

**(2017) 10 BOM CK 0062**  
**In the Bombay High Court**  
**Case No : 2916 of 2017**

Rippal Harbanslal Suneja

APPELLANT

Vs

Vibhuti Rippal Suneja

RESPONDENT

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**Date of Decision :** 11-10-2017

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 125](#) — Order for maintenance of wives, children and parents  
[Hindu Marriage Act, 1955](#), [Section 24](#) - Maintenance pendente lite and

**Citation :** (2017) 10 BOM CK 0062

**Hon'ble Judges :** Shalini Phansalkar-Joshi

**Bench :** SINGLE BENCH

**Advocate :** Ashutosh R. Gole, Jitendra B. Mishra

**Final Decision :** Dismissed

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## Judgement

1. Rule. Rule made returnable forthwith.
2. With consent of learned counsel for both the parties, heard finally at the stage of admission itself.
3. By this petition, the order passed by the Family Court No.2, Mumbai in Petition No. A-2070 of 2015 on 13th October, 2016 is challenged by the Petitioner-husband. By the said order, the Petitioner-husband is directed to pay an amount of Rs.30,000/- per month as interim maintenance to the Respondent-wife from the date of filing of the application i.e. 4th January, 2016.
4. Facts leading to the Petition are to the effect that Respondent, herein, has filed a petition for divorce against the Petitioner and in the said petition, she has filed an application at Exh.10 claiming interim maintenance under Section 24 of Hindu Marriage Act, 1955. She has claimed interim alimony at the rate of Rs.50,000/- per month for herself and Rs.50,000/- per month to both the children. She has also given break-up of her expenses in paragraph No.10 of the Application

according to which the total of the expenses comes to Rs.1,13,650/- per month. However, some of these expenses are, though claimed to be per month, they appear to be once in a year.

5. Be that as it may, though, the Respondent has claimed maintenance for her two children also, it is a matter of record that both the children have become major. The daughter Palomi is a Dentist with MYDENTIST and earning Rs.10,000/- per month; whereas the son Karan is also educated and has become major. The trial Court has thus held that both the son and daughter have lost their right to claim maintenance and this finding of the trial Court is not challenged in this petition. The application for maintenance, therefore, filed by the Respondent was considered only qua herself.

6. The trial Court has, while deciding her application, taken into consideration the documents filed by the Petitioner, including the Bank Statement of ICICI Bank showing that various amounts are withdrawn for household expenses. The Petitioner has also filed his salary slip for April 2016 and the termination letter dated 22nd June, 2016. His salary slip showed that he was working with Reliance Communication Limited and earning gross salary of Rs.2,05,652/- per month. Much reliance was placed by the Petitioner on the letter of termination dated 22nd June, 2016 stating that on account of his unsatisfactory performance, the management has terminated his services and therefore, it was urged that he is having no source of income.

7. The trial Court has, however, taken into consideration, the earning capacity and potentiality of the Petitioner, which was reflected in the salary slip of April, 2016 showing his gross salary of Rs.2,05,652/- per month. The trial Court has then also taken into consideration the contention advanced by the Petitioner that the Respondent was a qualified lady, as she was doing a job of Stenographer and having her own source of income. The trial Court, however, found that the Respondent has left her job long back in the year 1996 and since then she has no source of income. Therefore, trial Court held her entitled for maintenance and having regard to the standard of living of both the parties and earning capacity of the Petitioner awarded interim maintenance at the rate of Rs.30,000/- per month from the date of filing of the application.

8. Against this order of the trial Court, two submissions are advanced by learned counsel for the Petitioner. In the first place it is submitted that at the time of deciding the application for interim maintenance on 13th October, 2016, the Petitioner was not having any job. The letter of termination of his service from Reliance Communication Limited was produced on record before the trial Court. Therefore, when apparently there was no source of income for the Petitioner, the impugned order passed by the trial Court, merely on the basis of his earning capacity and potentiality, cannot be legal and correct, especially when in this case, the services of the Petitioner were terminated on account of his unsatisfactory performance, thereby indicating that he is no more having the potential or earning capacity, which the trial Court has wrongfully considered it

be so, as to be able to pay maintenance at the rate of Rs.30,000/- per month. According to the learned counsel for the Petitioner, on this very ground itself, the impugned order passed by the trial Court needs to be set-aside.

9. Secondly, it is submitted that, if the earning capacity of the Petitioner is to be considered, then vise-a-versa the earning capacity of the Respondent also needs to be considered. It is an admitted fact that the Respondent was also doing the services in NOCIL Non Supervisory Employees' Credit Fund, Bombay from 1990 to 1996 as Stenographer. She has resigned from the said job voluntarily and there is no evidence to show that she has made any effort to search for another job. In such situation, if one has regard to her earning capacity and potential, then unless she shows that she is not in a position to get the job, her earning capacity also requires to be considered. According to learned counsel for the Petitioner in case of a qualified and educated woman like Respondent, she cannot be expected to sit idle and extract the money from the Petitioner in the form of alimony, especially when now the Petitioner has also lost his job.

10. In my considered opinion, however, these submissions cannot be accepted for the simple reason that though the Petitioner contends that he has lost his potentiality and earning capacity, therefore he is removed from the job; the evidence on record shows that at present he is having better prospects than he was having in the job. The page of his profile on the FACEBOOK is produced on record of this case at page No.167 and 168, which shows that he has joined John Maxwell Team as Certified Coach, Teacher, Trainer and Speaker and he can offer workshops, seminars, keynote speaking, and coaching etc for the company. He has stated therein that he has worked for last 30 years in the Corporate World, having huge and satisfying experience in the area of business development; out of which he has spent 26 years in leadership roles, managing businesses independently and through highly motivated and productive teams. As stated therein, currently he is working with 2 progressive clients AdStringO, a successful IT startup company, and Fabrico, a garment manufacturing and exporter company, training and coaching their teams, who are successfully managing their businesses, worldwide.

11. Thus, it is apparent that, the Petitioner has not lost his earning capacity or potential but he has gained it with three decades of experience and exploiting it fully for the purpose of having the better financial prospectus. Presently also, he is not sitting idly but he is working in the John Maxwell Team. Therefore, there was nothing wrong, if trial Court considered his earning capacity and potential as against the Respondent. The Respondent is not as qualified as him nor she is having the working capacity, having lost the job about 20 years back. Therefore his working capacity and potential is rightly taken in to consideration by the trial Court, especially having regard to the fact that at present also he is not sitting idle but earning, may be more than what was his earning from the job.

12. As regards submission that Respondent is having an equal earning capacity, the evidence on record shows that she has resigned from her job of

Stenographer about 20 years back on account of her household duties. There is nothing on record to show that during this period of two decades she has worked anywhere or her skills as typist/Stenography are retained and will be used gainfully as during this period of twenty years, with the advent of technology in the age of computerization, the demands of such job are drastically changed. Hence, it would be futile to compare her potentiality with that of the Petitioner.

13. As to the decision of the Delhi High Court relied upon by learned counsel for the Petitioner, the first one is that of Sanjay Bhardwaj & Ors. vs. The State & Anr., in Criminal M.C. No.491 of 2009 decided on 28th August, 2010; wherein while considering the provisions relating to maintenance under The Protection of Women from Domestic Violence Act, 2005 (D.V. Act) and other prevalent laws like Hindu Adoption and Maintenance Act, 1956; Hindu Marriage Act, 1956 and Section 125 of Criminal Procedure Code (Cr.P.C.), it was held that, "a husband is supposed to maintain his unearning spouse out of the income which he earns. No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Court cannot tell the husband that he should beg, borrow or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning and both of them claimed to be gainfully employed before marriage".

14. It was further observed in this judgment that, "When we are living in a era of equality of s\*xes, an unemployed husband, who is holding a MBA degree, cannot be treated differently to an unemployed wife, who is also holding a similar MBA degree. Since both are on equal footing, one cannot be asked to maintain other unless one is employed and other is not employed".

15. In my considered opinion, though there cannot be any dispute about the legal proposition laid down in this authority, one has to appreciate the said legal proposition in the backdrop of the facts of the said case. In that case, the marriage has taken place on 25th May, 2007. The parties lived together hardly for three weeks and then the marriage failed and both of them started residing separately. There was evidence to show that husband was Bsc and Masters in Marketing Management, whereas wife was MA(English) & MBA. It was also found that husband was working as Manager abroad. Whereas wife was working in Multinational Company in India. In the backdrop of these facts, which clearly proved that wife was very much in service just before the application for maintenance was filed and she was equally qualified like that of the husband, it was held that she cannot be entitled for interim maintenance. Moreover, the evidence on record also proved that the husband has lost his job in Angola (Africa), where he was working before marriage, because his passport was seized by police and he could not join his duties back; hence he has to remain in India and he was not employed.

16. As against it, in the instant case, the educational qualification and the experience of working in the field, of the Petitioner is far higher than that of the

Respondent. The salary slip of the Petitioner goes to prove that he was working as "Deputy General Manager" in the Reliance Communication Limited for number of years. The indication thereof is his gross salary which was to the tune of Rs.2,05,652/- p.m.. In addition thereto, he was getting other perks and emoluments. As against it, so far as the Respondent is concerned, long back, from the year 1990 to 1996, only for 6 years she was serving in NOCIL Non Supervisory Employees' Credit Fund, Bombay as a Stenographer. Her salary certificate is produced on record, which shows that the last salary drawn by her was Rs.4,749/- only. Her job was also in not in the managerial capacity but as a typist Stenographer. She has left the job long back on account of household duties. Hence, it cannot be said that at present also after the gap of about 20 years she is having the same potential or earning capacity as that of the Petitioner, who has lost the job only few months back and that too, the job of a Deputy General Manager in a Telecommunication Company and at present also, as stated above, he must be earning far more than his earlier job.

17. Learned counsel for the Petitioner has then relied upon the second judgment of the Delhi High Court in case of Damanreet Kaur vs. Indermeet Juneja and Anr. in Criminal Revision Petition No. 344 of 2011, decided on 1st June, 2012. The facts of the said case show that the Respondent-wife was very much working with Met Life Insurance Company as Assistant Manager from which she resigned on 17th June, 2010 without assigning any reason. In the backdrop of the same, when she filed an application for maintenance thereafter, it was held that she being qualified, the trial Court has rightly refused to grant interim maintenance to her.

18. Learned counsel for the Petitioner has then relied on the decision of the Madhya Pradesh High Court in the case of Smt. Mamta Jaiswal vs. Rajesh Jaiswal 2000(3) MPLJ 100. However, the said decision pertains to the rejection of the prayer made by the Petitioner-wife for awarding traveling expenses of one adult attendant who is to go with her for attending matrimonial Court. While rejecting the said prayer, it was held that, when she is well qualified, educated, independent lady, she cannot be entitled for such traveling expenses. It may be true that some observations are made by the High Court in the said judgment about the grant of interim maintenance to a qualified woman by observing that, a lady who is fighting matrimonial petition for divorce cannot be permitted to sit idle and put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition, however ultimately the order of interim maintenance awarded to her by the trial Court was not disturbed in this decision. Conversely the husband was directed to pay the said amount.

19. It would be useful in this context to refer to the decision of this Court in case of Tejas B. Naukudkar vs. Urmishta Tejas Naukudkar & Anr., CDJ 2016 BHC 1568, relied upon by learned counsel for the Respondent, wherein despite the material on record showing that wife was a freelance writer, the award of maintenance at the rate of Rs.20,000/- per month was upheld having regard to the financial

status of the husband. It was also held that, "the ascertainment of the income has to be done judicially and sensibly and not arbitrarily or only arithmetically. In consideration of income contemplated under these proceedings, cognizance need not be restricted to only the numerical figures shown in the income tax returns nor can such figures be taken for the gospel".

20. Learned counsel for the Respondent also relied upon the recent decision of the Apex Court in case of Manish Jain vs. Akanksha Jain, CDJ 2017 SC 352. In this case, the application for interim alimony filed by the wife was resisted by the husband on the ground that she is an educated lady as she had completed one year course of Fashion Designing and she is capable of earning monthly salary of Rs.50,000/- per month. As against it, it was contended that the husband had become jobless as the publication of the Magazine in which he was working had stopped. The trial Court had, therefore, rejected the application filed by the wife for interim maintenance under Section 24 of the Act; whereas, the High Court has set-aside the said order and granted maintenance of Rs.60,000/- to the wife. When the matter reached to the Apex Court, the Apex Court held that though the wife has completed the Fashion Designing Course and internship and also have some job, intermittently, she has no permanent source of income and, therefore, she was rightly held entitled for interim maintenance. As regards the contention of the Respondent-husband that he has lost the job or has no source of income, the Apex Court was pleased to observe that,

"It has now become a matter of routine that as and when an application for maintenance is filed, the nonapplicant becomes poor displaying that he is not residing with the family members if they had a good business and movable and immovable properties in order to avoid payment of maintenance. Courts cannot under these circumstances close their eyes when tricks are being played in a clever manner."

21. In paragraph No.15 of the order of the Apex Court was pleased to observed as follows:

"15. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court."

(Emphasis supplied)

22. In the instant case, if one has regard to the rich experience the Petitioner is

having in his job, his potentiality, his present status as Member of John Maxwell Team, then it follows that at present also he must be earning substantial sum. Whereas Respondent is not having any source of income and now she also cannot support herself when the job is left long back for the purpose of household duties. Hence, merely because at one time in her life, about 20 years back, she was doing some job of Stenographer, she cannot be denied her lawful claim for interim maintenance.

23. Having regard, therefore, to the status of the parties, the capacity of the husband and his approximate earning, the amount of interim maintenance awarded by the trial Court to the tune of Rs.30,000/- per month, in this case, can hardly be called as exorbitant or unreasonable, so as to warrant interference therein. The impugned order therefore passed by the trial Court being just, legal and correct; it is confirmed. Writ Petition being devoid of merits, stands dismissed.

24. Rule is discharged.