

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/
Appellant

Versus

Brigadier Ashwini Nayyar ...Respondent

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

Ms. Pallavi N. Dabholkar, APP for the Respondent.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED: 30th APRIL 2026.

ORDER (Per : Manjusha Deshpande, J.):

1. This Interim Application has been filed by the Applicant-wife with a prayer to direct the principal controller of Defence Accounts (Pensions) ("PCDA"), Prayagraj, to credit 30% of the Respondent's monthly pension amount alongwith dearness allowance directly into her Bank Account in lieu of monthly maintenance.

RAJESHRI
PRAKASH
AHER

Digitally signed by
RAJESHRI PRAKASH
AHER
Date: 2026.05.08
19:26:29 +0530

2. The Applicant has filed Appeal before this Court, feeling aggrieved by the Judgment and decree dated 25th September, 2019, passed by the Family Court, Pune dissolving the marriage between the Applicant and the Respondent by granting decree of divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955, by restricting the maintenance of 20% of the amount of gross salary of the Respondent, till the Appeal period is over.

3. The learned Advocate Ms. Vikramaditya, for the Applicant submits that, the Appeal came to be admitted by this Court *vide* order dated 18th December, 2019, and the order passed by the Family Court restricting maintenance only till the Appeal period, has been modified by issuing directions to the PCDA (officers) Golibar Maidan, Pune, to deduct 20% amount from the Respondent's salary as per the earlier order dated 1st February, 2014, for payment of maintenance to the Applicant-wife, till the Respondent retires with liberty to move the appropriate application after retirement of the Respondent.

It is submitted that, the Applicant was receiving an amount of 20% from the salary of the Respondent, though initially it was sufficient in addition to her own income as a pre primary teacher, but after passage of some time, it proved to be insufficient for upbringing her son and to take care of all her ailments. Therefore, she has filed this application with the prayer to issue direction to grant 30% of the net pension with the dearness allowance, considering her needs and the rising costs of living. The application was also filed in the contemplation of the superannuation of the services of the Respondent on 31st October, 2025, so as to ensure that there should not be any break in the maintenance receivable by her after retirement of the Respondent.

4. Our attention is drawn to the order passed by the vacation Judge (Coram : Advait M. Sethna, J.) of this Court dated 24th October, 2025, who after hearing the respective parties has passed an order directing the PCDA to retain 20% of the total retiral and terminal benefits of the Respondent which is due and payable upon his superannuation in the interregnum, which was subject to the

order that would be passed by the regular Court. Now the Respondent has superannuated, the earlier order, directing to make payment of 20% from the salary of the Respondent needs to be modified by quantifying the maintenance admissible to the Applicant in proportion to the pension received by the Respondent.

5. Even though a prayer is made by the Applicant to award her 30% of monthly pension with dearness allowance, alongwith other benefits, as admissible to the dependent spouse of an Army official, it is opposed by the learned Advocate for the Respondent.

6. Ms. Pallavi Dabholkar, learned Advocate for the Respondent has opposed the prayer of the Applicant by contending that the Applicant is not at all entitled for any maintenance amount, the benevolent provisions enacted for the protection of weaker sex is being misused by the Applicant, hence, such misuse needs to be curbed . According to her, the allegations made against the Respondent in the Interim Application as well as Appeal is baseless and contrary to the provisions of law as well as the findings of

fact recorded by the trial Court. She has drawn our attention to the observations made by the trial Court refusing to grant her maintenance, she submits that the Family Court vide order dated 7th September, 2015, has passed a reasoned order, thereby refused the Application for interim maintenance filed by the Applicant after recording a finding that since the Applicant is the qualified doctor, though she was working as a primary teacher, has capacity to earn. Hence, her application for interim maintenance has been rejected with costs. Applying the same parameters, she would submit that the Applicant is not entitled for any maintenance from the Respondent.

7. We have heard the respective parties and we have also perused the previous orders which forms the part of record. Admittedly, the Family Court Appeal is filed in the year 2020 and since then the Applicant was receiving maintenance amount of 20% of the salary of the Respondent. Considering that, the maintenance amount was restricted till the retirement of the Respondent, and the Respondent stood retired on 31st October, 2025, the Authorities have stopped making payment of the maintenance to the Applicant. From

the communication dated 17th November, 2025, placed on record by the Advocate for the Applicant, which is addressed to her and tendered by her in the Court, it transpires that although this Court vide order dated 24th October, 2025 had directed the PCDA to retain 20% of the total retiral benefits admissible to the Respondent, upon his superannuation, this amount could not be secured by the Respondent by retaining it. It is informed that by the time the order dated 24th October, 2025, came to be issued, the Pension Payment Order (PPO) had already been generated and subsequently the benefits granted in the PPO have been automatically credited to the pensioner on 1st November, 2025.

The Applicant is presently not receiving any maintenance for her survival. The calculation sheet of the retiral benefits and the pensionary entitlement of the Respondent is placed on record, which discloses that Respondent has received gratuity of Rs. 25,00,000/- and capitalized value of pension is Rs. 59,52,442/-. He has also received an amount of Rs. 59,52,442/- towards commutation of Pension. According to these calculations, the lump-sum amount received by the Respondent is Rs. 83,31,442/-.

The monthly pension received by him is Rs. 1,16,550/-. The Respondent who was personally present in the Court submitted that, the net pension received by him is Rs.1,16,550/-, this amount is without any deduction towards the taxes. A note appears in the said document which states that, after deductions, the net pension receivable by the Applicant would be around Rs. 80,000/- or Rs. 85,000/-. Considering the above calculations, alongwith the fact that although this Court had directed to secure 20% of retiral benefits, it could not be secured as it was already disbursed. In our view, a huge amount of almost Rs. 84,00,000/- and plus is at the disposal of the Respondent alongwith the monthly pension receivable by him, which is more than sufficient for him to comfortably live with no responsibilities.

The record discloses that, the Applicant was granted maintenance in accordance with provisions of Section 90 (i) of the Army Act, 1950 read with Rule 193 of the Army Rules, 1954, sanctioning deduction of 25.5 % per month from the pay and allowance of the Respondent towards maintenance for Applicant and her son Dhruv. This amount made admissible to the Applicant in accordance with the Army

Rules, 1954, was continued all these years, even during the pendency of Hindu Marriage Petition, and by way of an ad-interim order granted by this *vide* order dated 18th December, 2019.

The final hearing of this Appeal is definitely going to take some time, therefore, some amount for the survival of the Applicant needs to be awarded, till the adjudication of the Appeal. Admittedly, the financial position of the Respondent also has undergone a change on his superannuation, therefore, the maintenance amount also needs to be granted commensurating with the present income of the Respondent. We are informed that when the order directing 5.5 % of the salary of the Respondent to be deducted towards maintenance of his son, due to passage of time, as the son has now completed his education and is earning his livelihood, therefore, the maintenance awarded to the son is no longer payable and only the applicant wife is entitled for the maintenance now. We are informed that the Applicant presently resides with her aged mother and she also needs to be taken care of.

As compared to him, the Applicant has no source of income, which makes it necessary to grant her some amount of maintenance for her day-to-day as well as medical expenses. In the given scenario, in our opinion, it would be appropriate to grant Rs.40,000/- per month to the Applicant towards monthly maintenance.

8. Accordingly, we direct the Principal Controller of Defence Account (Pension) Draupadi Ghat, Prayagraj to credit the amount of Rs.40,000/- per month in the bank account of the Applicant from the Respondent's monthly pension towards her interim monthly maintenance, during the pendency of the Appeal.

With the aforesaid directions, the Interim Application stands disposed of.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)