

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**(Family Division)**

**FL 519 of 2008**

**BETWEEN:**

**HARESH BHARAT KARNANI**

**Applicant/Husband**

**AND**

**RAKHEE DAYALDAS KARNANI**

**Respondent/Wife**

**Before**

**The Hon. Madam Justice Elneth O. Kentish      Judge of the High Court**

**Appearances:**

Mrs. Peta-Gay Lee-Brace, Attorney-at-Law for the Applicant/Husband

Mrs. Cicely P. Chase, QC, in association with Ms. Althea Chapman-Carmichael and Ms. Asha Downes, Attorneys-at-Law for the Respondent/Wife

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2013: May 27  
      June 19  
      September 17  
      October 22  
2014: March 28  
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## JUDGMENT

### THE PARTIES

- [1] **Kentish J:** The Applicant/Husband was born in Barbados on 7 June 1971 to parents of Indian descent and Hindu faith. The Respondent/Wife was born in India on 2 December 1972 and she and her family are also Hindu.
- [2] It was a marriage arranged, as remains customary in some parts of India, between the respective families of the parties even though the Applicant/Husband had lived all his life in Barbados. The parties met for the first time four weeks before their marriage and went through a ceremony of marriage according to Hindu rites in Mumbai (formerly Bombay) India.
- [3] After a brief honeymoon, the Applicant/Husband returned to Barbados with his new bride and later on 2 September 1998 went through a civil ceremony at the District 'B' Magistrates' Court in Oistins, Christ Church.
- [4] The Respondent/Wife was a total stranger to Barbados. She took up residence with her husband in an apartment adjoining the home of his parents. To date that has been her only residence since her arrival in Barbados.
- [5] To all intents and purposes the parties only slept in that apartment and were fully integrated into his parents' home. All their expenses of living (food, utilities and transportation) were provided for by his mother, Renu Karnani, the matriarch of the family. At the very core of this case is a fundamental aspect of the Hindu/Indian culture in which the husband is responsible for his wife and the family.
- [6] Throughout the marriage, the Applicant/Husband worked, and still works, as a Manager in a jewelry business under the name Nari's Barbados Limited,

owned and operated by his family. The Respondent/Wife also worked there for a period of some three years, before the parties eventually started their own jewelry store under the name Gold Impressions Jewelry Store (“Gold Impressions”) operating out of Galleria Mall, Broad Street in Bridgetown, where the family jewelry store Nari’s was also then located. They were the joint owners of this business.

- [7] On 10 January 2001 the only child of the marriage, Hema Karnani, was born. She now attends St. Michael Secondary School.
- [8] In time, the marriage broke down irretrievably with no prospect of reconciliation and in an atmosphere of rancour, acrimony, distrust and allegations of physical abuse.
- [9] The Respondent feels trapped, unable, as she says, to maintain herself and afford alternative accommodation. The Applicant/Husband and his mother want her out of the apartment.
- [10] On 5 September 2008, the Applicant/Husband filed an application for dissolution of the marriage which has still to be heard and determined.
- [11] In the interim on 6 November 2008, the Respondent/Wife filed, under a certificate of urgency, an application for maintenance for herself and the minor child Hema including the provision of suitable accommodation on the ground that it has become impossible for her to reside in the matrimonial home.
- [12] An interim order for maintenance was made by Reifer J. and the issue of maintenance for the Respondent/Wife and the minor child, including accommodation, remains to be resolved in the ongoing proceedings before me.

[13] Also in the interim, the Applicant/Husband filed on 14 September 2012 an application relating to the distribution of the marital assets. That application is also to be determined in these proceedings.

[14] Despite the protracted proceedings in which several affidavits have been filed by and/or on behalf of the parties and the lengthy cross-examination on those affidavits, there is no dispute that each party is entitled to a one-half share in these assets.

[15] The difficulty in resolving the distribution of the marital assets arises, firstly, from the fact that each party prior to the commencement of these proceedings appropriated some of the cash assets for his or her sole use and benefit; secondly, from the absence of a proper accounting of the inventory and stock of Gold Impressions which was taken over by Nari's; thirdly, the non-disclosure by each of the parties of certain assets and/or the appropriation of the same and, fourthly, the level of distrust and animosity generated by the breakdown of the marriage.

### **THE ASSETS**

[16] It has now been agreed that the following are the marital assets:

1. The matrimonial property situate at Lot 66, 2<sup>nd</sup> Avenue, Ocean Drive, Fort George Heights, St. Michael ("the land");
2. The remaining stock from Gold Impressions;
3. Funds formerly in a Junior Savings Account No-16-5446003 ("the Hema Account") maintained at FirstCaribbean International Bank;
4. Funds formerly in a joint account No-3105803772 in Citibank, Florida, USA; and

5. One Mitsubishi Lancer.

## **DISTRIBUTION OF ASSETS**

### **1. The Land**

[17] This land was acquired from monies emanating from Gold Impressions. Its valuation for land tax purposes is \$597 000.00. There is an outstanding mortgage in favour of FirstCaribbean International Trust and Merchant Bank (Barbados) Limited (“the Bank”) in an amount said to be \$250 000.00.

[18] In his evidence under cross-examination, the Applicant/Husband stated that he was prepared to transfer his half-share in the land to the Respondent/Wife, subject to the outstanding mortgage, as part of the property settlement.

[19] The mortgage is in arrears and the land has been put up for sale by the Bank. It has been on the market for a considerable period of time. The parties have been given an opportunity by the Bank to find a buyer for the land. To date, no buyer has been found. It seems that its location together with the ongoing economic recession have combined, thus far, to thwart its sale at a price acceptable to the parties.

[20] The Respondent/Wife is prepared to accept the offer of the Applicant/Husband on the condition that her Counsel should have conduct of the sale. Counsel for the Applicant/Husband has objected to this condition being attached, without advancing a good and sufficient reason for the objection.

[21] Given that the Respondent/Wife will be assuming responsibility for the existing mortgage and would be entitled to the net proceeds of sale, I consider that her Counsel is the proper person to have conduct of any sale thereof. This might, in any event, be an academic exercise if the Bank finds a buyer.

[22] I therefore order that the Applicant/Husband shall transfer to the Respondent/Wife his one-half share or interest in Lot 66, 2<sup>nd</sup> Avenue, Ocean Drive, Fort George Heights, St. Michael subject to the existing mortgage in favour of FirstCaribbean International Trust and Merchant Bank (Barbados) Limited to the intent that thereafter the Respondent/Wife shall hold the legal and beneficial interest therein for her sole use and benefit freed and discharged from any interest of the Applicant/Husband therein, but subject to the aforesaid existing mortgage.

[23] Before I proceed to consider the distribution of the value of the residual stock in Gold Impressions, the funds in the Citibank account in Florida, USA and the funds in the Hema Account at FirstCaribbean International Bank, I must address certain aspects of the evidence in these proceedings.

[24] From the outset both parties were less than candid in the disclosure of assets and their dealings with the same.

[25] The first affidavit filed in the matter was that of the Respondent/Wife in support of her urgent application for maintenance for herself and the minor child Hema. Her application was supported by a statement of financial circumstances filed contemporaneously with the application on 6 November 2008.

[26] Although the statement of financial circumstances disclosed an estimated sum of \$30 000.00 as “credit in banks, savings accounts, credit unions”, it did not disclose the existence of the Hema Account which was opened for the benefit of Hema and on which the Respondent/Wife is the sole signatory.

[27] Nor did that affidavit disclose that between 2006 and 2008 there was well over \$100 000.00 in that account and that over the period September 2006 and

October 2007 the Respondent/Wife withdrew the equivalent of US\$60 000.00 from that account and remitted it to India for investment, without the knowledge or consent of the Applicant/Husband. All this came to light in cross-examination and after partial production of the records of that account.

[28] Under cross-examination, the Respondent/Wife also admitted the withdrawal of \$11 223.74 and \$41 670.00 from that account in 2005 with which she purchased government bonds in the names of Hema and herself. This too was without the knowledge or consent of the Applicant/Husband.

[29] Re-examined she explained that she purchased the bonds using money from the Hema Account because interest on the bonds was 5% whilst on the savings it was only 3%. As a result of purchasing the bonds she realized a profit. The bonds were cashed in to pay J. S. Creations and Jade House, two suppliers of jewelry to Gold Impressions. The Respondent/Wife had to pay them off because of the “big stress” on the store. Gold Impressions was not making a lot of money as it was facing too much competition.

[30] Asked by her Counsel why she sent money from the Hema Account to India, she stated that it was because she had an account No. 5445724 on which she placed her wages and all the money that she took as salary she put back in Gold Impressions. So she took the money from Hema’s account as her salary and sent it to India.

[31] In her affidavit the Respondent/Wife had disclosed the Tata (AGI) life investment policy, but not its cash surrender value. The Applicant/Husband is a beneficiary on the policy and, in cross-examination, its surrender value was stated to be US\$9 025.00.

[32] The Respondent/Wife also failed to disclose mutual funds invested in India and valued at US\$30 000.00.

[33] What of the Applicant/Husband and his non-disclosure? His Counsel focused on the non-disclosure of the Respondent/Wife. The statement of financial circumstances filed by the Husband on 30 January 2009 does not disclose the Citibank account in Florida. Nor does it disclose the 100 shares issued to him in Nari's. Nor does it disclose his pension plan with Sagicor. It discloses the land at Fort George Heights and the estimated sum of \$19 022.39 as "credits in bank saving accounts, building societies etc." But perhaps the most peculiar feature of his statement of financial circumstances is his salary of \$200.00 per week as a manager and the complete absence of any expenses whatsoever, with a note that he has obligations under several of the heads [in the statement of financial circumstances], particularly as they relate to the child of the marriage Hema and all of which are borne by his mother.

[34] I digress to comment that it is difficult to conceive of such an arrangement in the context of a Barbadian marriage. However, as noted earlier, the parties are Indian by descent or origin and Hindu by religion. And it is perhaps the transposition from one culture to another which accounts for the phenomenon shown on the Applicant/Husband's statement of financial circumstances.

[35] His eventual disclosure of the Florida account came in his further affidavit filed 24 August 2012, after it was referred to in the Request for Discovery of the Respondent/Wife filed 17 November 2009.

[36] Indeed, to date, he has not disclosed savings account #2606666149 with Citibank F.S.B. at Biscayne Financial Centre opened on 18 January 2008 and in respect of which he issued handwritten instructions to remove the beneficiary Hema Karnani therefrom immediately and until further notice "for

security reasons”. (See Exhibit “4” attached to the affidavit of the Respondent/Wife filed 27 August 2009).

[37] However, in his further affidavit filed 6 December 2012 he stated at para 3 that he did not recognize that account number and urged the Respondent/Wife to produce to the Court the information in her possession relating to that account. That information appears from Exhibit “4” referred to in the preceding paragraph. And there has been no denial that he wrote those instructions.

[38] The Applicant/Husband has denied that he owns 100 shares in Nari’s. So has his mother. However, attached to his affidavit filed 6 December 2012 as Exhibit “HBK 2” is a copy of a share certificate number 13 which certifies that Haresh Bharat Karnani of 40 Highgate Garden, Collymore Rock in the parish of St. Michael is the registered owner of 100 shares in Nari’s (Barbados) Ltd. That share certificate is dated 1 June 1999 signed by the then secretary and director, whose signatures are indecipherable, and issued under the seal of Nari’s (Barbados) Ltd. I therefore reject the testimony of the Applicant/Husband that he is not the owner of those shares and that he was never issued with 100 shares in Nari’s as the directors objected to the issue. Accordingly, I find that he is the owner of 100 shares in Nari’s.

[39] In the final analysis I am satisfied that I cannot regard the testimony of either the Applicant/Husband or the Respondent/Wife as entirely reliable. And I especially bear this in mind in dealing with the distribution of the remaining matrimonial assets to which I now return.

## **2. The Stock in Gold Impressions**

[40] It is not in dispute that on the closure of Gold Impressions the stock was taken over by Nari's and that it was agreed that, when sold, it would be used to defray the outstanding loan on the land and the expenses relating thereto; the loan for the stock and other expenses of the parties.

[41] In her affidavit sworn 27 August 2009 the Respondent/Wife at para 37 deposed that the stock and assets of Gold Impressions were worth approximately \$200 000.00 when her mother-in-law, Renu Karnani, and the Applicant/Husband took them over.

[42] However, under cross-examination she did not accept that the value of the stock so handed over was approximately \$200 000.00. She said that she had assessed the value of the gold jewelry and the watches, but that the silver had not been valued. It is significant that she was the person who assessed the value at approximately \$200 000.00, a value she now seeks to reject so as to place the stock at a higher value.

[43] In the affidavit of her mother-in-law, Renu Karnani, filed 22 October 2009 she puts the stock taken over by Nari's at \$198 000.00. And I am prepared to hold and find that the value of the stock taken over was \$200 000.00. I therefore reject the evidence of the Respondent/Wife that the stock had a greater value. The Respondent/Wife struck me as a very intelligent person who had, before her marriage, almost completed a degree in Commerce in India. And I am certain that given the breakdown of the marriage she would have exercised great care in determining the value of the stock taken over by Nari's.

[44] Her Counsel has urged upon the Court that there has been no valuation of the stock now remaining for distribution. The Applicant/Husband puts that value at approximately \$60 000.00 and so has his mother.

[45] Attached to the affidavit of Renu Karanani as Exhibit “RK 1” is a stock sheet of Gold Impressions detailing a breakdown of the deductions from the value of the stock over the period July 2008 to August 2009. At the latter date the value of the stock stood at \$114 412.00.

[46] That affidavit was filed on 22 October 2009 and exactly 4 years later on 22 October 2013, Renu Karnani was giving evidence in this matter. She was the person dealing with the stock and making disbursements therefrom. It was not suggested to her that the value of the stock remaining was in fact greater than the sum of \$60 000.00.

[47] I therefore find the value of the remaining stock in Gold Impressions to be \$60 000.00 and order that the Applicant/Husband shall retain this stock for his sole use and benefit.

### **3. The funds at FirstCaribbean International Bank and the funds in Citibank Florida**

[48] As I have stated earlier, I regard the testimony of both parties as unreliable, particularly as it relates to the financial transactions between them and the use of the funds generated by Gold Impressions.

[49] I therefore find that as the Applicant/Husband has in essence appropriated the Citibank account, he ought to be allowed to retain that account for his sole use and benefit. And I so order. In so far as the Respondent/Wife has also in essence appropriated the funds in the Hema Account at FirstCaribbean International Bank, I find that she ought also to be allowed to retain that account for her sole use and benefit, notwithstanding that the account was opened as a junior savers’ account for the benefit of her daughter Hema. And I so order.

#### **4. The Mitsubishi Lancer car**

[50] The Respondent/Wife claims an interest in the Mitsubishi Lancer purchased from Simpson Motors in 2005 and registered in the joint names of the parties. According to the unchallenged affidavit evidence of Renu Karnani, a deposit of \$10 000.00 was paid and the balance of the purchase price was to be paid over 72 months by monthly installments of \$961.00. It is the evidence of Renu Karnani that she has paid all the monthly installments to date, totaling some \$48 000.00. In addition she has also paid the road tax on and the insurances and maintenance costs of the vehicle.

[51] In her evidence the Respondent/Wife concedes that while she paid one-half of the deposit, all other installments and expenses relating to the car have been borne by her mother-in-law. In the circumstances, I find her contribution to the purchase of the car and its operation to be negligible and make no order in her favour in respect of the car.

#### **SPOUSAL MAINTENANCE**

[52] This brings me to the thorny and complex issue of whether an order should be made that the Applicant/Husband pay to the Respondent/Wife a monthly sum by way of maintenance, such sum to include the cost of providing alternative residential accommodation for herself and the minor child Hema.

[53] It is thorny and complex not because of the legal principles to be applied, as set out in ss. 50 and 52 of the Family Law Act, Cap 214 of the laws of Barbados (“the Act”), but because it involves a marriage arranged between the families of the parties and the cultural underpinnings of such a marriage in a legal system far removed from that culture.

[54] So the first question is whether, in the circumstances of this case, it was reasonable for the Respondent/Wife, with 4 years of university education in commerce and being intelligent and experienced in the jewelry business, to refuse to become an employee and insist instead on pursuing her desire to own her own business at a location in Broad Street?

[55] That desire seems consistent with the fact that the Respondent/Wife came from a mercantile family in India. She married into a family which owned and operated a jewelry business in Barbados where she was employed for 3 years before she and the Applicant/Husband started their own jewelry business, Gold Impressions.

[56] The business flourished for a time and they both enjoyed a comfortable lifestyle which was largely “expense-free” due to the input of the Applicant/Husband’s parents. It was the initial success of the business, taken with the rent-free accommodation and the absence of the usual expenses of running a household, that allowed both of them to open and maintain the disclosed and, I also believe, non-disclosed accounts.

[57] When Gold Impressions crashed, the Respondent/Wife became unemployed and a-stay-at-home mother, caring for the minor child of the marriage and preparing meals during the week for the entire family, including her in-laws. By that time, her marriage had also crashed. However, the Respondent/Wife continued to reside and still resides with Hema in the apartment adjoining the family home and still bears negligible, if any, expenses of running a household with the exception of her personal needs.

[58] It is her Counsel’s submission that in Hindu culture the Husband is expected to provide for his wife and family. That may be so and indeed may be inferred from his parents and, by extension, himself absorbing all the usual

living expenses of housing, accommodation, utilities and food. But her marriage has broken down. Her relationship with her in-laws is fractured beyond repair or so it seems. They no longer wish to provide the support they had previously provided.

[59] To my mind, these changed circumstances demanded that she take practical steps to become self-reliant and to seek employment as an employee until such time as she could start a business of her own.

[60] I therefore find that her refusal to seek employment in another business, having regard to her skills, intelligence and experience in the jewelry business, was nevertheless, in the peculiar circumstances of the case, unreasonable. In this regard, I am mindful that more than six years have elapsed since the breakdown of the marriage.

[61] The Respondent/Wife is seeking maintenance for herself in the sum of \$3 500.00 per month inclusive of residential accommodation for herself and the minor child.

[62] Under s. 52 of the Act, in so far as relevant, the Court is empowered to make orders with respect to the maintenance of a party to the marriage or a child of the marriage.

[63] In so doing, the Court is required to take into account the factors now commonly referred to as the s. 53(2) factors.

[64] I shall consider only those factors that are relevant to this case and the application of the Respondent/Wife filed 6 November 2008 and that of the Applicant/Husband filed 14 September 2012.

**(i) the age and state of health of the parties**

[65] The Respondent/Wife was born on 2 December 1972 and is now 41 years old. On her evidence she is in fairly good health. The Applicant/Husband was born on 7 June 1971 and is now 42 years old. On his evidence he has high blood pressure and high cholesterol and is taking an aspirin a day.

[66] There is no significant age difference between the parties. The difference in their state of health is, to my mind, not substantial.

**(ii) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for gainful employment.**

[67] There is no doubt about the capacity, physical or mental, of the Respondent/Wife for gainful employment and I have found her refusal to seek employment as an employee to be unreasonable.

[68] As to her income and financial resources it is clear that at present she has no income. I consider, however, that from the evidence she has sufficient financial resources to provide for herself until she becomes either self-employed, as she wishes, or an employee. Those financial resources are to be found in the funds formerly in account number 16-5446003 at FirstCaribbean International Bank, some of which have been invested in India, the TATA AIA life investment policy valued at US\$9 025.00 and a portfolio of investments in a number of companies in India valued at US\$30 000.00.

[69] The Applicant/Husband has given evidence that he attended the Green Lynch Secondary School. He stated that he left school after spending two years in fourth form. Thereafter, he attended the Barbados O'level institute but left after a single term. He has no CXC subjects and no academic qualifications.

[70] On the basis of their educational attainment it is clear that the Respondent/Wife's capacity for gainful employment is far greater than that of the Applicant/Husband. As to the income and financial resources of the Applicant/Husband, in his statement of financial circumstances he disclosed a salary of \$200.00 per week. This, he confirmed in oral testimony. He stated that he is employed by his mother at Nari's jewelry store as a salesman. However, he said that he has not been paid since October 2012, as the business in the store is very slow. He added that staff had to be laid off and once a week the store resorted to selling gold jewelry to the Cash for Gold business in order to generate income to pay expenses including the wages of the sole remaining employee of Nari's, whose wages are also not up-to-date.

[71] On his evidence he is in arrears of the maintenance order made 23 October 2009 in favour of the Respondent/Wife in the sum of \$150.00 per week. Since March 2013, it seems that sum has been paid either partially or not at all. He is not in a position, he stated, to comply with the order.

[72] His mother confirmed his salary of \$200.00 per week and that he has not been paid since October 2012. She also confirmed that she pays the expenses in relation to the family residence.

[73] So it appears that the Applicant/Husband's seemingly low wage of \$200.00 per week may be partially explained by the virtual absorption by the matriarch of the family of all his liabilities and expenses.

[74] However, as I have earlier found, he has maintained the Citibank account in the sum of US\$78 658.28, which I have ordered that he retain for his sole use and benefit. It is his Counsel's submission that there is no evidence before the Court that this sum is now available to him or available for distribution. He had that sum transferred to a trusted friend. There is also no evidence

before the Court that that sum is not now available to him. Indeed, he admitted under cross-examination that the funds from that account were not being used to defray any of his current expenses. The inference to be drawn, therefore, is that the funds are being held for him by that trusted friend and are available to him.

[75] Accordingly, I find that those funds are or ought to be available to the Applicant/Husband and form part of his financial resources. I am also not satisfied that the Applicant/Husband has made full and frank disclosure of his bank accounts and, in particular, that mentioned at para [36] above. I therefore hold that, notwithstanding the disclosed income of the Applicant/Husband, I am satisfied that he does have further financial resources both disclosed and non-disclosed.

[76] As to the government bonds, I accept that the Applicant/Husband no longer owns them and that these bonds were cashed in, divided equally between both parties and used to defray some of the debts of Gold Impressions.

**(iii) whether either party has the care and control of a child of the marriage...who has not attained the age of eighteen years**

[77] Presently, Hema, the minor child of the marriage, resides with the Respondent/Wife in a self-contained apartment adjoining the Karnani family residence. Both parties, along with her maternal grandmother, share in her day-to-day care and control. The greater part of her financial needs is borne by her maternal grandmother.

[78] The Applicant/Husband has stated that he is prepared to meet all the educational and other expenses of Hema if she is allowed to remain in Barbados with his family. He has proposed that Hema should complete her

secondary education at St. Michael School in Barbados where she is currently a second form student.

[79] However, it is clear, and also understandable, that the Respondent/Wife, who has no family in Barbados, wishes to either return to her native India or migrate to the U.S. Virgin Islands where a sister resides. She wishes to take Hema with her. So in these circumstances the issue of which party should have the care and control of Hema is yet to be resolved and is an issue to which I shall return.

**(iv) the financial needs and obligations of each of the parties**

[80] The Respondent/Wife is seeking spousal maintenance on the ground that she has no income and is not employed. On the other hand, the Applicant/Husband acknowledges his obligation to maintain the minor child. He argues that he is not in a position to maintain the Respondent/Wife.

[81] Neither party has an obligation to support any other person other than the minor child, Hema.

**(v) the eligibility of either party for a pension allowance or benefit under any Act or rule or under any superannuation fund or scheme, or the rate of any such pension, allowance or benefit being paid to either party.**

[82] The Applicant/Husband has a Retirement Income Policy with Sagikor. According to his affidavit evidence that plan matures when he attains the age of 65 on 7 June 2036, but no payments have been made to the plan for the last 7 years. The beneficiary under that plan is his mother.

[83] It is submitted by Counsel for the Respondent/Wife that the Applicant/Husband is eligible to receive the sum of \$64 381.00 from that

policy at maturity. No supporting documentary evidence has been produced for that submission.

[84] The Respondent/Wife has no pension plan in force and neither party will qualify for a pension under the National Insurance and Social Security Act, Cap 47 of the Laws of Barbados as no contributions have been paid on behalf of or by either of them.

**(vi) where the parties have separated or the marriage has dissolved, a standard of living that in all the circumstances is reasonable.**

[85] The Applicant/Husband and Respondent/Wife, as noted earlier, have since the marriage resided and still reside at the Karnani family home. Until the closure of Gold Impressions and with the absorption of all their living expenses by the matriarch of the family, they enjoyed a comfortable standard of living.

[86] The Applicant/Husband will no doubt continue to enjoy a reasonable standard of living in his parents' home. So the question is, what is a reasonable standard of living that the Respondent/Wife should be accorded in the changed circumstances of the dissolution of the marriage? For reasons that will become clear, I will return to this issue in dealing with the maintenance of the minor child.

**(vii) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income.**

[87] It is clear on the evidence that the Respondent/Wife has sufficient training, experience and certification. She requires no further training to either own

and operate her own jewelry business or to become an employee in such a business. I accept her affidavit evidence that she ran Gold Impressions almost single handedly and worked tirelessly in that business.

[88] It is said by her Counsel that should the Respondent/Wife receive the sum of maintenance she seeks and her share of the matrimonial assets, she will be able to establish any business she aspires to operate, thereby providing her with an independent source of income. That may be so. However, the question is whether the Applicant/Husband is obliged, and is in a position, to fund the establishment of a business for her.

[89] Having regard to the distribution of the assets earlier ordered and my finding on her financial resources, the issue is the amount of spousal maintenance, if any, that should be ordered in her favour, to which I shall return.

**(viii) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party.**

[90] The evidence before the Court is that both parties worked in partnership in the business and acquired the disclosed marital assets, which are now more or less equally distributed between them.

**(ix) the duration of the marriage...and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration**

[91] This was a marriage of some eight years. As already noted, the parties made a comfortable living from the jewelry business they owned and operated together.

[92] So neither the duration of the marriage nor the marriage itself affected negatively the earning capacity of the Respondent/Wife. It was the closure of the business which left her without an income and, in the aftermath of the dissolution of the marriage, wholly dependent on and at the mercy of the Applicant/Husband and his mother. Her response to her changed circumstances not to seek employment as an employee was, as I have found, not reasonable.

**(x) the terms of any order made or proposed to be made under s. 57 relating to the property of the parties.**

[93] Under paras [22]; [47] and [49] hereof, I have made orders relating to the property of the parties and I bear in mind those orders in determining what spousal maintenance, if any, the Applicant/Husband should be ordered to pay to the Respondent/Wife.

[94] In view of my finding that the refusal of the Respondent/Wife to seek employment was unreasonable and also in view of my finding that she has financial resources at her disposal, I find that she is not entitled to maintenance in the sum of \$3 500.00 inclusive of accommodation, as sought from the Applicant/Husband. Her claim for maintenance is therefore dismissed.

[95] I further order that the interim order of Reifer J. made 23 October 2009 shall cease with immediate effect from 28 March 2014 and all arrears now due under that Order shall be paid by the Applicant/Husband to the Respondent/Wife on or before 30 April 2014. In default of payment of the said arrears, the Applicant/Husband shall pay to the Respondent/Wife interest thereon at the rate of 6% per annum from 1 May 2014 until payment in full.

## **CARE AND CONTROL OF THE MINOR CHILD**

[96] In her Application filed 6 November 2008, the Respondent/Wife seeks an order that she be granted care and control of the minor child with reasonable access to the Applicant/Husband as mutually agreed between the parties and in default of agreement as ordered by the Court.

[97] Neither party has sought any order relating to the custody of the minor child. In the circumstances and, in order to resolve all outstanding issues between the parties, it is ordered that custody of the minor child shall be vested jointly in the Applicant/Husband and Respondent/Wife.

[98] There is no suggestion that the Respondent/Wife should be denied care and control of the minor child. Accordingly, care and control is granted to the Respondent/Wife with reasonable access to the Applicant/Husband mutually agreed between the parties or in default as ordered by the court.

## **MAINTENANCE OF THE MINOR CHILD**

[99] Hema is now 13 years old. In her application filed 6 November 2008, the Respondent/Wife is seeking maintenance for Hema in the sum of \$2 000.00 per month, together with the payment of all medical, dental, ophthalmic, pharmaceutical and educational expenses and the cost of any extracurricular activities.

[100] Under s. 51 of the Act, each party is liable to maintain the minor child of the marriage according to their respective financial resources. In this case, the Applicant/Husband is prepared to assume full responsibility for Hema's educational expenses provided she resides in Barbados and continues to attend public secondary school. If the Respondent/Wife ceases to reside in Barbados and takes Hema to India or elsewhere with her, then he is prepared

to assume responsibility for one-half of her educational expenses, in addition to paying the sum of US\$200.00 per month towards her maintenance.

[101] It is clear on the evidence that the Respondent/Wife can no longer continue to reside in the apartment adjoining the Karnani home. The Applicant/Husband has not objected to the Respondent/Wife having care and control of Hema, as she wishes to do. What follows from this is that the Respondent/Wife will require housing accommodation not only for herself but also for the minor child of the marriage, so long as the Respondent/Wife continues to reside in Barbados.

[102] Although I am satisfied that there is no longer any obligation on the part of the Applicant/Husband to provide accommodation for the Respondent/Wife, it is, however, his obligation to contribute to the provision of such accommodation for Hema. That being the case, until the Respondent/Wife leaves Barbados I order that the Applicant/Husband shall pay to the Respondent/Wife one-half of the reasonable cost of rented accommodation inclusive of the cost of utilities (water, electricity and gas) towards the housing accommodation for the minor child. In addition, he shall pay the Respondent/Wife \$400.00 per month as maintenance for Hema, with effect from the date on which the Respondent/Wife ceases to reside at the Karnani family home, together with the full cost of her educational expenses.

[103] In the event that Hema relocates with her mother to India or elsewhere, the Applicant/Husband shall pay to the Respondent/Wife the sum of US\$200.00 per month towards her maintenance together with one-half of all medical, dental, ophthalmic, pharmaceutical and educational expenses reasonably incurred on her behalf.

[104] Counsel for the Applicant/Husband submits that before the Respondent/Wife is allowed to remove the minor child from the jurisdiction, proposals for Hema's education abroad should be placed before the Court for its approval. I accept this submission. I therefore order that the Respondent/Wife shall provide the Court with written proposals in relation to the continued education abroad of Hema, such proposals to include the name and address of the educational institution, whether the institution is prepared to accept the minor child and the cost of her attendance at that institution. Until such information is provided and the Court approves that institution, the minor child shall not be removed from this jurisdiction without an Order of the Court.

### **COSTS**

[105] In her application dated 6 November 2008 the Respondent/Wife also sought an order that the Applicant/Husband pay the costs of the Respondent/Wife such costs to be agreed or taxed.

[106] S. 94 of the Act empowers the Court to depart from the general rule that each party shall bear his or her own costs, where the Court is of the opinion that the circumstances in any case are such as to justify it in doing so.

[107] In this case, having regard to all the circumstances and to the nature of the orders made by the Court, I am satisfied that there are no circumstances which require the Court to depart from the general rule. Accordingly, each party shall bear his or her own costs of these proceedings.

### **DISPOSAL**

[108] In light of the foregoing, it is ordered that:

- (i) the Applicant/Husband shall transfer to the Respondent/Wife his one-half share or interest in Lot 66, 2<sup>nd</sup> Avenue, Ocean Drive, Fort George Heights, St. Michael subject to the existing mortgage in favour of FirstCaribbean International Trust and Merchant Bank (Barbados) Limited to the intent that thereafter the Respondent/Wife shall hold the legal and beneficial interest therein for her sole use and benefit freed and discharged from any interest of the Applicant/Husband therein but subject to the existing mortgage in favour of FirstCaribbean International Trust and Merchant Bank (Barbados) Limited and in the event of any sale of the land by the Respondent/Wife, Counsel for the Respondent/Wife shall have conduct of the said sale;
- (ii) it is declared that the value of the remaining stock in Gold Impressions is \$60 000.00 and that the Applicant/Husband shall retain this stock for his sole use and benefit;
- (iii) the Applicant/Husband shall retain for his sole use and benefit the sum of US\$78 658.28 in the account number 310580772 in Citibank, Florida, USA;
- (iv) the Respondent/Wife shall retain for her sole use and benefit the funds formerly standing in the account number 16-5446003 at FirstCaribbean International Bank, together with all funds invested by her in India including the Tata (AIG) life investment policy;
- (v) the claim of the Respondent/Wife for spousal maintenance is hereby dismissed;

- (vi) custody of the minor child, Hema, shall be vested jointly in the Applicant/Husband and Respondent/Wife;
- (vii) care and control of the minor child shall be granted to the Respondent/Wife with reasonable access to the Applicant/Husband to be mutually agreed or in default of agreement as ordered by the Court;
- (viii) (a) the Applicant/Husband shall pay to the Respondent/Wife the sum of \$400.00 per month as maintenance for the minor child, Hema, with effect from the date on which she takes up residence with the Respondent/Wife in Barbados together with one-half of all medical, dental, ophthalmic and pharmaceutical expenses reasonably incurred in respect of said minor child within 14 days of the presentation to him of receipts, bills or invoices. So long as the minor child remains in Barbados, the Applicant/Husband shall pay in full all of her educational expenses;
- (ix) (b) in addition, the Applicant/Husband shall pay to the Respondent/Wife one-half of the reasonable costs of rental accommodation for the Respondent/Wife and the minor child, Hema, with effect from the date on which the Respondent/Wife vacates the apartment at the Karnani family home and so long as the Respondent/Wife remains in Barbados with the said minor child;
- (x) in the event that the minor child relocates with the Respondent/Wife to India or elsewhere, the Applicant/Husband shall pay to the Respondent/Wife the sum of US\$200.00 per month towards her maintenance together with one-half of all medical,

dental, ophthalmic, pharmaceutical and educational expenses reasonably incurred on her behalf;

- (xi) the Court being satisfied that proper arrangements have been made for the welfare of the minor child of the marriage, Hema Karnani, in all the circumstances, hereby grants an order under s. 42 of the Family Law Act; and
- (xii) the interim order of Reifer J. made on 23 October 2009 shall cease with immediate effect on 28 March 2014. All arrears now due under that order shall be paid by the Applicant/Husband to the Respondent/Wife on or before 30 April 2014. In default of payment of the said arrears, the Applicant/Husband shall pay to the Respondent/Wife interest thereon at the rate of 6% per annum from 1 May 2014 until payment in full; and
- (xiii) liberty to apply.

**ELNETH O. KENTISH**  
**Judge of the High Court**