

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

**INTERIM APPLICATION NO. 12632 OF 2025
IN
FAMILY COURT APPEAL NO. 25 OF 2020**

Shalini Ashwini Nayyar	...Applicant
Versus	
Brigadier Ashwini Nayyar	...Respondent

Mr. Vikramaditya Deshmukh a/w Ms. Priya Chaubey i/b Ms. Sapana Rachure, for Applicant.

Mr. Ajit Anekar i/b Auris Legal, for Respondent.

Brigadier Ashwini Nayyar, Respondent present in person.

CORAM : ADVAIT M. SETHNA, J.

DATED : 24 OCTOBER 2025

P.C.:-

(VACATION COURT)

1. Heard Mr. Vikramaditya Deshmukh, learned counsel for the Petitioner and Mr. Ajit Anekar, learned counsel for the Respondent.

2. The Applicant has moved this Interim Application on the ground of urgency which according to her is that the applicant is seeking 30% of the net pension amount along with Dearness Allowance payable to the respondent which is paid to the applicant towards her monthly maintenance.

The applicant contends that, if the respondent is paid all the pensionary

benefits without retaining any portion thereof before the hearing of the this Interim Application, the same will become infructuous.

3. The Applicant has also contended that on 15 October 2025 this proceedings were mentioned before the Division Bench of this Court comprising of (Her Ladyship Hon'ble Smt. Justice. Revati Mohite Dere and His Lordship Hon'ble Shri. Justice. Sandesh D. Patil) when the applicant was granted the liberty to move before the vacation court, but the said order is not uploaded.

4. At the very outset Mr. Deshmukh, learned counsel for the Applicant has drawn this courts' attention to two orders of the Division Bench of this Court, both dated 18 December 2019. It appears therefrom that the Family Appeal (st) No. 29030 of 2019 is admitted. The subsequent order of the same date i.e. 18 December 2019 passed by the same Division Bench of this Court in Paragraph 6 which read thus :-

"6. Considering these facts, by consent of both the parties, following order is passed.

a) The operation and implementation of Clause (2) of the impugned Judgment and Decree dated 25/09/2019 passed by the Family Court No.2, Pune in Petition No. A-1221 of 2014 is stayed till the hearing and final disposal of Family Court Appeal No. 29030 of 2019, which reads thus:

"2. The marriage dated 22/01/1997 solemnized between the

petitioner and the respondent is dissolved by decree of divorce under the provisions of Section 13(1)(ia) of the Hindu Marriage Act, 1955."

b) The PCDA (Officers), Golibar Maidan, Pune to deduct 20% amount from the respondent's salary as per their order dated 01/02/2014 for payment of maintenance to the applicant/wife, till he retires.

c) Liberty is granted to the applicant to move appropriate application for further orders after retirement of the respondent from his services."

5. It is pursuant to the liberty granted in paragraph 6 of the said order that the present Interim Application has been filed by the applicant, which is now placed for consideration before this Court.

6. Heard Mr. Deshmukh and Mr. Anekar, learned counsel for the parties. As far as the prayer clause A of the present Interim Application is concerned i.e. directing the Principal Controller of Defence Accounts (Pensions), Prayagraj, to credit 30% of the respondents' monthly pension amount along with dearness allowance directly into the applicant's bank account as interim monthly maintenance is concerned, this cannot be granted at this stage.

7. The Court is of the view that the Applicant by the above prayer is seeking substantive relief. Before granting such relief, the Court would have to consider the legality, tenability, which can be done only after hearing the

parties and passing appropriate orders. Thus, as far as such relief sought in prayer clause -A of the Interim Application is concerned, this Court is of the view that the same can be decided by the regular Court upon reopening.

8. Mr. Deshmukh at this stage presses prayer clause -D of the Interim Application which read thus :-

“Pending the hearing and final disposal of the above Appeal, the Applicant prays that this Hon'ble Court may be pleased to direct the Principal Controller of Defence Accounts (Pensions), Prayagraj, and all other concerned authorities to withhold and reserve at least 30% (thirty percent) of the Respondent's total retirement and terminal benefits including gratuity, commuted value of pension, leave encashment, and any other lump-sum dues payable upon superannuation towards the Applicant's lawful maintenance claim, and to release the remaining amount to the Respondent subject to further orders of this Hon'ble Court.”

9. He would submit that if such relief is not granted and the entire amounts are dissipated by the respondents, the applicant would be rendered completely remediless. It is only as a matter of abundant caution and for the sake of security, that some protection in terms of the said relief be granted.

10. Mr. Anekar, however, would submit otherwise. He would oppose the grant of any relief and/or indulgence as far as prayer clause -(d) is concerned.

11. At this stage this Court has perused the order dated 18 December

2019, where the court had *inter alia* directed the Principal Controller of Defence Accounts (“PCDA”) to deduct the 20% amount from the respondent’s salary as per the order dated 01 February 2014 for payment of maintenance to the applicant/wife, till he retires with liberty to move appropriate application for further orders after retirement of the respondent from his service. It is true that this was a consent order as submitted by Mr. Anekar, learned counsel for the respondent.

12. However, it is also undisputed that the respondent retires from service on 31 October 2025 when in all probabilities all the amounts forming part of the retirement corpus would be disbursed to the respondent.

13. Considering the peculiar factual complexion, in my view the interest of justice would be served if the PCDA is directed to retain 20% of the respondents total retiral and terminal benefits, which form part of his dues payable upon superannuation. Such retention is in the interregnum only for the purposes of security and to address the apprehension expressed by Mr. Deshmukh. In any event, there is no much time between 31 October 2025 and the reopening of this Court on 3 November 2025. I do not find any prejudice would be caused to the respondent, if such order is passed, at this juncture in the given factual complexion.

14. Thus, the following order, at this stage, would meet the ends of justice:-

ORDER

- i) The PCDA shall retain 20% of the total retiral and terminal benefits of the respondent which is due and payable upon superannuation, in the interregnum.
- ii) The above direction would be subject to the orders that would be passed by the regular Court.
- iii) Liberty to the parties to apply immediately on reopening for listing of this application and/or passing further appropriate orders.

15. All concerned to act on an authenticated copy of this order. The Advocate for the petitioner shall circulate a copy of this order to the PCDA.

(ADVAIT M. SETHNA, J)