
(2009) 09 BOM CK 0019

In the Bombay High Court

Case No : Family Court Appeal No's. 91 and 99 of 2009 and Civil Application No. 145 of 2009

Rahul Bhupinder Luthra

APPELLANT

Vs

Rashmi/Ria Rahul Luthra

RESPONDENT

Date of Decision : 25-09-2009

Acts Referred:

Special Marriage Act, 1954 — Section 14(1), 27

Citation : (2010) 5 BomCR 314 : (2011) 7 RCR(Civil) 1696

Hon'ble Judges : More R.V., J;Majmudar P.B., J

Bench : Division Bench

Advocate : Y.R. Shah, in F.C.A. No. 91/2009, C.A. No. 145/2009 and T.F. Irani, in F.C.A. No. 99/2009, for the Appellant; T.F. Irani in F.C.A. No. 91/2009, C.A. No. 145/2009 and Y.R. Shah in F.C.A. No. 99/2009, for the Respondent

Judgement

Majmudar P.B., J.—With the consent of learned Counsel appearing for both sides, these appeals are decided finally at the admission stage itself. Both the appeals are accordingly admitted. Respective learned Counsel appearing for the parties waive service.

2. Both these appeals are directed against the judgment and order passed by the Family Court in Petition No. A-2441/2007 by which the Family Court dissolved the marriage by a decree of divorce by mutual consent and granted Rs. 8,000/- per month to the wife and Rs. 4,000/- per month to the daughter towards their maintenance from the date of the petition.

3. The wife instituted the said petition before the Family Court at Bandra, Mumbai against her husband for a decree of divorce u/s 27(d) of the Special Marriage Act, 1954 on the ground of cruelty. The marriage between the appellant and the respondent was solemnised on 16th November, 2005 at Bandra, Mumbai under the Special Marriage Act, 1954. Out of the said wedlock, a female child viz. Tiesha was born on 27th November, 2006. The custody of the said child is with the wife. During the pendency of the said petition, the parties entered into

consent terms by which it was decided to take divorce by mutual consent and the question about maintenance and stridhan was agreed to be decided on merits by the Family Court. The Family Court accordingly decided the question regarding return of stridhan as well as the claim of the wife regarding maintenance for herself and her daughter. By the impugned order, the learned trial Judge passed a decree dissolving the marriage by mutual consent. The prayer of the wife regarding return of stridhan was rejected by the learned trial Judge. So far as the question of permanent alimony is concerned, the learned Judge of the Family Court directed the husband to pay Rs. 8,000/- per month to the wife and Rs. 4,000/- to the daughter towards maintenance payable from the date of the petition i.e. 20th November, 2007. It is the aforesaid order of the Family Court, Mumbai. dated 17th February, 2009, which is impugned at the instance of the husband in Family Court Appeal No. 91 of 2009, to the extent of seeking reduction of the maintenance at Rs. 2,000/- per month.

4. So far as the wife is concerned, she has also filed a separate appeal being Family Court Appeal No. 99 of 2009, against the rejection of her claim by the trial Court regarding return of stridhan, claim for separate residence and maintenance at the rate of Rs. 30,000/- per month.

5. Since common point is involved in both these appeals, these appeals were taken up for hearing and are being disposed of by this common order. We have also heard the learned Counsel appearing for the parties. We have gone through the evidence produced by the parties before the Family Court and have gone through the record and proceedings of the case.

6. Since the issue about divorce is already concluded by consent of the parties before the Family Court, in the present appeals this Court is required to consider the question as to whether the maintenance amount granted by the Family Court is required to be reduced or enhanced or to be maintained as it is. Since the point regarding separate residence is also raised by the wife, the Court is also required to consider as to whether the wife is entitled to have a separate residence and whether she is entitled to a decree for return of stridhan.

7. During the course of argument, Ms. Irani, learned Counsel for the wife, submitted that in the petition before the Family Court, the wife had prayed that the husband may be directed to provide security of Rs. One crore towards inheritance claim of the minor child. She is not pressing the said prayer at this stage and seeks liberty to file separate proceeding in connection with the said prayer. In our view, since Family Court has also not gone into this question, this Court is not required to consider the said question. Liberty is, therefore, granted to the wife to take out separate proceedings in this behalf.

8. The wife had claimed Rs. 30,000/- per month before the Family Court towards the maintenance for herself and her child. In order to prove her case, the wife has also tendered her evidence in the form of an affidavit. We have gone through the oral and documentary evidence on record with a view to find out as to

whether the amount awarded by the Family Court is required to be enhanced or is required to be reduced or it is required to be kept as it is.

9. Before analysing the evidence, it is necessary to incorporate the consent terms arrived at between the parties before the Family Court. The same reads thus:

1. Both the parties shall withdraw all the allegations made against each other in the above said petition.

2. Both the parties have got married to each other on 16th November, 2005 and they are staying separately from each other since 24th April, 2007.

3. There is one female child born from this wedlock namely Tiesha, who is one year and five months old. At present custody of the daughter is with the petitioner mother and will continue to remain with the petitioner mother. Respondent Father shall avail access once in a month on Sundays at Bombay as per convenience of both the parties and the daughter.

4. Respondent has agreed to return all the articles and ornaments to the petitioner as per list agreed by the respondent. On next Court date before the Marriage Councillor and the issue of remaining articles and ornaments may be decided by the Honourable Court on merits.

5. Issue of maintenance/alimony may be decided by the Honourable Court on merits.

9. It is the case of the appellant-wife that her husband is the Chairman of Imperial Academy located at Indore and is the owner of an export house of cars in Dubai and has various other businesses. In her affidavit, she has stated that the monthly income of the husband is Rs. 15 lakhs. It is the case of the wife that her husband is a Non-Resident Indian (NRI) and is travelling to Dubai every now and then in connection with his business. In her affidavit, she has stated that she has travelled to Dubai on three occasions by business class along with him for which she has also produced her passport to substantiate her say. As per the say of the wife, her husband is having two storeyed house at Indore, a house in Delhi, a lavish house in Dubai and two houses in Mumbai for which reference is made to Income Tax returns of the husband. It is also the say of the wife that under the Protection of Women from Domestic Violence Act, 2005, the husband is required to provide her with a house/place of residence which she has prayed in her separate application dated 21st April, 2008, under the said Act.

10. In the cross-examination she has admitted the fact that she was working since 2007 and getting salary of Rs. 10,000/- per month. It is pointed out to the Court that in the typed copy it is wrongly transcribed thus: "I am working in Call Centre since June, 2007". The learned Judge has also accepted the said version and has found that she was working at the Call Centre in the past. In the cross-examination she has denied the suggestion that she is the partner in the business with her father. In the cross-examination, she has reiterated her say

that the husband is working in Imperial Academy at Indore. She has denied the suggestion that he was getting Rs. 20,000/- per month and that he is not doing any other job. She has denied the suggestion that she received the articles which were given to her at the time of marriage. In order to substantiate her claim about stridhan, she had produced bills on record. In the cross-examination she denied the suggestion that the said bills are false and bogus. On behalf of the wife, her father was also examined at Exh. 31. In his examination-in-chief he has pointed out that a newspaper advertisement was given for the marriage of his daughter and on that basis ultimately the appellant and the respondent decided to marry. In the examination-in-chief he has stated that at the time of marriage, a reception card was printed in which various businesses have been mentioned. The said witness has stated that a list of jewellery was shown to him. Nothing substantial has been brought out in the cross-examination of the said witness. On behalf of the wife, one Rajinder Kapoor was examined at Exh. 38 in order to prove that the disputed jewellery was purchased from his shop. The said witness has said that the petitioner-wife is his niece and that he is doing jewellery business in the name and style of Daulat Ram & Sons, Karol Bagh, New Delhi. The said witness has produced original bill receipt book at Exhs. 40 and 41 and filed xerox copies of carbon copies of bills on record. The said witness has stated that the items at Exhibits 35 and 36 are purchased from his shop. The price of jewellery at Exhibits-35 and 36 i.e. photographs of the jewellery is Rs. 1,03,000/- as well as Rs. 50,000/-. The said witness has pointed out that one bracelet was also given to the petitioner-wife weighing 40 grams. The price of the same was around Rs. 50,000/-. The said witness has stated that the said jewelleries were given to the petitioner after polishing the same and it was weighing 168 grams. In the cross-examination, the said witness has admitted that he was not aware as to whether the marriage was performed on 16th November, 2005 under the Special Marriage Act at Bandra, Mumbai. He has stated in the cross-examination that he had prepared the jewellery after receiving cash in advance. He has admitted the fact that in Exh. 41 it is mentioned that the D.D. was received on 6th December, 2005. He has denied the suggestion that he had prepared bogus bills.

11. On behalf of husband, affidavit in lieu of oral evidence was tendered wherein he has stated that the ornaments and articles were under the custody of the petitioner and the petitioner was using the same. It is his case in the affidavit that the petitioner took away some of her ornaments and articles to Mumbai and some of the articles were left behind at Indore. He has stated that he has signed the consent terms and accordingly agreed to return the list of the articles of the petitioner lying at Indore and no article left behind by the petitioner is lying at Indore which are either with him or with any of his family members. In his affidavit he has stated that his monthly income is Rs. 14,000/-, which is reflected in the Income Tax returns produced along with the list of documents. He has stated that he is not the Chairman of Imperial Academy or any business of exporting of cars in Dubai. He has stated that he is not having any houses at

Delhi, Mumbai, Indore or Dubai. In the affidavit he has stated that he is willing to pay maintenance to his daughter at the rate of Rs. 2,000/- per month which is as per his capacity. In his cross-examination, he has stated that he has no idea as to what ornaments were given from his side to his wife. He has stated that he has no idea as to what articles she has taken with her. In paragraph 8 of the cross-examination, he has stated that he can produce documents to show that he has obtained the house on rent. In paragraph 9 of the cross-examination, he has stated that he is an NRI due to his father and whenever he went to Dubai, he stayed at his friend's house. He has further stated that his mother is having custody of house at Dubai and he cannot produce the papers. He has also stated in the cross-examination that his mother is the owner of the company which is mentioned in Exh. 48. In the cross-examination, he has stated that his father has prepared a will and he can produce the same. He has stated in the cross-examination that in his Income Tax returns, income from business is shown but he is not doing any kind of business. He has admitted the fact that an amount of Rs. 37,591/- is shown towards telephone expenses in the Income Tax returns. He has also stated in his cross-examination in paragraph 10 that he has closed the accounts of three banks which he had shown in the Income Tax returns. He has stated that the amount towards the loan was shown for adjustment of the accounts when his father was alive.

12. On behalf of the wife, documentary evidence is produced in the form of e-mail I.D. which is produced on record by the wife. The same is at Exh. 26 on the record. As per the same, the husband has given the following particulars "Rahul Luthra available for chat, male, Dubai, United Arab Emirates". In the said e-mail account, his education is stated as Masters Degree, occupation as export house of cars in Dubai. Job description is shown as "I own my company". It is also mentioned that he is Chairman of Imperial Academy and is a great man. In the description of home town it is stated as Indore, Mumbai, Delhi and Dubai. In the passion it is shown as cars and bikes. Music-hip-hop, rock. In the column of City, it is written as Dubai, United Arab Emirates. The wife has also produced Income Tax returns at Exh. 43. The copy of the Income Tax returns are made available to the Court in a small compilation by the learned Counsel for the wife. At page 18 of the said compilation, his address is shown as Rahul Luthra, 9, Dhankunj, M.A. Road, Andheri (West), Mumbai. The Income Tax returns were filed from Mumbai. For the Income Tax assessment for the year 2005-2006, in the particulars about his capital account, in the column of particulars, an amount of Rs. 12,30,610/- is shown to have been received by way of gift in dollars and an amount of Rs. 12 lakhs is shown to have been gifted to the mother and father. In the said balance-sheet, in the column of investment, Rs. One lakh towards N.S.C. is also shown. Telephone bill is also shown on the particulars of expenditure as Rs. 37,591/-. Relying on the same, it is submitted by the learned Counsel for the wife that the appellant-husband is a multi-millionaire having huge properties at Indore, Mumbai as well as at Dubai. It is submitted that the learned Judge of the Family Court gravely erred in awarding only Rs. 8,000/- as the wife is entitled to have

the same style of living at par with the life style of the husband. It is submitted that looking to the cost of living and looking to the fact that she is required to spend considerable amount towards the child and looking to the income of the husband which according to her is not less than Rs. 15 lakhs per month, the amount of Rs. 30,000/-claimed was most reasonable and the Family Court should have granted the same.

13. It is submitted by the learned Counsel for the wife that the Family Court has not considered the voluminous evidence on record and though it has been found that the husband is not telling the truth before the Court in the matter of disclosure of his correct income, the learned Judge is erred in awarding only Rs. 8,000/- to the wife and Rs. 4,000/- to the child. The learned Counsel submitted that there is no reason for the wife to make false case about the ornament and stridhan and in view of the independent evidence of the person who has sold the jewellery, the Family Court should have passed an order of handing over the said stridhan to the wife. It is submitted by her that the Family Court has gravely erred in rejecting the claim for residence altogether. In the consent terms it is clearly provided that the question of maintenance is kept open for consideration of the Court and that the prayer for separate residence can be said to be included in the prayer for maintenance and since the question of maintenance was required to be decided by the Family Court, the Family Court should have considered the claim for residence and should not have rejected the same on the ground that the said prayer has not taken care of in the consent terms. It is submitted by her that though separate proceedings have been taken under the Protection of Women from Domestic Violence Act, 2005, during the pendency of these matters, it came to the knowledge of the wife that the said prayer was rejected by the Family Court on the ground that it has become infructuous. The copy of the order dated 17th February, 2009 is kept on record of this Court which was also shown to the other side and even that order is part of the record and proceedings of the present case. The learned Judge by the order of even date on which day the main petition was decided, disposed of the same by a cryptic order stating that since the parties had agreed to take divorce by mutual consent, the application which is filed by the wife is an interim application, the same is not tenable. The application was, therefore, rejected on the ground that it is not tenable.

14. The learned Counsel for the wife vehemently submitted that since providing residence to a wife is required to be considered along with the maintenance, the Court should have considered the question about separate residence at the time of deciding the question about maintenance. In order to substantiate her case, she relied upon the decision of the Supreme Court in the case of Komalam Amma Vs. Kumara Pillai Raghavan Pillai and Others, wherein it has been observed in para 9 as under.

9. Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or

less, to which she was accustomed. The concept of maintenance must, therefore, include provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a preexisting right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1).

15. The learned Counsel for the wife submitted that from the evidence on record it is established that the husband is having large properties and is a very wealthy man, yet he has tried to deprive the wife and the child in the matter of payment of appropriate maintenance amount.

16. Mr. Shah, learned Counsel appearing for the husband, on the other hand, submitted that the father of the appellant-husband was having large businesses and was having his business at Dubai also. However, according to him, after the death of his father, the business at Dubai was closed. Learned Counsel further submitted that he was employed in the Imperial Academy and was getting salary of Rs. 14,000/-. He has subsequently left that job. An additional affidavit is filed before this Court on 25th August, 2009 wherein he has stated that he is residing with his mother and he is not holding any landline telephone connection in his name. He has stated that he is having mobile connection bearing No. 9826377777 and he is paying the bills for the same. He has stated that he did not have any means to make payment at the rate of Rs. 12,000/-per month as ordered by the Family Court. However, as per the initial order of this Court, for payment of the arrears, he has borrowed a sum of Rs. 2,28,000/- from his friend Mr. Nalin Dave from Indore for which he has agreed to pay in installment from his income with interest at the rate of 24 percent per annum. In para 8 of the said additional affidavit he has stated that now he is not working with Imperial Academy and he has taken up a new job with M/s. Parkhya Solution as a Web Developer for a salary of Rs. 8,000/-per month. The said affidavit is filed obviously with a view to see that the amount granted by the Family Court at the rate of Rs. 12,000/- per month can be reduced. Mr. Shah has further submitted that the husband used to go to Dubai and after his father's death he had gone with his mother for the purpose of closing down the business as the business was run and managed by his mother. Learned Counsel further submitted that before the death of his father, he executed a will and bequeathed all his properties to his mother. Learned Counsel further submitted that the husband is willing to maintain his daughter for which he is ready to pay Rs. 2,000/- per month and since his wife is earning, she is not entitled to get any maintenance. Learned Counsel further submitted that the wife is learning Rs. 10,000/-per month from a Call Centre and, therefore, no maintenance amount is required to be given to her. Mr. Shah has further submitted that the Family Court has rightly held that the evidence produced by the wife regarding stridhan is not believable and,

therefore, rightly rejected the said claim.

17. We have gone through the evidence on record. In order to appreciate the real income of the husband, there are certain factual aspects which are required to be taken into consideration. Firstly, the following aspects are required to be taken into consideration.

(i) It is not in dispute that the husband is having NRI status and on perusal of the passport which is placed on record, it is clear that he is regularly visiting Dubai. Even after the death of his father he has regularly visited Dubai and the last entries in the passport are of June, 2009.

(ii) From the e-mail profile, copies of which are on record, it is clear that he himself has stated that he is doing business at Dubai and his occupation is mentioned as export house of cars in Dubai and he is the owner of his company. He is also shown as Chairman of Imperial Academy and that he is having houses in four cities at Indore, Mumbai, Delhi and Dubai.

(iii) The husband has not produced any evidence to show that the business at Dubai was run in the name of his father nor any evidence is produced to show that the ownership of the said business premises belongs to some one else.

(iv) In the Income Tax returns, it is clearly established that he was having considerable investment and that he had received gift of Rs. 12,34,610/- in dollars.

(v) Even in his Income Tax return, his address is shown as his Bombay premises at Andheri which house, according to the husband, belongs to his father.

(vi) No account books are produced prior to period 2005. Subsequent record is produced only when it was realised that the matrimonial proceedings are likely to be initiated against the husband.

(vii) Learned Counsel for the respondent has fairly submitted that he is not in a position to point out as to when he had resigned from Imperial Academy where he was employed by his mother. It is not possible for us to believe that a person will leave the job in which he was getting salary of Rs. 14,000/- and will accept the job with a salary of Rs. 8,000/- per month.

The said fact is stated by way of additional affidavit and it is obvious that only with a view to see that the amount granted by the Family Court is not enhanced by this Court that such additional affidavit is filed for which no particulars are given as to whether he was required to resign or whether he was removed from the earlier employment. So-called will produced on record is highly doubtful as it is an admitted fact that the testator i.e. his father has not stated anything about his son and daughter. There is no reference about the son or daughter in the will at all. There is no reference of other properties in the said will. The said document seems to have been created only for the purpose of creating evidence to show that the appellant-husband has no business or income worth the name.

The said will, as stated above, is an unregistered one and no probate of the same is obtained. 18. From the facts and circumstances of the case as well as on going through the oral and documentary evidence, we are satisfied that the appellant husband has resorted to falsehood and has tendered false evidence with a view to deprive his wife and daughter for getting reasonable amount of maintenance. It is relevant to note that in the additional affidavit filed before this Court, it is stated that the husband has paid arrears of maintenance of Rs. 2,28,000/- for which xerox copy of the promissory note is produced. As discussed earlier, the husband continued to visit Dubai from time to time and even after his father's death he visited Dubai. On the face of the evidence on record, as stated above, in our view, the reasonable inference which can be drawn is that the respondent-husband is having his own business at Dubai. Admittedly he is a N.R.I. So far as Imperial Academy is concerned, it is a big institution at Indore wherein, according to the wife, he is a Chairman. The learned Advocate for the husband fairly pointed out that there is nothing on record to suggest that he was having any strained relationship with his father and mother. Considering the totality of the evidence, therefore, in our opinion, the husband has tried to fabricate the evidence in the form of so-called will of his father and an additional affidavit which is filed before this Court that he has taken loan for paying the maintenance arrears to his wife. The learned Counsel for the appellant-husband has fairly admitted that the husband is not in a position to explain as to why no evidence regarding income prior to the year 2005 is produced nor any Income Tax returns prior to 2005 are produced. The will in question is not even exhibited. Even otherwise, no weightage can be given to the said document as it hardly inspires any confidence and even no probate is obtained to prove the so-called will. In the instant case, it is unfortunate that the husband who is having number of businesses has tried to deprive his child and wife of reasonable amount of maintenance. Even if there is no direct evidence, the Court can draw an inference from the evidence on record and also from the facts and circumstances of the case. It is also required to be noted that the husband is well qualified as he is B.E. in Computer Science and M.B.A. Unfortunately, he has filed an additional affidavit before this Court stating that he has left the services where he was serving under his mother at Imperial Academy and now he has joined at M/s. Parkhya Solutions, for which no evidence has been led and it is difficult to comprehend that a person will leave the job where he was getting higher salary and join for a job with lesser salary. He has not given any explanation at all in this behalf. This affidavit is filed only with a view to deny the wife and the child of reasonable amount of maintenance and cannot be accepted at all. It is also required to be noted that the respondent has not produced any appointment order showing that he was ever appointed in the Imperial Academy on the salary of Rs. 14,000/- per month. As pointed out earlier, if the business at Dubai was of his father, he could have led documentary evidence to show that the shop was in the name of his father at Dubai. The husband has not produced any documentary evidence about the Imperial Academy to show as to who was the Chairman of the said institution. As per the evidence, the husband was a

N.R.I. and he is having resident permit of Dubai. It is also required to be noted that it has come in evidence that the wife was initially serving in the Call Centre and was earning Rs. 10,000/-per month but that job she has left and, therefore, in our view, on the date of the application she was not having any employment worth the name. Even as per the bank pass book produced by the wife, it is shown that she was earning Rs. 10,000/- per month only upto 2nd November, 2007 and not thereafter. Considering the totality of the evidence on record, we are of the opinion that the Family Court has rightly found that the respondent has not stated the correct facts. In paragraph 32, the Family Court has observed as under:

I have already held that the respondent has suppressed his income from the Court. When he is NRI and has several assets, in such circumstances it can be said that she is entitled for maintenance at the rate of Rs. 8,000/-per month for herself. The daughter is hardly of two years old and, therefore, I grant maintenance to the daughter at the rate of Rs. 4,000/- per month and answer point No. 3 in the affirmative and pass the following order.

19. Considering the said aspect, we do not find any substance in the appeal filed by the husband. However, in our view, from the evidence on record it is clear that looking to the income of the husband, the wife is entitled to get reasonable amount towards maintenance for herself and for her daughter as she is entitled to have the same standard of living which she was having at the time of subsistence of her marriage. Looking to the fact that the wife is also required to spend regularly for the education of the child and also the fact that when she was in the matrimonial home she had visited the husband thrice to Dubai in the business class, in our view, the claim made by the wife for the maintenance at the rate of Rs. 30,000/- per month is just and reasonable and is in consonance with the earning of her husband. Considering the said aspect, the order of Family Court granting Rs. 12,000/- to the wife and her daughter is, in our view, is required to be interfered with as from the evidence it is evident that the husband who is having sufficient income is required to maintain his wife so that she can continue to live in the same manner in which she used to stay while she was in the matrimonial home. In this view of the matter, we direct the husband to pay an amount of Rs. 30,000/- which would include maintenance for herself as well as for her daughter i.e. Rs. 25,000/- per month for the wife and Rs. 5,000/- per month for the daughter from the date of the filing of the application before the Family Court.

20. The next question is about return of stridhan. In this connection the wife has led evidence that part of the stridhan was received by her at the time of entering into compromise but for remaining stridhan her claim was kept alive and she was permitted to prove the same before the Family Court. In her evidence, she has clearly stated that part of stridhan for which evidence was led in the form of evidence of the shopkeeper from whom the ornaments were purchased is placed on record. Simply because the jewellery was purchased from the relative, it

cannot be said that he is giving false evidence in this behalf. In his oral evidence at Exh. 38, the jeweller has brought the original receipt book and filed xerox copies of carbon copies of the bills on record at Exhibits 40 and 41. The said witness has stated that items at Ex-hibits-35 and 36 were purchased from his shop. The said witness has clearly stated in his evidence that he had given gold jewellery to the petitioner wife after polishing the same and it was weighing 168 grams. The said witness has stated that he was present at the time of marriage. Simply because a receipt is prepared in advance and when, according to the said witness, the ornaments were given at the time of marriage, the version of the said witness cannot be said to be not believable. Even if the parents of the wife had not personally visited the shop is no ground for coming to the conclusion that such ornaments must not have been given to the petitioner at the time of marriage. The said witness has also stated that he was not aware as to whether her marriage was performed under the Special Marriage Act but the fact remains that there was a marriage function held at Indore for which invitation cards were also produced on record. Therefore, there is nothing wrong, if the said witness has brought the ornaments with him at the time of attending the said function. It has come in evidence that the total weight of the said ornaments is 168 grams. Considering the evidence on record, the claim for the same is required to be allowed.

21. It is required to be noted that the learned Judge has negated the claim about separate residence on the ground that in the consent terms she has not specifically mentioned this claim. In our view, the said finding cannot be upheld as in view of the judgment of the Supreme Court in the case of Komalam Amma (supra) maintenance includes claim for residence. However, since there is no satisfactory evidence on this point, we deem it proper to remit the matter so far as the aforesaid claim of residence to the Family Court with a direction to decide the said claim de novo, after allowing the parties to lead evidence in this behalf. The claim of the residence has not been examined at all by the Family Court and in this view of the matter, the matter is required to be remitted to the Family Court in this behalf. We may, however, clarify that our observations about the so-called will in question is only tentative and it will have no bearing in any other proceedings, if taken out in this behalf such as probate proceedings, etc. Our observations shall be confined only to the present proceedings in connection with granting appropriate amount to the wife and her daughter towards maintenance.

22. So far as the claim of the wife regarding depositing of Rs. One crore towards the benefit of the minor's estate is concerned, since the Family Court has not gone into that question and even otherwise that point cannot be decided in the present proceedings, it will be open to the appellant wife to take out separate proceedings in this behalf before the appropriate forum.

23. In view of the above, these appeals are disposed of by passing the following order.

(i) Appeal filed by the husband i.e. Family Court Appeal No. 91 of 2009 is

dismissed.

(ii) Appeal filed by the wife i.e. Family Court Appeal No. 99 of 2009 is partly allowed and the wife is entitled to receive maintenance at the rate of Rs. 25,000/- per month for herself and Rs. 5,000/- per month for her daughter from the husband from the date of her filing of the application before the Family Court

(iii) It is directed that the husband shall return to the wife stridhan articles weighing 168 grams or value of the same as per today's market rate on the aforesaid 168 grams of gold;

(iv) The matter is remitted to the Family Court for the purpose of deciding the claim of the wife towards separate residence. The Family Court shall allow both the parties to lead evidence in this behalf and decide the said aspect de novo within a period of six months from today.

(v) Writ to be send down to the Family Court along with the record and proceedings forthwith.

24. In view of the above, no orders are required to be passed in Civil Application No. 145 of 2009. The same is accordingly disposed of.

25. At this stage, the learned Counsel for the husband prayed that this order may be stayed for a period of four weeks from today. The said request is granted and the present order shall remain stayed for a period of four weeks from today.