

(2016) 08 BOM CK 0035

In the Bombay High Court

Case No : Civil Application No. 385 of 2015 In Family Court Appeal No. 216 of 2015 In M.J. Petition No. A-2400 of 2011

Ranjeet Nabha

APPELLANT

Vs

Udita Nabha

RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(ia)
Special Marriage Act, 1954 — Section 27(1)(d)

Citation : (2016) 4 RCRCivil 154

Hon'ble Judges : Naresh H. Patil and Prakash D. Naik, JJ.

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Naresh H. Patil, J.—The applicant Ranjeet Nabha prays for following reliefs:

(a) That pending the hearing of the captioned Family Court Appeal, this Hon'ble Court be pleased to stay the effect, implementation and operation of the Impugned Judgment and Order dated 14th September, 2015 passed by the Learned Judge therein (Exhibit "A" to the captioned Appeal), in so far as it relates to the final alimony and maintenance to be paid to the Respondent;

2. The Family Court Appeal 216/2015 preferred by the applicant/appellant was admitted by the Division Bench of this Court (Coram: A.S. Oka and G.S. Kulkarni, JJ) by an order dated 9th March, 2016. The said order reads as under:

" Admit. Printing is dispensed with.

The learned Advocate on record for Respondent waives service. The Appellant to file private paper book within a period of six months from today."

3. On the application for grant of stay the Division Bench (Coram: V.M. Kanade, Acting C.J. And Revati Mohite Dere, J) passed order on 20th January, 2016. Paragraph-6 of the said order reads as under:

"We have perused the correspondence between the parties and also the orders passed by the Court on 11th December, 2015. Since the learned regular Bench is not available and since the respondent has not given her consent to continue the arrangement, we have no alternate option but to direct that till the next date of hearing, the applicant may continue to pay Rs. 3,00,000/- per month as maintenance as per the earlier arrangement. It is clarified that the said order is passed without prejudice to the rights and contentions of both the parties and the continuation of the arrangement may be considered by the regular Court when it hears the appeal for admission and for consideration of the stay application."

The stay order was continued on further dates. By an order dated 4th May, 2016 the Division Bench (Coram: A.S. Oka and P.D. Naik, JJ) observed in paragraph-3 as under:

" Clause-4 of the impugned decree is a money decree. If Applicant wants his prayer for stay and grant of monthly payment to be considered, the Applicant must deposit a reasonable amount out of the amount payable in terms of Clause-4. Learned Senior Advocate for the Applicant seeks time to take instructions whether the Respondent can pay a reasonable amount. We, however, make it clear that unless the Applicant deposits a reasonable amount, his prayer for grant of facility to pay monthly amount will not be considered on merits. Place the application for hearing on 23rd June, 2016."

The applicant is original respondent and respondent herein is original petitioner in Family Court Petition No. A-2400/2011 filed for dissolution of marriage under Section 27(1)(d) of Special Marriage Act. It was the contention of the respondent-petitioner before the Family Court that she was married to the applicant. The marriage of respondent and applicant was solemnized on 24th March, 1995 at Dadri, U.P. according to provisions of Special Marriage Act. Thereafter on 26th November, 1995 they had undergone marriage ceremony at New Delhi as per Arya Samaj and Anand Karaj Rights. They have one female issue out of their wedlock. The daughter "Naia" was born on 13th July, 2013 in New York City (United States). Since the day of marriage both have stayed at New York till the year 2006. Thereafter, they started residing in Mumbai. The respondent contended before the Family Court that due to objectionable conduct and behavior of the applicant, she had to file petition for dissolution of marriage.

4. By judgment and order dated 14th September, 2015 the Family Court allowed the petition filed by respondent. The marriage was dissolved by the Family Court. The applicant was directed to pay a lumpsum permanent alimony of Rs. 6 Crores to respondent and Rs. 5 Crores for their daughter Naia within three months from the date of judgment.

5. In a petition for Special Leave to Appeal (C) No. 17274-17275/2014 filed by the present applicant, the Apex Court on 4th August, 2014 passed following order:

" Heard Mr. Soli Sorabjee, learned senior counsel for the petitioner and Mr. Shyam Divan, learned senior counsel for the respondent.

In course of hearing, learned counsel for the parties that the petition for divorce filed by the wife should be decreed on consent and the daughter, namely, Ms. Naia, who is in the custody of the mother, shall remain in her custody with a periodical visitation rights of the father, the petitioner herein.

The only controversy that really remains to be sorted out pertains to grant of maintenance. Learned counsel for the parties have undertaken that they, through their briefing counsel, shall take instructions and address the Court. Though, we have left it to the learned counsel for the parties to obtain instructions, we direct the petitioner and the respondent shall remain personally present before this Court on 25.8.2014.

List for further hearing on 25.8.2014"

6. In the aforesaid Special Leave to Appeal, the Apex Court on 2nd September, 2014 passed following order:

" Heard learned counsel for the petitioner for some time and perused the record.

The present petitions are filed against the order passed by the High Court in the review petitions filed by the petitioner against the order of remand.

After giving our thoughtful consideration and hearing the rival contention, we find that it is not a fit case for interference of our power under Article 136 of the Constitution and, hence, the petitions are devoid of any merit. Therefore, we dismiss the special leave petitions. However, we direct VI Family Court Mumbai at Bandra to expedite the hearing.

It is needless to make any observation in this order that whatever amount that is already paid in favour of the respondent towards interim maintenance shall be taken into account to comply with the order passed by the High Court in the order impugned."

7. In the month of April, 2015 the parties filed minutes of order in a petition in Civil Writ Petition No. 1711/2015 before this Court. Paragraph 5 of the minutes of order reads as under:

"The trial on the issue of permanent alimony and maintenance as prayed for by the Respondent herein (i.e. Petitioner in the Divorce Petition No. A-2400 of 2011) shall be concluded and final orders thereon shall be passed on or before 20th July, 2015. The Hon"ble Family Court to report progress to the Hon"ble Bombay High Court on 20th May, 2015."

8. Learned Senior Counsel appearing for the applicant submitted that the Family Court failed to articulate its reasoning in passing order of payment of permanent alimony to the respondent. Highly exorbitant amount has been ordered to be paid without any cogent and convincing reasoning. The trial Court seems to have

been much impressed by the wealth possessed by the mother of the applicant. It has come on record that the applicant belongs to one of the royal family of Punjab. Her mother holds property worth Rs. 155.5 Crores. The Family Court ought to have considered as to whether the applicant holds sufficient wealth, property, money to pay such a huge amount as permanent alimony to respondent. The Counsel submits that the applicant at the relevant time was associated with a leading company and was earning few Crores of rupees yearly but since last few years, the applicant is not associated and involved in any such job or involved in commercial activities which would earn him lacs or crores of Rupees. The Counsel submits that the applicant is occupying 780 sq. feet flat in New York and has limited resources at his disposal. It would not be appropriate to expect the applicant to borrow money from the mother to satisfy the decree passed by the Family Court. In other words, the Counsel submitted that for satisfying the Family Court's decree of this nature by husband, the property owned by parents is not liable to be taken into consideration. The Counsel further submitted that respondent no.2 comes from wealthy and resourceful family. The respondent possesses property worth Rs. 40 Crores. She has shares of a company. She gets regular constant income of Rs. 2 lacs per month (Rs. 1,20,000 dividend earned from Vita Pvt. Ltd. + Rs. 50,000/- being salary earned from Vita Pvt. Ltd. and Rs. 36000 being rental income from Bangalore property. Learned Counsel submitted that Family Court had arrived at a conclusion that respondent earns Rs. 90,000/- per month from various sources. It was urged that in view of the voluminous material evidence placed on record and the financial condition of the applicant the execution of decree of payment of permanent alimony be stayed.

9. Learned Senior Counsel appearing for respondent submits that applicant is a wizard in financial matters. He had served in that capacity with leading companies in United States. It has come on record that he was earning Rs. 5 to 7 Crores annually for several years. He hails from Royal family, Punjab. It is submitted that it is unbelievable that applicant could dis-associate himself in respect of wealth of his family when it comes to payment of permanent alimony to the respondent. The Counsel submits that it is not the case of the respondent that he should borrow money from mother and satisfy the decree but record has been placed before the Court to show that applicant has sufficient means to honour the decree. The Counsel submitted that though the amount of permanent alimony may sound to be on higher side compared to other cases but the facts of the case are to be considered in its proper perspective. Respondent herself is from well to do family. She is married in a royal family. The couple was leading a comfortable life in United States of America. Considering the lifestyle and the cost to be borne to maintain the standard in life which the respondent is accustomed to, the applicant should satisfy the decree of permanent alimony. Part of the decree is devoted to the daughter of the applicant and atleast applicant shall not have any reservation on that issue and in taking care of his daughter.

10. To the limited extent of consideration of prayer of stay to the execution of decree, we heard the learned Counsel appearing for the contesting parties. Voluminous record is also presented before the Court which seems to be part of the trial Court's record. The evidence would be scanned in detail at the time of final hearing of the appeal.

11. Under the ad-interim arrangement pending hearing of the present application it was ordered that the applicant would pay an amount of Rs. 3 lacs per month to the respondent by way of maintenance. The Division Bench of this Court had made it clear on 4th May, 2016 that reasonable amount will have to be deposited. Unless the applicant deposits the reasonable amount, his prayer for grant of monthly amount was not considered on merits. During the course of hearing no such proposal was given on behalf of the applicant in tune with the order passed by this Court on 4th May, 2016. The applicant prays for stay to the impugned order of grant of permanent alimony.

12. We have perused the details furnished by the respondent regarding the expenses which she has to bear for maintaining herself and her daughter's school and other expenses. It is to be noted that we are not considering the issue of grant of maintenance in the present application but an order of grant of permanent alimony. The status of both the applicant and respondent is well described and is matter of record. Both seems to be coming from wealthy and resourceful families. Both had lived comfortable life with status and to a good extent of affluence. There is nothing wrong in respondent expecting to maintain the same lifestyle in the society in which she lives. At the sametime the applicant's plea of his financial condition is also required to be looked into. The applicant has placed before us details of his wealth, bank accounts. It was submitted that he is residing in 750 sq. feet flat at New York.

13. It is not the stage to enter into details of the properties and wealth acquired by each of the party or past and present earnings of the parties. We have also taken into consideration present earnings of the applicant and respondent. We find it appropriate to observe that some reasonable substantial amount is required to be deposited by the applicant and considering the evidence brought on record.

14. Taking into consideration the record placed before us, the orders passed by the Apex Court and the High Court and considering the submissions advanced on behalf of the contesting parties, we are of the view that the execution of the impugned judgment and decree needs to be stayed on following condition.

ORDER

(i) Pending the hearing and final disposal of Family Court Appeal No. 216 of 2015, execution of judgment and order in clauses (iv) and (v), passed by the Learned Family Court No. 6 at Bandra, Mumbai on 14th September, 2015 stands stayed subject to applicant Ranjeet Nabha depositing 75% of the amount as directed by the Family Court in clauses (iv) and (v) towards lumpsum permanent

alimony in favour of respondent Udit Nabha and daughter Naia Nabha within three months from today, with the Registry of this Court.

(ii) The Civil Application stands disposed of.