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### CLARITY ON PARITY: BOMBAY HIGH COURT UPHOLDS HUSBAND'S CLAIM FOR MAINTENANCE

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The Bombay High Court (HC) in a recent decision in *Bhagyashri v Jagdish* [Writ Petition Number 2527 of 2021], upheld the decision of a lower court decreeing 'maintenance *pendente lite*' and permanent alimony in favour of the ex-husband.

#### **Facts and Background**

The petitioner wife and respondent husband were married on 17 April 1992. During the subsistence of their marriage, the wife filed to dissolve the marriage on the grounds of cruelty and desertion. Thus, the marriage between the parties was dissolved by a decree of divorce passed on 17 January 2015. Thereafter, the husband claimed permanent alimony of INR 15,000 per month from the ex-wife, alleging that he suffered humiliation and harassment in the marital relationship as the divorce was filed with *mala fide* and dishonest intentions. He contended that he had no source of independent income, movable or immovable property and not being of good health was unable to secure a job for himself. With respect to the wife, the husband stated that she had completed her higher studies and was employed as a university teacher earning an income of INR 30,000 per month, while also possessing valuable household articles and immovable property. The husband added that in order to encourage his wife to study and acquire her degrees, he managed the household affairs, keeping aside his own ambitions.

The husband also filed a separate application claiming "maintenance *pendente lite*", that is, interim maintenance till the disposal of the main proceedings.

The husband's claim was strongly opposed by the wife. She submitted that the husband was running a grocery shop and that he also owned an auto rickshaw from the leasing out of which he earned income and was hence independent. She also stressed that the couple have a daughter born out of the wed-lock who is already dependent on her and, therefore, the claim of maintenance by the husband should be rejected.

The petitions were heard by the Lower Court which directed a payment of INR 3,000 per month as interim maintenance to be awarded to the husband from the date of the application till its disposal. The instant order was followed by another order wherein directions were given to the school to create a charge on the wife's salary.

The aggrieved wife challenged both the abovementioned orders before the HC in a writ petition.

The primary argument advanced by the wife was that since the marriage between the petitioner and the respondent had been dissolved by a decree of divorce, the proceedings for

permanent alimony and maintenance under the Hindu Marriage Act, 1955 (HMA) are not maintainable especially since the terms "husband" and "wife" are not used upon dissolution of marriage. It was contended that the orders of the Lower Court amounted to a travesty of justice.

On the other hand, the husband submitted that the provisions contained in Section 25 of HMA (dealing with alimony) does not depend upon the outcome of the relationship subsequent to divorce and hence the husband cannot be denied the benefit of claiming under the section, after dissolution of marriage.

### **Decision of the HC**

The HC examined the provisions of the HMA dealing with interim and permanent maintenance and noted that they are both enabling provisions which confer a right on the indigent spouse to claim maintenance from the other.

The court further observed that Section 25 of the HMA permits the court to pass an order regarding maintenance either at the time of passing any decree or any time thereafter and that they cannot be made redundant by giving constricted meaning to the words "wife or husband".

In the court's view, words used by the legislature are passed with reason and not in vacuum. Accordingly, when it specifically permits the courts to exercise the power of granting permanent alimony and maintenance at the time of passing of the order or at any time subsequent thereto, it is open for the court to exercise such power.

The HC supported its reasoning by highlighting that Section 25 permits a court to vary, modify or rescind an order as the court may deem just and therefore the provision cannot be restricted to read that, on divorce / dissolution of marriage, the wife or the husband cannot bring such proceedings.

The HC also noted that the provisions are gender-neutral and that they can be invoked by any spouse. In conclusion, the orders of the Lower Court were accordingly not interfered with.

### **Conclusion**

The decision of courts in matters of maintenance and alimony are largely fact driven and dependent upon the peculiarities of each case. The courts endeavour to ensure that the maintenance claim decreed is befitting the status of the parties and mould it based on a variety of factors.

Criteria oft analysed by courts include the status of living of parties during marriage, income of each party along with income-earning capacity, capacity of a spouse to pay maintenance, number and needs of dependants, lifestyle of parties, and the bona fides of each party during the subsistence of marriage.

Bearing in mind the implications an alimony and maintenance order may have upon an individual's finances, it is important to consider planning for unfortunate contingencies before marriage. These measures could include pre-nuptial agreements and spousal trusts amongst others.

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