

SUPREME COURT OF INDIA

Udita Nabha

Vs.

Ranjeet Nabha

C.A.No.6695-6697 of 2018

(N.V.Ramana and S.Abdul Nazeer,JJ.,)

16.01.2018

JUDGMENT

N.V.Ramana,J.,

SLP(Civil)No. 22343-22345 of 2017

1. Leave granted.

2. These appeals are filed against the interim order dated 25.04.2017 in Civil Application No. 78 of 2017 in FCA NO. 216 of 215 along with Civil Application No. 178 of 2016 in FCA NO. 232 of 2015 and order dated 06.07.2017 in Review Petition No. 5 of 2017 in Civil Application 78 of 2017 passed by the High Court of Judicature at Bombay.

3. It would be necessary to observe the litigation history of this case, in order to appreciate the case at hand. Appellant (wife) and respondent (husband) were married under the provisions of the Special Marriage Act, 1954 way back in the year 1995. The couple was blessed with a girl child in the year 2003. As there was matrimonial discord between appellant (wife) and respondent (husband), appellant (wife) filed a petition under Section 27(1)(d) of the Special Marriage Act, 1954, being M.J. Petition No. A-2400 of 2011 before the Family Court in Mumbai.

4. In the aforesaid divorce petition, the Appellant, inter alia, sought permanent alimony of Rs. 30,00,00,000/- and interim maintenance of Rs. 3,50,000/- for herself and Rs. 2,50,000/- for her minor daughter. It is to be noted that the Family Court, by order dated 21.10.2013, partly allowed the appellant's application for interim maintenance and directed the respondent to pay Rs. 2,00,000/- per month for the appellant (wife) and Rs. 1,00,000/- per month for the minor daughter. The order of trial court granting interim maintenance was sustained by the appellate courts thereafter.

5. Thereafter, the Family Court by a final order and judgment, dated 14.09.2015, in M.J. Petition No. A-2400 of 2011, inter alia, while granting the divorce to the petitioner, provided

for the permanent alimony, in the following manner – 4. The respondent shall pay lumpsum permanent alimony of Rs. 6 Crores for the petitioner and Rs. 5 crores for their daughter Naia, within three months from the date of decree.

5. Out of the above mentioned Rs. 5 Crores, the petitioner shall keep the amount of Rs. 3.5 Crores in fixed Deposit with any nationalized bank in the name of minor child Naia for a period of 5 years.

6. The petitioner is not entitled to withdraw above amount of Fixed deposit of Rs. 3.5 Crores in the name of minor daughter without the permission of the Court during the minority of child.

6. It may be relevant to note that both parties preferred appeals, before the High Court, against the aforesaid order of the Family Court, being FCA No. 216 of 2015 and 232 of 2015. The High Court, by order dated 09.03.2016, has issued notice in both appeals filed by parties herein and the same is pending.

7. In the meanwhile, respondent filed a Civil Application No. 385 of 2015 in FCA No. 216 of 2015, seeking, inter alia, stay of the implementation of the final order, so far as it relates to the permanent alimony, granted by the Family Court. On 04.05.2016, the High Court, while considering the interim stay sought by the respondent, tentatively allowed his counsel to seek instruction on the deposit, in the following manner- 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 a grant of facility to pay monthly amount will not be considered on merits. Further, by order dated 12.08.2016, The High Court while granting a conditional stay, ordered as under- 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. On an appeal before this Court, by the respondent, in SLP (C) No. 32082 of 2016, this Court, by Order dated 28.11.2016, while dismissing the special leave petition, extended the time period for respondent to deposit the money by further two months.

8. In view of the aforesaid order of this Court, the respondent, accordingly, deposited the requisite money and complied with the order.

9. Thereafter, the appellant (wife) filed an Application before the High Court, being Civil Application No. 78 of 2017 in FCA No. 216 of 2015, seeking, inter alia, permission to unconditionally withdraw a sum of Rs. 8.25 Crores deposited by the respondent.

10. The High Court, by the final impugned order, dated 25.04.2017, while partly allowing the application, inter alia, passed the following order-

(I) We direct the registry to invest a sum of Rs. 1.125 crores in separate fixed deposit with any nationalized bank. While opening the fixed deposit account, instructions shall be given to the Bank directing the Bank to transfer the quarterly interest accrued thereon directly to the bank account of the applicant-wife. We direct the applicant-wife to furnish necessary account particulars of her Bank account to the Registrar (Judicial-I) within a period of three weeks from the date on which order is uploaded;

(II) The amount equivalent to 75% of the sum of Rs. 3.5 Crores shall be separately invested in fixed deposit with any nationalized Bank. In the event of any major change in circumstances, it will be open for the applicant-wife to apply to this Court for seeking permission to withdraw a part of the said amount or interest accrued thereon;

(III) Rest of the amount deposited by the respondent-husband in terms of the order dated 12th August 2016 shall be invested in fixed deposit in any nationalized bank;

(IV) All fixed deposits shall be renewed from time to time till further orders are passed by the Court in Family Court Appeal;

11. Further, the appellant (wife) filed a Review Petition No. 5 of 2017 in Civil Application No. 78 of 2017, seeking review of the aforesaid order. The High Court, vide order dated 06.07.2017, dismissed the Review Petition filed by the appellant (wife).

12. Aggrieved by the impugned order, the appellant (wife) approached this Court through these appeals.

13. Heard the learned senior counsels appearing on behalf of both parties and perused the material available on record.

14. Our attention was drawn to the fact that appellant (wife) and the minor daughter were provided with Rs. 2,00,000/- per month and Rs. 1,00,000/- per month as interim maintenance, but the aforesaid amount has been substantially reduced and presently, the minor daughter is only entitled for approximately Rs. 29,000/- per month, even after being granted the permanent alimony by the Family Court through the final order. Further, we are aware of the fact that the appeals filed by both the parties are pending in the High Court.

15. Although the learned senior counsel, appearing on behalf of the respondent, has vehemently contended that there was no requirement to grant any amount to the petitioner

(wife), as she was alleged to have sufficient means to maintain herself and her daughter, but we are not impressed by such submissions on merits, as we are only concerned with reasonability of conditions imposed for granting stay. In this case at hand, we have to delicately balance the interests of parties concerned, so that a party is not unjustly denied of his rights on the one hand, at the same time, interest of judgment-debtor during intra-appeal is also not unjustly denied.

16. Learned senior counsel appearing on behalf of the petitioner, has limited the submissions to only a part of the entire amount granted by the trial court, so as to maintain herself and her child. Although we acknowledge the respondent's promise to provide for the child's education in the concerned institution, but we cannot lose track of the fact that the appellant (wife) may require certain amount to lead a comparable life and also provide for her child's comfort at the same time. Therefore, it is imperative on us to protect her interests in this case at hand.

17. In view of pendency of appeals before the High Court, any further indulgence at this stage is not required, except, we deem it appropriate to modify the order of the High Court to the extent that the appellant (wife) be allowed to withdraw Rs. 2 Crores during intra-appeal as an interim measure.

18. Further, we request the High Court to expeditiously dispose of the appeals. It is also made clear that we have not expressed any views on the merits of this case and the High Court is further requested to consider the case, uninfluenced by any observations made herein.

19. Accordingly, these appeals are disposed of.