

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.309 OF 2017
IN
FAMILY COURT APPEAL NO.180 OF 2017**

Sheetal @ Urvashi Deepak Bhatija ... Applicant
versus
Deepak Govindram Bhatija ... Respondent

Mr. Abhijeet Sarwate with Mr. Ajinkya Udane, for Applicant.
Mr. Ashish Kamat with Mr. Ramchandra Yadav i/by Legal Vizz, for Respondent.

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE: 17th OCTOBER, 2019

P.C.:

1. This civil application is filed by the appellant-wife. She has prayed for granting interim maintenance to herself @ Rs.50,000/- per month; a further sum of Rs.55,000/- per month towards rent for herself and two daughters. She has also prayed for the reimbursement of a sum of Rs.1.20 crores to be made by the respondent-husband which she has spent for the higher education of her child in Australia. Yet another prayer for payment of a sum equivalent to 2100 Australian dollars per month for the educational expenses for the elder daughter – Shristi for the remaining period. She has also prayed for providing maintenance @ Rs.1,00,000/- per month to the the younger daughter – Sholka. She has claimed litigation cost of Rs.2,00,000/-.

2. The appellant-wife and respondent-husband had several matrimonial disputes. The marriage between the wife and husband was dissolved by the family court by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. However, the wife being aggrieved by the dismissal of her claim for maintenance, lumpsum alimony, residence and litigation expenses; insufficient maintenance with regard to her daughters – Shloka and Shrishti and her claim for reinstatement of her associate membership in Khar Gymkhana, has filed the present family court appeal.

3. Pending such appeal, the wife has filed this application seeking the above noted prayers. In the civil application, she has stated that the respondent-husband is engaged in multiple businesses, such as investment business, money lending, share business, financing, etc. He also owns shops and offices situated at Mumbai. She has stated that she has sent her elder daughter Shrishti for studies to Australia by taking education loan, mortgaging her flat situated at 902, Paramount Towers. Shrishti has joined graduate programme at Edith Cowan University, Australia in the year 2014. Her fee is Rs.7 Lakhs per term i.e. approximately Rs.15 Lakhs per annum. Additionally she has to bear cost of living. She has estimated the total expenditure for five year course to Rs.1.20 crores. She has further stated that the younger daughter Sholka has been diagnosed with Polycystic Ovarian Disorder (PCOD), which requires monthly medical expenses of Rs.12,000/-. She points out that the family court while awarding maintenance to the family, the requirement of the residence has been

overlooked.

4. The respondent has filed a reply disputing the averments made in the civil application. He contends that the wife has her own source of income. She has been running a businesses in the names of Threads-N-Homez and Threads-N-Homez Ghar, from which she makes sizeable profits. He has denied that he has multiple sources of income. He has stated that from her flat at Paramount Towers, the applicant was receiving monthly rent of Rs.1,10,000/-. He denied having purchased any new flat, but stated that the scheme in which he owned flat was redeveloped, upon which he received a new unit. He has further pointed out that the daughters own a flat at 601, Badrinath Building, from which rent income of Rs.1,00,000/- is generated. He has pointed out that the applicant has received 11000 shares of Indusind Bank on 6th June, 2017 from him. At that time, the share was valued at Rs.1500/- per share. The total transfer, thus was of a sum of Rs.1.65 Crores. In December 2017 the shares were valued at Rs.1670/- making the total value of shares to Rs.1,83,70,000/-. He has further stated that his capital is reduced to merely Rs.60 Lakhs. As against this, he has paying maintenance of Rs.6 Lakhs to the daughters and spends another six lakhs for his own maintenance. According to him, he receives rent income of Rs.95,000/- per month from Flat No.901, Paramount Towers, which is given on leave and license. In addition to this, he receives interest of Rs.37,500/- per month from money lent by him. He has stated that the decision to send the daughter for higher education was

taken without consulting him. He is in any case, not in a position to bear the expenditure for the same.

5. We may record that the family court in the judgment which is impugned in the appeal has awarded maintenance to the elder daughter @ Rs.30,000/- per month and to the younger daughter @ Rs.20,000/- per month, however, strangely limiting latter direction till the time she becomes major. We are informed that the younger daughter has since then become major, however, the respondent continues to pay maintenance at the same rate to her.

6. In background of such facts, learned counsel for the parties have made detailed submissions. Learned counsel for the applicant submitted that the husband has multiple sources of income, which he has systematically withheld from the family court as well as this Court. He has taken us extensively through the voluminous materials produced before the family court to contend that the husband was engaged in the businesses of money lending and financing. He had financed popular hindi feature films in the past. He had also given private loans of sizeable amounts to individuals on interest. He has multiple immovable properties, lives life of comfort. He submitted that when the husband and wife were together, they would travel abroad on vacations frequently. At times, they would also take the care taker with them abroad to take care of their young daughters, clearly revealing lavish life style and sufficient income. He further submitted that the elder daughter was sent abroad for

higher education to Australia in the year 2014. She allthroughout had bright academic career. Even in Australia, she continues to perform well. The applicant had to raise bank loan by mortgaging her flat to meet with such expenditure.

7. On the other hand, counsel for the respondent submitted that the husband has suffered from heart ailment. He is no longer in any active business. Barring two immovable properties, one of them which is occupied by him for his residence and another is on lease, he has no other immovable properties. The applicant, on the other hand, continues to be involved in her business. Even otherwise, she earns income from house property. The flat owned by the two daughters also generates monthly lease rent closed to Rs.1.30 lakhs.

8. Before we discuss the materials on record, we may record that the counsel for the applicant had stated before us that previously the applicant after shutting down her business, was not earning any income. However, recently she has been engaged as a retainer by M/s. Laries Impex at a retainer fee of Rs.75,000/- per month. She clarified that after deduction of tax, her net payment comes to Rs.68,000/- per month.

9. In order to show the husband's income and the sources thereof, counsel for the applicant had drawn out attention to the cross-examination of the husband before the family court, during which he had stated that he had transferred a sum of Rs.21 Lakhs to his sister by way of loan. He had given a sum of Rs.1 Crore to Mr. Prem Batra, Rs.2 Crores to Batra family as loan on 9% interest p.a. In such cross-

examination, he had further stated that he had a paid sum of Rs.40,01,025/- to Supreme Builders for extra constructed area of 300 sq.ft., over and above what he was entitled to under the redevelopment scheme. He had paid a further sum of Rs.15 Lakhs later on for the said purpose. He agreed that against the entitlement of flat for the carpet area of 850 sq.ft., he had received a flat with additional area total of which comes to 1100 sq.ft. He had agreed that he was a member of Khar Gymkhana. He had also agreed that he was in possession of one office in Jyoti Building and two offices in Chotani building and one in Geeta building, all of which are on pagadi basis. He agreed that on certain family trips, when the daughters were young, the maid had accompanied them.

10. On the other hand, learned counsel for the husband had drawn our attention to the documents on record suggesting that the applicant had sold a flat for a sum of Rs.48 Lakhs in the year 2009. He pointed out that the wife's income in the year 2010-11 was Rs.23,20,120/-. She has several fixed deposits. As on 31st March, 2011, she had a bank balance of Rs.13,40,437/-. He disputed her statement that she had stopped her own businesses. He pointed out that the income tax returns for the year 2015-16 also shows her income of Rs.15 Lakhs. In the year 2013-14, she had shown cash on hand of Rs.9.31 Lakhs. He submitted that the husband had transferred 11000 shares of Indusind Bank, current value of which would be in the vicinity of Rs.2.20 crores. He submitted that the loan given to Batra family was only Rs.1 Crore, that also

was many years back. It was erroneously recorded in the cross-examination that he had given separate amount of Rs.1 Crores and Rs.2 Crores to Mr. Batra and his family.

11. Both sides have thus, tried to project rather break financial picture of their resources as against rosy picture of the opponent's. We would have to wade through the documents on record in order to come to just conclusion. The documents and materials on record suggest the following :

(a) Whether her business as earlier continue or not, the applicant admits to be retained on a monthly retainer fees of Rs.75,000/-;

(b) the flat jointly owned by the daughters is leased out, earning lease income of approximately Rs.1,30,000/- per month;

(c) the husband undoubtedly had sizeable financial resources in the past, nevertheless there is no clear direct proof of his current income;

(d) at present the husband is paying a total of Rs.50,000/- per month for the maintenance of the two daughters;

(e) the wife has received from husband 11000 shares of Indusind Bank of which value at the time of transfer was more than Rs.1.50 Crores. Currently, it is stated to be in the vicinity of Rs.2 Crores.

12. In view of such factors, we do not find that the prayer for interim maintenance to the wife can be granted. Nor can there be any further directions for increase of the maintenance to the daughters. This brings us to the central demand of

the wife for a direction to the husband to reimburse the entire cost of education of the elder daughter for the full period of five years. In this context, we find that the husband also cannot claim to be having no source of income at all. His previous lifestyle undoubtedly was quite lavish so much so that whenever the family would travel abroad, they would also take the maid to look after the daughters. His application for correction of his cross-examination where he had stated that he had lent a sum of Rs.1 Crore to Mr. Batra and Rs.2 Crores to the family, we are informed, has been rejected by the family court. Thus, not too far back, the husband was engaged in multiple businesses, such as film financing and private financing. Surely, such investments would not be wiped out overnight. Thus, we refuse to believe the entire version of the husband about his financial resources. At the same time, we do not find it appropriate to direct him to bear the entire educational expenses. This is so because (i) the applicant has not been able to produce clear evidence of the current financial capacity of the husband (ii) concededly the decision to send the daughter for higher education abroad was taken out consultation of the husband, whatever the reason for non-consultation may be; (iii) when a ward is being sent for higher education abroad at a relatively young age, which entails considerable expenditure, the concurrence of both the parents, particularly one who is expected to bear the expenditure thereof, would be necessary. The husband certainly would have a right to inquire about the university where the child is likely to be admitted, the course being

pursued, the aptitude of the child in the particular branch of education etc., which would be relevant factors. The applicant cannot take a unilateral decision of such magnitude and simply send the bill for the expenditure to the father.

13. Having said this, looking to the resources of the husband and also looking to the fact that the daughter is performing well in her higher education at Australia and the fact that the mother has already undertaken and will continue to undertake expenditure for such education, we direct the respondent husband to pay a sum of Rs.25 Lakhs towards the said cause. This amount shall be paid over to the wife within four weeks from today.

14. With these directions, the civil application is disposed of.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)