

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

WRIT PETITION NO.4413 OF 2025

Poonam Jaidev Shroff An adult, Indian Inhabitant of Mumbai, residing at 82, Pali Hill, Bandra, and currently residing at No. 38 Pali Hill, Bandra, Mumbai – 400 050 (A-2742 of 2015)	}	Petitioner
Versus		
Jaidev Rajnikant Shroff An adult, Occ: Business, British citizen, Dubai resident, and NRI residing at 82, Pali Hill, Rajendra Kumar Chowk, Bandra (West), Mumbai – 400 050 (A-2742 of 2015)	}	Respondent

Mr. Girish Godbole, Senior Advocate a/w Adv. Madhu Gadodia, Ms
Kimaya Prajapati, Ms Anisha Nair and Mr. Udit Mehta i/b Naik
Naik & Co., for the Petitioner.

Mr. Vineet Naik, Senior Advocate a/w Mr. Sameer Tapia, Ms Siddai
Doshi and Mr. Rohan Marathe i/b ALMT Legal, for the Respondent.

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 17th JUNE, 2025

PRONOUNCED ON : 04th JULY, 2025

: J U D G M E N T :

1. Rule. Rule made returnable forthwith, the Writ Petition is taken up for final disposal with consent of the parties.
2. The Petitioner assails the order dated 31st January 2025 passed below Exhibit- 225 by the Judge, Family Court No. 7 at

Bandra, Mumbai, in Petition No. A - 2742 of 2015. By way of the Application (below Exhibit- 225) filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (for short “the HAMA, 1956”), the Petitioner-wife herein has prayed for clubbing of her petition for maintenance being Petition No. A- 26 of 2023 with the Petition No. A-2742 of 2015 filed by the Respondent-husband herein for divorce under Section 13 of the Hindu Marriage Act, 1955 (for short “the HMA, 1955”).

3. For the sake of convenience and to avoid confusion, the parties are referred to as husband and wife hereinafter.

4. The Application (below Exhibit – 225) filed by the wife in the Hindu Marriage Petition, has been rejected vide Order dated 31st January 2025 by the Judge, Family Court No. 7 at Bandra, Mumbai.

5. The wife, who had filed the Application for maintenance under the HAMA, 1956, has preferred the present Writ Petition against the order of rejection of her Application for clubbing of the two proceedings. The facts giving rise to the present Writ Petition, according to the narrations of Petitioner, are as under :

(i) The Petitioner-wife and the Respondent-husband herein were married on 27.11.2004, under the Special

Marriage Act, 1954.

(ii) A daughter, namely, Rudritara Shroff is born out of the wedlock of the parties.

(iii) The husband has filed petition for divorce being M.J. Petition No. A- 2742 of 2015, before the Family Court, Bandra, on 06th October 2015 on the ground of alleged cruelty.

(iv) The wife opposed the said petition by filing written statement on 20th February 2019. After the amendment to the said petition, amended written statement is also filed by the wife. The wife has not filed any counterclaim.

(v) During the pendency of proceedings, the wife has filed a Miscellaneous Application seeking interim maintenance to the tune of Rs.1.90 Crores per month for herself and her minor daughter Rudritara.

(vi) The Family Court directed the husband to pay an amount of Rs. 7 lakhs per month to the wife and Rs.5 lakhs per month to the daughter and Rs. 20 lakhs as one time litigation expenses, vide Order dated 30th July 2018.

(vii) The order granting interim maintenance was subject

matter of challenge before this Court in a Writ Petition filed by the wife for enhancement of the maintenance amount. The said Writ Petition came to be dismissed vide order dated 06th February 2020, with no stay to the order impugned.

(viii) The dismissal of the said Writ Petition has been challenged by the wife before the Hon'ble Supreme Court, in Civil Appeal No. 2719 of 2022, which is pending before the Hon'ble Supreme Court.

(ix) The issues in Divorce Petition filed by the husband came to be framed on 21st October 2021.

(x) Since no counterclaim was filed by the wife, issue regarding the grant of maintenance was not framed. The issues regarding entitlement of permanent alimony and custody of minor daughter has also been framed vide Order dated 21st October 2021.

(xi) The husband has filed his affidavit in lieu of examination-in-chief on 17th October 2022, along with a compilation of documents.

(xii) The husband was cross-examined by the wife's Advocate on 09th October 2023 and 23rd January 2024.

(xiii) There are number of proceedings pending between the parties. In one of such proceedings, the Hon'ble Supreme Court vide order dated 03rd December 2021 has been pleased to expedite the proceedings for Divorce pending before the Family Court.

(xiv) Vide order dated 18th March 2024, the Hon'ble Supreme Court has requested the Family Court to complete the proceedings within a period of six months. The trial could not be completed before 18th September 2024. Since the trial could not be completed within the prescribed period, the Monitoring Committee of this Court addressed a communication to the Family Court to hear the matter on day-to-day basis. The wife has filed the petition under Hindu Adoptions and Maintenance Act, 1956, in July 2023, which is at the stage of filing of Written Statement by the husband.

(xv) In the meantime, the wife has also filed permanent alimony application on 18th March 2024 in the M.J. Petition No.2742 of 2015 filed by the husband before the Family Court at Bandra.

6. On this background, the wife had filed the application (below Exhibit- 225), on which the impugned Order dated 31st January

2025 came to be passed.

7. Shri. Girish Godble, learned Senior Counsel appearing for the Petitioner-wife submits that, considering the commonality of the issue of maintenance between the parties in the proceedings which have been filed under the HAMA, 1956 and the Divorce Petition under the HMA, 1955, the Application was filed seeking clubbing of those two Petitions. Since the parties in both proceedings are common and that the common questions of fact and law are required to be considered in both proceedings, clubbing both the proceedings together would shorten the litigation and eliminate the possibility of conflicting judgments and orders that are likely to be passed if the proceedings are conducted separately.

According to him, the Family Court has fell in error by holding that the proceedings are under two distinct statutes; the legal principle and cause of action are also distinct in both the proceedings, therefore, those cannot be clubbed together. According to him, in the Divorce Petition, the wife has filed a permanent alimony application, therefore there is a vivid overlapping between the issues of permanent alimony and the one for maintenance. It is urged that, even in the Divorce proceedings question of permanent alimony is required to be adjudicated, therefore, it is in the fitness of things that the Divorce and Maintenance proceedings should be

tried together.

8. Mr. Girish Godbole, learned Senior Counsel would submit that, the consolidation of both the proceedings would facilitate the trial, since the parties to the dispute in both the proceedings are same, even the witnesses would be the same. Hence, the proceedings can be decided expeditiously. If both the proceedings are clubbed together, a common trial and recording of evidence of both the cases can be conducted together. It would ensure consistency in the judicial findings and avoid conflicting orders. It would certainly save the time and avoid unnecessary duplication of proceedings.

He further submits that, considering that an additional issue regarding permanent alimony is also framed vide Order dated 21st October 2021 and that too forms part of the proceeding in the Hindu Marriage Petition for divorce. There would be a repetition of the evidence to be lead in both the proceedings. In order to avoid the repetition of leading of evidence, in the two set of proceedings, it would be appropriate to club the proceedings.

It is further submitted that, the finding of the Judge, Family Court at Bandra that, the Divorce Petition is related to dissolution of marital relationship, whereas maintenance Petition is about financial sustenance and support, cannot be a ground for refusing to

club the matters and such ground is not sustainable since the additional issue of permanent alimony is already framed by the said Court, which is common in both the proceedings. It is his contention that though the stages of both these proceedings are different, and the husband has yet to file a Written Statement in the Petition filed by the wife for Maintenance under Section 18 of the HAMA, 1956, however, if this Court directs the husband to file Written Statement within the stipulated period, a day-to-day schedule can be worked out for bringing the proceedings under the HAMA, 1956 at the same stage to that of divorce proceedings to synchronize the proceedings under the HMA, 1955 and, thereafter, the proceedings can be tried together.

9. Reliance is placed on the reported judgment of this Court in case of ***Sanjeev Indravadan Dani V/s. Rupal Sanjeev Dani***¹, wherein this Court has held that consolidation of the trial of two separate petitions can be granted by the Court by invoking its inherent powers under Section 151 of the CPC. The separate petitions pending before the Family Court under Sections 9 and 13 of the HMA between the same parties were consolidated by this Court by exercising its powers under Section 151 of the CPC for meeting the ends of justice.

1 2010 (1) Mh.L.J

The learned Senior Counsel has drawn by attention to the observations of the Hon'ble Supreme Court which have been reproduced in paragraph 12 of the said judgment, wherein it is observed that, it is not necessary that all question or issues should be common to both actions. Even if some issues and some evidence is common, it would be sufficient for a joint trial especially, when the two actions arise out of the same transaction or series of transactions.

The learned Senior Counsel has also relied on the following observation made by this Court in paragraph 19 of the said Judgment:

“19. We have no hesitation in taking the view that the Family Court has ample powers to order consolidation of trial of two petitions pending before it between the same parties even if the same were claiming entirely different reliefs. Such power can be exercised with reference to the inherent powers under Section 151 of the Code. That power is in no way impacted by provisions such as section 21 A of the Hindu Marriage Act.”

10. Per contra, Mr. Vineet Naik, learned Senior Counsel for the Respondent-husband submits that the application of the Petitioner-wife is not at all maintainable. The Application has been filed in order to avoid the regular procedure of conciliation undertaken before the Family Court. The wife wants to directly club the proceedings of maintenance without undergoing the regular

procedure. He also objects the clubbing of proceedings, on the ground that the Divorce Petition has been filed by the husband in the year 2015 i.e. almost eight years prior to the filing of the Application, by the wife under the HAMA, 1956.

11. According to him, though the parties to both the proceedings are same, but considering the nature of relief that is prayed for and the evidence that is required to be adduced in both the proceedings is different. The clubbing would not be appropriate. The proceedings filed by the husband are under Section 13 of the HMA, 1955 for Divorce, in which the nature of evidence that is required to be adduced by the wife as well as the husband is different from the nature of evidence that is required to be adduced in the proceedings for maintenance under Section 18 of the HAMA, 1956.

12. The learned Senior Counsel for the Respondent-husband further submits that the maintenance proceedings during the divorce are distinct and serve a different purpose. It is only during the pendency of the Divorce proceedings the interim maintenance can be granted, for which the evidence adduced by the parties is of different nature. The maintenance proceedings under HAMA are filed by the wife are instituted two years ago, in which the Written Statement is yet to be filed by the husband.

He further points out that, the Hon'ble Supreme Court vide Order dated 03rd December 2021 itself while hearing the Interim Application filed by the wife in Civil Appeal, filed by the husband has passed an order directing the Family Court to expedite the proceedings of Petition No. A- 2742 of 2015 and decide it as expeditiously as possible.

Thereafter, again vide Order dated 18th March 2024 the Hon'ble Supreme Court has directed that, the proceedings should be decided within a period of six months from the date of order. In spite of that, the proceedings have not yet been decided and, presently, day to day hearing of the Petition for divorce is going on as per the direction issued by the Monitoring Committee of this Court. Therefore, in view of the direction issued by the Hon'ble Supreme Court as well as this Court, it would not be appropriate to club the two proceedings. It is submitted that it would result in delaying the proceedings filed by the husband in the year 2015, as a result of consolidation of proceedings.

13. It is his contention that, though the wife has filed belated application in the Petition for Divorce, making a prayer for permanent alimony, the relief of the wife would depend upon the outcome of the Divorce proceedings. If the decree of divorce is refused, there would be no question of granting any permanent

maintenance under HMA, 1955.

On the other hand, in the petition filed by the wife under Section 18 of the HAMA, 1956, the relief can be granted only during the subsistence of marriage. A divorced wife cannot claim any maintenance under HAMA, 1956. Her only remedy is under HMA, 1955. In support of his submission, reliance is placed on the judgment of this Court in case of ***Panditrao Chimaji Kalure V/s Gayabai Panditrao Kalure***².

In view of the aforementioned position of law, according to him, considering the two different enactment under which the relief is claimed by the respective parties, the order passed by the Judge, Family Court at Bandra (below Exhibit – 225) is just and proper, therefore does not deserve any interference.

14. Heard the respective counsel for the parties.

15. After going through the impugned order and the relevant documents placed on record, it appears that the husband has filed the Divorce proceedings on 06th October 2015. After raising challenge to various orders in the proceedings for Divorce, which have reached up to the Hon'ble Supreme Court on more than one occasion. The wife has filed the Petition under Sections 18 and 23 of the HAMA, 1956 on 07th July 2023. Even prior to filing of the

² 2002(2) Mh.L.J. 53

Petition for maintenance by the wife, the Hon'ble Supreme Court had directed the Family Court to expedite the Divorce proceedings filed by the husband vide Order dated 03rd December 2021, as well as subsequent order dated 18th March 2024. In fact, on 18th March 2024 directions are given by the Hon'ble Supreme Court, to decide the Divorce proceedings within a period of six months. It appears that on the same day the wife has filed the Miscellaneous Application seeking permanent alimony of Rs.1000 Crores in the Divorce proceedings. It is informed that presently, day to day hearing of the Divorce Petition is being conducted.

16. In view of the above undisputed facts, this Court is called upon to decide whether it would be appropriate to grant the prayer made by the Petitioner- wife, by setting aside the impugned order?

Section 151 of the CPC confers inherent powers on the court, which reads thus:

“151. Saving of inherent powers of Court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court.”

Admittedly, the courts are vested with inherent powers under Section 151 of the CPC, which can be invoked if necessary for meeting the ends of justice, or to prevent the abuse of process of

court. Fact remains that such power is discretionary. When two suits are filed and the matter in issue is directly and substantially similar to the issue in the suit previously instituted between the same parties, the discretionary powers can be exercised by the courts for consolidation of two proceedings. It is expected that the courts should take an over all view of the matter. Only after taking into consideration, convenience of the parties; as well as to avoid separate overlapping evidence in the proceedings; if the parties to the proceedings are same and the evidence required to be adduced is also same, in order to avoid conflicting orders, the court can pass an order directing to consolidate the two proceedings, which would serve the ends of justice.

17. In my view, the first impediment in granting the prayer of the Petitioner is the order passed by the Hon'ble Supreme Court, which directed the Family Court to decide the Divorce proceedings within a period of six months from the date of order i.e. from 18th March 2024, which is already over. When the time granted for deciding the proceedings within a period of six months was about to get over, the communication was addressed to the Hon'ble Supreme Court on 10th September 2024 through the Registry of this Court seeking extension of time. Similarly, one more communication was addressed to the Registrar (Judicial – II) of this Court intimating

him about the above facts alongwith letter addressed to the Hon'ble Supreme Court for extension of time. In response to the said letter, the Registrar (Judicial – II) informed the Family Court at Bandra, Mumbai that the Committee headed by the Hon'ble Judge of this Court directed the Family Court to schedule hearing of the Petition on day to day basis and to take effective steps for deciding it expeditiously. In furtherance thereto, an order (below Exhibit- 1) was passed on 18th September 2024 by the Judge, Family Court. The Family Court referring to the order dated 18th September 2024 passed an order directing the parties, that the matter will be taken up on every working day as per the order dated 13th September 2024.

18. So far as the stage of maintenance under the HAMA, 1956 is concerned, the Petitioner- wife has filed her affidavit in lieu of examination-in-chief on 18th February 2025. As against that, the Divorce proceedings filed by the husband, are at an advance stage. Apart from the huge difference in the stage of two proceedings, cause of action in both the proceedings is different, both the proceedings arise out of different enactments and serve distinct legal purpose. The two remedies are independent and distinct. The maintenance is an independent legal right, therefore, it will have to be proved independently and consolidating it with the matrimonial

dispute may lead to procedural complications and unnecessary delay, therefore, it would be appropriate to decide the proceedings independent of each other.

The permanent alimony claimed by the Petitioner-wife in the Divorce proceedings under Section 25 of the HMA, 1955 is an ancillary relief dependent upon the proceedings filed under Section 9 to 14 of the HMA, 1955. It is not the main relief, it is an incidental relief in the proceedings under the HMA. As against that, the relief of maintenance claimed by the Petitioner-wife under Section 18 of the HAMA, 1956 is an independent relief. This is a relief, which a Hindu wife is entitled to claim during the subsistence of marriage, and would be entitled to live separately from her husband without forfeiting her claim for maintenance. Provided, she fulfills any of the conditions in Section 18, in sub-clause (a) to (f) of the HAMA. In short, without disturbing her marital status or irrespective of proceedings of marriage pending between the parties, a wife is entitled for separate residence and maintenance from her husband.

19. This issue has been elaborately considered and decided by the Hon'ble Supreme Court in case of ***Chand Dhawan (Smt) V/s. Jawaharlal Dhawan***³. More particularly, in paragraph 25 the Hon'ble Supreme Court has explained the subtle difference in the

³ 1993 (3) SCC 406

scope and object governing the provision of maintenance provided in two different enactments. Paragraph 25 of the said judgment gives clarity to the position of law, which reads thus:

“25. We have thus, in this light, no hesitation in coming to the view that when by court intervention under the Hindu Marriage Act, affectation or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that court, to be altered or modified as future situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification under Section 18(1) of the Hindu Adoptions and Maintenance Act. The court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as such and are clear on their subjects and by liberality of interpretation interchangeability cannot be permitted so as to destroy the distinction on the subject of maintenance.”

20. Though the Petitioner- wife has relied on the judgment of this Court in ***Sanjeev Indravadan Dani V/s. Rupal Sanjeev Dani*** (*supra*), the two proceedings which were consolidated by exercising the inherent powers were under the same enactment that is the HMA, 1955, which were filed under Sections 9 and 13 of the HMA respectively. Therefore, this Court while exercising the powers under Section 151 of the CPC has taken a view that, since the parties

are same, even the evidence that would be adduced by the parties would be same, hence, in order to avoid multiplicity of the proceedings and duplication of evidence the order has been passed.

21. After taking over all view of the matter, it can very well be inferred that the evidence in the Divorce proceedings filed by the husband has substantially progressed, whereas the proceedings for maintenance filed by the wife is still at initial stage. The issues involved in both the proceedings are governed by different enactments. Even the cause of action cannot be said to be the same.

In view of the above discussion, in my view, it would be undesirable and impracticable to make an order for consolidation. There is no jurisdictional error committed by the Judge, Family Court at Bandra. After going through the order, I do not find that there is any jurisdictional error while passing the impugned order. Hence, no case for interference is made out by the Petitioner-wife. Accordingly, Writ Petition stands dismissed. Rule stands discharged.

(MANJUSHA DESHPANDE, J.)