

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Digitally signed
by
HUSENBASHA
RAHAMAN
NADAF
Date:
2026.07.27
13:03:23
+0530

WRIT PETITION NO. 2549 OF 2025

Prashant Lunawat)
Age 41 years, Occupation- Business,)
Currently residing at House No.4/43,)
Lamta Road, Baihar- District,)
Balaghat, Madhya Pradesh-481111)Petitioner

Versus

1) Khushboo Jain)
Age 42 years, Occupation: Service)
Residing at flat no. 202, Raigad CHSL,)
Sher E Punjab, Andheri East, Mumbai)
-400093) ...Respondent No.1

2) Hriday Prashant Lunawat)
Age 11 years, Occupation: Student)
Residing at flat no. 202, Raigad CHSL,)
Sher E Punjab, Andheri East, Mumbai)
-400093) ... Respondent No.2

3) State of Maharashtra) ... Respondent No.3

Ms. Pushpa Ganediwala a/w. Ms. Anshu Agrawal for Petitioner.
Mr. Akshay Shetty i/b Mr. Akhilesh Chaubey for Respondent
Nos.1 & 2.
Ms. Manisha R. Tidke, APP for Respondent No.3-State.

CORAM : M.M. SATHAYE, J.

DATE : 24th JULY, 2026

ORAL JUDGMENT :

1. Heard learned counsel for the parties. This is a dispute between the Petitioner-husband and Respondent No.1-wife. Petitioner-husband has filed this petition challenging an interim order

dated 30.01.2025 passed by the Judge of Family Court No.2, Mumbai below Exh.5-A in Petition E-256 of 2021, directing the Petitioner-husband to pay interim-maintenance of Rs. 50,000/- per month to Respondent No. 1-wife from 30.10.2021. Respondent No. 2 is their son, who is about 12-13 years old, as on today.

2. Admittedly, the main application under Section 125 of Criminal Procedure Code, 1973 ('CrPC', for short) is pending and is already a 5 year old litigation. Divorce and custody litigation filed by the Petitioner-husband is pending, which is apparently filed after about an year or so from start of above maintenance proceedings.

3. According to the learned counsel for Petitioner-husband, Respondent No.1-wife is an educated lady having an MBA degree. It is submitted that the Petitioner-husband is a Chartered Accountant (CA) by profession who was employed with good salary prior to Covid-19 and was staying in Mumbai and had taken housing loans for purchase of two flats, one at Andheri other at Panvel. It is submitted that during Covid-19, he lost his job and his income decreased and he was required to move to his native place, Baihar, Madhya Pradesh, where he is practicing as CA. It is submitted that presently the Petitioner-husband is required to pay bank's equated monthly installments (EMI) of both Andheri and Panvel flats apart from spending on himself, his parents at native place and pay maintenance and due to decline in earning, he is facing financial difficulty. It is submitted that Petitioner is required to borrow money from family members. It is submitted that Respondent No.1-wife is not ready to come and stay with husband at Baihar. On instructions,

it is submitted the Petitioner-husband is ready to pay Rs.25,000/- per month, if Respondent No.1-wife shifts to Panvel Flat so that the Andheri flat can be sold and arrears can be cleared. It is further submitted that though EMI for Andheri is about Rs. 60,000/- and EMI for Panvel flat is about Rs. 40,000/-, however, the difference between market value of two flats is far more considerable, which has material bearing on the aspect of sale proceeds. It is further submitted that the sale of Andheri flat is necessary for paying other EMI amount as well as for clearing arrears of maintenance which are mounting by day.

4. On the other hand learned counsel for Respondent No.1-wife submitted that the Petitioner has not cleared the arrears as per the impugned order, which are about Rs.27 lakh as on today, after deducting the amount paid/deposited. He submitted that the Magistrate has considered the reduced income and average of 3 years is considered. So far as the income of the Petitioner-husband is concerned, he submitted that the income tax return have shown decrease in the income after the litigation started, which indicates that the decrease shown is not genuine. He also raised maintainability issue of the petition contending that revision can be filed against the impugned order. He submitted that the Respondent No. 1 wife is not ready to shift to Panvel flat.

5. It is not disputed that what is under challenge is an interim-maintenance order. Parties are yet to face final verdict. From impugned order itself it is clear that Respondent No.1-wife is earning at least Rs.15,000/- per month as salary on the date of impugned order. Evidence of her recent employment and salary was not before

the Family Court. According to the learned counsel for the Petitioner-husband, as on today, Respondent No.1-wife is earning much more.

6. I have considered rival submissions and perused the record.

7. Considering that the Petitioner has invoked supervisory jurisdiction under Article 227 of the Constitution of India and further considering the fact that under earlier orders, the parties agreed for final disposal of the matter at admission stage, the objection in maintainability is overruled.

8. This is a case where according to the husband, the wife is not residing / refusing to reside with him without any sufficient reason and therefore she is not entitled in view of Section 125(4) of CrPC. According to the wife, the husband left the matrimonial house which according to her is Andheri flat. In view of the fact that main application is pending, I am not commenting on this aspect to avoid prejudice to either side.

9. Perusal of the impugned order shows that the learned Judge of the Family Court has held that there is no explanation for the decrease in the income during financial year 2020-21. Impugned order records that litigation started in 2021. It is almost a year after the Covid Pandemic started. So far as the effect of Covid Pandemic which started in March 2020, it cannot be disputed that it effected professions and businesses all across the country. Therefore the Petitioner-husband can not be taken as exception. Therefore, it can not be said that there is no explanation for reduction in income. The case of the Petitioner that he is required to pay EMIs of both the flats

and he is also facing the liability of maintenance arrears will have material bearing on the issue at hand. The finding of the learned Judge of the Family Court in the impugned order that the present income of the Petitioner-husband can be safely considered at Rs.1,00,000/- to Rs.1,50,000/- lakh per month, does not appear to be based on any objective calculation or figures.

10. It appears from the submission of the learned counsel for Respondent No.1-wife that the wife is not contributing anything in the EMIs to be paid for keeping both the flats.

11. In a dispute between husband and wife, if wife expects a luxury of staying at a premium location like Andheri, Mumbai without paying EMI from her own pocket and the very availability of such premium location flat/residence is because the husband is paying EMI, then it cannot be expected from the husband, who is supposed to pay EMI or paying EMI, will not plead it as a reason for reduction in maintenance amount. Equality can not be claimed selectively and certainly not when both parties are earning. If lifestyle is to be maintained, both parties must contribute.

12. Apparently, Respondent No.1-wife is not ready to leave the location of Andheri and move even to Panvel, let alone to native place of the Petitioner-husband. The reason behind such stand is not for this Court to comment upon, not at least at this interim stage. Be that as it may.

13. Petitioner-husband is ready if the wife wishes to occupy Panvel flat. Because of the stand of the Respondent No.1-wife of not vacating

Andheri flat and shifting to Panvel, the Petitioner-husband is fully justified in contending that he is not in a position to bear the payment of both EMIs for Andheri flat as well as Panvel flat and therefore seeking reduction in the maintenance amount.

14. The petitioner has shown clear willingness to pay Rs.25,000/- per month as interim maintenance during pendency of the main application under Section 125 of CrPC.

15. If the Petitioner-husband who is facing maintenance litigation wants to dispose of any of his properties (for both of which, only he is paying EMI) to raise money for meeting monthly expenses including the liability of paying maintenance and its arrears, in my view, no fault can be found with such a stand or request made in that behalf. At the cost of repetition, it is noted that Respondent No. 1 – wife is not contributing anything to EMIs of either Andheri flat or Panvel flat.

16. From the impugned order, it is seen that the amount of Rs.50,000/- per month directed to be paid by the Petitioner is also for the purpose of taking care of the educational expenses of the son. It is unfortunate to note that when the husband and wife both are earning and want their children to take best education and both are expected to contribute to education expenses, the decision about location of the school and fees must be taken with consent of both stake-holder parties. It is seen, more often than not, that such decisions are taken without consulting a stakeholder party who is supposed to contribute for educational expenses, which in the present case is the Petitioner-

husband. If child's education and its expenditure is an issue, decisions about choice of school, its location and location-dependent fees can not be taken unilaterally without consent of the party who is supposed to pay.

17. In the aforesaid facts and circumstances and for reasons indicated above, the impugned order requires interference.

18. **Writ Petition is accordingly disposed of** by passing following order :

(A) The impugned order dated 30.01.2025 is set aside.

(B) The Petitioner-husband is directed to pay Rs.25,000/- per month to Respondent Nos.1 and 2 from 30.10.2021 till disposal of the main application under Section 125 of CrPC. Needless to mention that amount paid to Respondent No. 1 shall be subject to final adjustment as may be ordered by the Family Court.

(C) Considering that the arrears are not substantially cleared, the Petitioner is directed to pay arrears as per above modified amount, directly to Respondent No.1-wife within a period of 12 weeks from today, failing which the impugned order will revive.

(D) Hearing of main application (E-256/2021) is expedited and the concerned learned Judge of the Family Court is directed to hear and decide it, in accordance with law, within 9 months from presentation of this order.

(E) Both sides are directed to co-operate with the Family Court for expeditious disposal.

19. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)