

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 159 OF 2015

Shiraz s/o. Nurulla Khan

....Applicant

Versus

Uzma Shirin w/o. Siraz Khan
and Anr.

....Respondents.

Mr. A.A. Yadkikar, Advocate for petitioner.

Mr. A.N. Irpatgiri, Advocate for respondents.

CORAM : T.V. NALAWADE, J.

DATED : 24th July, 2015.

ORDER :

1. The petition is filed to challenge the order of interim maintenance made by the Principal Judge of Family Court, Nanded in proceeding bearing E-264/2014. The Family Court has granted interim maintenance at the rate of Rs. 45,000/- in favour of each of the present respondent Nos. 1 and 2. Thus, the present petitioner will be require to pay Rs. 90,000/- per month. The maintenance amount is to be paid from 27.9.2013 and so, the petitioner ill be required to pay more than amount of Rs. fifteen lakh as the arrears till this date.

2. The submissions made show that the Judge of the Family court has considered the record of salary income of the

petitioner when he was working in Japan. The learned counsel for the petitioner submitted that in one month, salary was shown as 4.3 lakh and in other month, salary was shown as 3.6 lakh and that amount was described in 'Yen', currency of Japan and further the salaries are always high in Japan as the cost of living index is also high. He worked in Japan for few months. He has produced the salary certificate of the petitioner from his employer from India for the month of September 2013 and his gross salary is shown as 56,833.93. After considering the standard deductions, the salary can be around Rs. 50,000/- (if income tax and professional tax are deducted from the gross salary amount).

3. As against aforesaid contentions, the original applicants in Family Court, present respondents have contended that it is not only the salary income which is source of income to the present petitioner, but he has other sources of income also. It is contended that he is in plotting business, broker in immovable property and he is making income by working as visiting lecturer and by taking private tuitions of engineering students. It is contended that his monthly income is more than Rs. three lakh. However, this contention was not made before the Family Court in a proceeding filed for interim maintenance.

4. It appears that before Family Court the present petitioner/husband did not specifically make contention about his salary income or other income and he only denied that he was getting the income as per the contentions made against him. In view of such defence, the Family Court accepted the case of the wife on the basis of aforesaid record which is the salary record prepared by the same company in Japan.

5. The learned counsel for petitioner submitted that there is possibility that there was misconception in the mind of the petitioner and his advocate and due to that the relevant record was not produced and due to that, petitioner is suffering. It was contended that when the petitioner is not getting salary income of more than Rs. 50,000/- he will not in a position to pay Rs. 90,000/- per month, so, the matter requires reconsideration.

6. Even if it is presumed that the monthly income from salary of the present petitioner is around Rs. 50,000/-, he can be made to pay Rs. 25,000/- per month to the present respondents. As per the order of the Family Court and considering the period, it can be said that he is in arrears of amount atleast Rs. 4,50,000/-. Unless and until such amount is deposited by the

petitioner, no opportunity can be given to him to put up his case and produce the record for reconsideration.

7. In the result, the petition is allowed, subject to condition that the petitioner deposits amount of Rs. 4,50,000/- (Rupees four lakh fifty thousand) in this Court within one month from today. If the amount is not deposited within one month from today, the present proceeding shall stand dismissed automatically without back reference to the Court and there will be liberty to the original applicants, present respondents to go for execution of the order made in their favour by Family Court. All the points are kept open. If the amount is deposited, the matter be remanded back to the Family Court for fresh consideration of the application filed for interim maintenance.

8. Authenticated copy is allowed to both the sides.

[T.V. NALAWADE, J.]

ssc/