

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.10393 OF 2013

RANJEET NABHA)...PETITIONER

V/s.

UDIT NABHA)...RESPONDENT

Mr.Darius Khambata, Advocate General, a/w. Mr.Vineet B. Naik, Senior Counsel and Mr.Suraj Iyer i/b. M/s.Ganesh & Co. Advocate for Petitioner.

Ms.Taboun Irani i/b. Ms.Sharon Patole Advocate for Respondent.

CORAM : SMT.R.P.SONDURBALDOTA,J

DATE : 24th DECEMBER, 2013.

P.C.:-

1 Rule. Rule made returnable forthwith. By consent of the parties, petition is taken up on board for final hearing. Heard the counsel.

2 This petition is directed against the order dated 21st October 2013 by which the Family Court awarded maintenance of Rs.2,00,000/- per month to the respondent wife and Rs.1,00,000/-

per month to the minor daughter towards maintenance pendent lite from the date of the application till further orders. Mr.Khambatta, the learned Advocate General points out that the extensive material produced by the parties of their respective income as also the income of the other side has not been considered in detail by the Family Court while arriving at the income of the petitioner. The Family Court has taken the net income of the petitioner as not less than Rs.20,00,000/- per month. Perusal of the order confirms the grievance made by the petitioner. The respondent had alleged that the petitioner earns Rs.63,00,000/- per month and has two rented premises in two of the costliest cities i.e. Mumbai and New York. According to her, the petitioner is super rich and is born in a princely family. The petitioner, on the other hand, does not dispute that at one point of time, he was earning Rs.63,00,000/- per month as the CEO and Managing Director of W.L. Ross India Pvt.Ltd, but according to him, he has lost that employment and since then, he is jobless. He claims that as per the Income tax returns filed by him in USA, his annual income now is of 18,287 dollars. Apart from this one fact, there is extensive material on record indicating the status of the petitioner which ought to have been considered by the Family Court. The claim of the petitioner of earning only 18,287 dollars per year, is required to be outright rejected for the simple reason

that he is a regular resident of America, living in a house in New York taken on rent @ 5,000 dollars per month. He is also seen to be maintaining a very lavish life style. Perusal of the order shows that the estimate of monthly income of Rs.20,00,000/- drawn by the Family Court is not an assessment based on the material on record. It appears to be more of an arbitrary figure taken by the learned Judge. Therefore, the application for interim reliefs filed by the respondent is required to be remanded to the Family Court for fresh hearing.

3 Ms.Irani, the learned counsel for the respondent however submits that the petitioner is not entitled to any hearing since he has flouted the orders of the court. She points out that the petitioner has not paid any money whatsoever to the respondent towards maintenance pursuant to the impugned order. According to her, as on today, the arrears due from the petitioner are of more than Rs.60,00,000/-. There is no dispute that the petitioner is in arrears of the entire amount of maintenance payable pursuant to the impugned order. Mr.Khambatta, the learned Advocate General submits that since the petitioner has challenged the order and since it is completely beyond his means, the petitioner has not paid that amount. The material on record prima facie indicates that the petitioner is a man of substance. In any case, merely because the petitioner

desired to challenge the order of interim maintenance, it is not open for him to refuse to pay maintenance. The petitioner must comply with the order until the same is either varied or set aside. Hence, petitioner is required to be directed to clear the entire arrears of maintenance as on today before the matter is remanded to the Family Court for fresh hearing. Petition is therefore, disposed of with the following order:-

ORDER

Petitioner shall clear the entire arrears of maintenance till date within a period of 10 weeks from today. On such payment being made, the petition will stand allowed. The order impugned in the petition will stand set aside. The application of the respondent for interim maintenance will be remanded to the Family Court for fresh hearing. In the event the petitioner fails to comply with the direction for payment of arrears of maintenance, this Writ Petition shall stand dismissed without any further reference to the Court.

Mr.Khambatta seeks stay of operation of the order.
Request for stay is rejected.

(SMT.R.P.SONDURBALDOTA,J)