenses. The extracts of his passbook of the Post Department are placed on record alongwith the affidavit of assets and liabilities. It discloses that he had opened account on 22nd May 2020, 20th August 2020, 12th September 2020, 12th November 2021 and 16th October 2020 by depositing amounts of Rs.65,000/-, Rs.65,000/-, Rs.70,000/-, Rs.1,00,000/- and Rs.2,00,000/- respectively. On one hand, in the affidavit he is claiming that he does not have any source of income, whereas on the other hand the record discloses that he has regularly deposited the amounts in the Post Office, that too after returning from Dubai in 2019.

19. On the other hand, the Respondent has filed her affidavit of assets and liabilities claiming interim maintenance of Rs.80,000/-. It is claimed by her that she has various medical issues like Diabetes, Lower Back Pain, Rheumatoid Arthritis, Cholesterol and Spondylosis. Therefore, she needs sizeable amount towards medical expenses. In details of her income she has disclosed that her monthly income is

Rs.10,000/- to Rs.12,000/- per month, received towards pension, after having retired as a clerk from a school. While giving information about the income and assets of the spouse, the Respondent has claimed that the Petitioner is staying on and off in Dubai and in India, and after his retirement he is doing consultancy work. She has claimed that he has various Fixed Deposits, Saving Accounts in Canara Bank and Bank of Baroda, Demat account and one commercial property standing jointly in the name of his son Aiden and himself. This averment made by the Respondent in her affidavit of assets and liabilities is not controverted by the Petitioner. The affidavit of assets and liabilities discloses that the Petitioner herein has worked in Dubai for a considerable period. It is also claimed by the Respondent that he still continues to work as a Consultant.

20. Upon perusal of the affidavit of assets and liabilities, the Petitioner does not seem to have disclosed all his assets and the income received by him. Even otherwise, considering the purport of Section 36 of the Divorce Act, 1869 it is the responsibility of the Petitioner to maintain his wife during the pendency of Divorce proceedings.

21. The learned Judge, Family Court at Bandra has categorically observed that, vide order dated 2nd March 2022 at Exhibit-13 the

Respondent was directed to produce his last three salary slips and Income Tax Returns, vide order dated 29th April 2022, but the Respondent has failed to comply the said order at Exhibit-13. Since the Petitioner has failed to produce the documents reflecting his income as directed by the Court, adverse inference has been drawn holding that the Petitioner has deliberately avoided to file those documents as mandated by the Judgment of the Hon'ble Supreme Court in case of ***Rajnish V/s. Neha & Another¹***, more particularly, in paragraph No. 66, which is reproduced hereunder:

“66. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Prakash Bodhraj v. Shila Rani Chander Prakash. MANU/DE/0028/1968 : AIR 1968 Delhi 174 The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.”

22. The failure on the part of the Petitioner to produce the relevant documents raises an inference that, sufficient funds are at his disposal as alleged by the Petitioner in the nature of investments. This inference can be supported from the various deposits in the passbook of the Postal

¹ (2021) 2 SCC 324

Department, which are already referred hereinabove. Therefore, the Judge, Family Court has rightly observed that, the Petitioner is a man of means capable of providing interim maintenance to the Petitioner.

23. Although the Respondent has claimed Rs.80,000/- by giving details of her expenses of Rs.77,000/-, the learned Judge, Family Court has not believed the expenses and has taken a balanced view of the matter by holding that, since the Respondent is already receiving pension of Rs.12,000/- per month and her major children who are also earning, are also responsible to maintain her. Therefore, it is held that it would be appropriate to grant Rs.8,000/- per month as interim maintenance to the Respondent.

24. This being an order of granting interim maintenance, it does not require to be proved by leading evidence, the learned Judge has relied on the affidavit of assets and liabilities and supporting documents. He has rightly arrived at a reasonable amount without burdening the Petitioner, taking into account all the facts and circumstances and the documents placed on record. A very reasonable amount of Rs.8000/- per month has been granted by the Judge, Family Court, which does not require any interference, since the jurisdiction of this Court is limited

only to the extent of deciding correctness of the order passed by the Family Court which has a very limited scope.

25. After considering the matter on the touch stone of the scope of powers of this Court under Article 227 of the Constitution of India, more particularly, in the light of the observations made by the Hon'ble Supreme Court in case of ***Municipal Corporation of Greater Mumbai and Ors. Vs. Vivek V. Gawade & Ors.***², which read thus:

“16. We now proceed to discuss, noticing that the petition of the respondents was also filed under Article 227, whether the High Court could have granted succour to the respondents by exercise of its powers under such article. It is well settled that the provision bestows the high courts with powers of administrative and judicial superintendence over subordinate courts. The test for exercise of such power was laid down in a 5-Judge Constitution Bench decision of this Court in Rajendra Diwan v. Pradeep Kumar Ranibala as follows:

“85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised ‘in the cloak of an appeal in disguise’.

86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles

226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not reassess or re-analyse the evidence and/or materials on record....The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law.”

26. From the observations made hereinabove it is evident that, this Court is conferred with a power under Article 227 to interfere only in cases where the impugned order is perverse; arbitrary; unreasonable; passed in violation of principles of natural justice; passed without jurisdiction or passed in usurpation of powers. I do not find that any of the aforementioned grounds have been made out by the Petitioner for exercise of powers by this Court.

27. I do not find any jurisdictional error committed by the Judge, Family Court while passing the order dated 3rd April 2024 by granting maintenance of Rs.8000/- per month to the Respondent; hence, no interference is warranted in the present Writ Petition. As such, the Writ Petition is dismissed being devoid of merits.

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[MANJUSHA DESHPANDE, J.]