

Salgaonkar

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Date: 2023.05.08 11:48:41 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.146 OF 2019
WITH
CIVIL APPLICATION NO.63 OF 2019
WITH
INTERIM APPLICATION NO.1850 OF 2023
IN
FAMILY COURT APPEAL NO.146 OF 2019

Dr.S.Ananth Bhandary .. Appellant

Versus

Smt.Chitra Bhandary .. Respondent

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Ms.Firoza Daruwala with Ms.Jennifer Sanjana i/b Zerick Dastur, Advocates & Solicitors for the Applicant/Appellant.

Ms.Rita K. Joshi (through VC) with Ms.Bushra A. Moughal for the Respondent.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATE : 08th MAY, 2026

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P.C:-

1. Interim Application No.1850 of 2023 is taken out under Order XLI Rule 27 of the Code of Civil Procedure (for short, “CPC”) for production of additional evidence during the course of hearing of the Appeal and paragraph 14 of the Application specifically seek bringing the following documents on record.

“14. The Applicant, therefore, humbly submits that in order for the dispensation of justice and for a fair and equitable adjudication in the matter, with the new information which has now come to light, it is imperative that this Hon'ble Court direct the Respondent to produce the following financial documents so as to ascertain the actual income earned by the Respondent:

- a) Respondent's Income Tax Returns along with Form 16 from 2010 till date;
- b) Respondent's bank statements for RV Enterprises, the proprietorship entity of the Respondent being Account No. "5020 0067 5136 91" with HDFC Bank Ltd, FC Road, branch, Pune from 2010 till date;
- c) Respondent's other bank accounts held by her both singly and jointly in all banks in India and abroad from 2010 till date;
- d) Respondent's GST filings in respect of RV Enterprises from inception till date;
- e) Respondent's father's Will or Letters of Administration;
- f) Respondent's PAN Card;
- g) Respondent's share of ownership in Satkar Hotel, Boarding and Lodging, Opp. Shivajingar S.T. Stand and monthly income from the same;
- h) Respondent's share of ownership in Renuka Hotel, Nigdi and monthly income from the same;
- i) Respondent's share of ownership in Sumitra Hotel, Kothrud and monthly income from the same; and
- j) Any other documents as this Hon'ble Court deems fit.”

2. Based on the aforesaid documents, the Appellant/Applicant has pleaded that the RV Enterprises is the proprietorship firm of the Respondent and for the purpose of determining the quantum of maintenance, it is very much necessary to take into account all these documents to show that the wife has a source of earning and, therefore, she is not entitled for maintenance, which is granted by the Family Court on 01/03/2018, while it considered the application for grant of maintenance.

3. On hearing the learned counsel for the Applicant and the learned counsel for the Respondent, who makes a specific

assertion that the Respondent has not cleared the maintenance, we find that she does not have any specific legal objection in considering the Application filed under Order XLI Rule 27.

The rejoinder filed by the Appellant-husband to the Interim Application No.1850 of 2023 is taken on record.

4. The provision to produce additional evidence in Appellate Court, clearly specify that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, but for the following :-

“(a) The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.”

It is in the aforesaid circumstances, the Appellate Court may allow such documents or evidence to be produced or witness to be examined.

5. We find the case of the Applicant to fit into clause (b) of sub-rule (1) of Rule 27, as we find that in order to have an effective adjudication of the entitlement of the wife, it is the case of the husband that he is in possession of certain documents, which would establish her earnings and throw light on the issue of determining the quantum of maintenance

payable to the wife. Apart from this, since it is a plea that these documents are necessary for effective adjudication of the claim before the Court, we deem it appropriate to grant the said application.

6. We permit the documents to be brought on record by way of additional evidence and grant liberty to the Respondent-wife to file her rejoinder affidavit, if at all she is disputing the said documents and for the purpose of enabling her to contest the claim that the documents establish her engagement into a business and her earnings therefrom. The documents are, therefore, permitted to be brought on record within a period of four (4) weeks from today, with liberty to the Respondent-wife to file an affidavit dealing with the said documents within a period of four (4) weeks thereafter.

7. In the meantime, we direct that if the Appellant-husband is in arrears of maintenance, and as according to the learned counsel for the Respondent-wife, he is in arrears of maintenance for five months, we expect the husband to clear the same. We also direct that as directed by the impugned order, he shall continue to pay the maintenance, as long as we do not pronounce upon the entitlement of the wife to claim maintenance.

8. Interim Application stands disposed of.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)