

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.70 OF 2013
IN
FAMILY COURT APPEAL NO.45 OF 2013

Mr. Rathindra Anant Walavalkar. .. Applicant
Vs
Mrs. Ratnamala Rathindra Walavalkar. .. Respondent
—
Shri C.G.Gavnekar for the Applicant.
Mrs. Manisha B. Gawade for the Respondent.
—

CORAM : A.S. OKA & G.S.PATEL, JJ
DATE : 31ST JULY 2013

P.C.

1. This is an application made by the Applicant husband for stay of operation of the impugned judgment and decree. Clauses 3 to 5 of the impugned judgment and decree read thus:-

- “3. Husband-Rathindra is directed to pay Rs.4000/- per month to the Petitioner and Rs. 2000/- per month to each child towards maintenance from the date of order.
4. In addition to above maintenance, husband shall provide accommodation in Goregaon (E), Mumbai consisting of 1BHK within three months from the date of order.
5. In default, he shall be liable to pay Rs.10000/- per month towards rent for the accommodation of wife and children, from the date of order.”

2. It will be necessary to make a reference to the order dated 27th June 2013 passed by this Court. Clause (1) of the said order reads thus:-

“1. Learned counsel appearing for the Applicant on instructions states that the entire arrears of maintenance payable as of today shall be paid to the Respondent or to her Advocate during the course of day. We accept the statement. The learned counsel appearing for the Applicant on instructions further states that the Applicant will make an offer of a suitable accommodation to the Respondent within a period of four weeks from today. We accept the said statement. The offer shall be submitted in writing to the Advocate for the Respondent along with all the requisite particulars in relation to the premises offered. We make it clear that the Applicant shall continue to pay maintenance in terms of Clause (3) of the operative part of the impugned judgment and decree till further orders.”

3. Today, the learned counsel appearing for the Applicant states that the Applicant is not in a position to offer any suitable accommodation to the Respondent.

4. Learned counsel appearing for the Applicant states that the Applicant who was in the employment of Mumbai Port Trust has since retired and he survives only on pension. He states that the premises held by the Applicant are jointly owned by the Applicant and his brother and that the same are in a dilapidated condition. He submits

that though a finding has been recorded by the Family Court that the Applicant had let out the said premises and was earning the income, in fact, the Appellant had accommodated an employer of the Mumbai Port Trust in the said premises only for a limited duration. He, therefore, submitted that operation of Clause 5 of the operative part of the impugned judgment and decree may be stayed.

5. We have considered the submissions. The present age of the daughter is 17 years and the present age of the son is 15 years. Prima facie, the Family Court was right in holding that it is an obligation of the Applicant to provide a shelter to his wife and his two children.

6. Under Clause 4 of the operative part of the impugned judgment and decree, the Applicant was directed to provide accommodation in Goregaon (East) consisting of one bed-room, hall kitchen and in default, he was held liable to pay Rs.10,000/- per month towards rent for the accommodation of the wife and two children.

7. This Court on 27th June 2013 recorded a solemn statement of the Applicant that he would offer a suitable accommodation to the Respondent. However, the learned counsel appearing for the Applicant today states that the Applicant is unable to offer any accommodation.

8. The Applicant admittedly holding a residential premises jointly with his brother. At one point of time, the Applicant had let out the said premises and was earning income. The direction of the Family Court to pay Rs.10,000/- per month in lieu of the residential accommodation is reasonable considering the fact that the Applicant has two grown up children. The maintenance amount fixed by the Family Court is Rs.4,000/- per month for the wife and Rs.2,000/- each for the two grown up children. Hence, we find that no case is made out for grant of stay of the operation of the impugned judgment and decree. The Application is accordingly rejected.

(G.S.PATEL, J)

(A.S. OKA, J)