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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2749 OF 2015

Shri Sachin Vasant Piwal,
Age: 36 years, Occ.: Nil,
R/o Maroti Temple, Kalasgaon,
Yashwant Nagari, Alandi Road,
Pune – 414 015

..PETITIONER
(Orig. Respondent)

VERSUS

Sau. Devyani Sachin Piwal,
Age: 29 years, Occu: Service,
C/o. Smt. Vaishali Vasantrao Hans,
R/o Delhi Gate, Municipal Colony,
House No. 7, Ahmednagar – 414 001

..RESPONDENT
(Orig. Petitioner)

Mr P. R. Katneshwarkar, Advocate for petitioner;
Mr R. S. Kasar, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 21st November, 2015

ORAL ORDER :

In Hindu Marriage Petition No.92 of 2013, learned 2nd Joint Civil Judge Senior Division, Ahmednagar, passed an order dated 5th November, 2014, below Exh.5, awarding interim maintenance of Rs.3,500/- with expenses of Rs.4,000/-, which order is impugned in the present petition.

2. Mr Katneshwarkar, learned Counsel appearing on behalf of the petitioner, would strenuously urge that the order impugned suffers from non application of mind, as the petitioner is unable to earn because of accident and payment of maintenance of Rs.2,000/-, already ordered in the

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proceedings under the Protection of Women from Domestic Violence Act, 2005, which is not taken into account. He would then add that in view of the qualification of respondent-wife and the fact that she is residing with her parents; the mother who is getting pension and brother who is serving as Supervisor in the Municipal Council, the award of interim maintenance of Rs.3,500/- is exorbitant.

3. Learned Counsel appearing on behalf of the respondent-wife, while opposing the prayer, would urge that the order impugned is just and proper and has been passed after taking into account the earning capacity of the petitioner. According to him, payment of Rs.2,000/- towards interim maintenance ordered in the proceedings under the Protection of Women from Domestic Violence Act, 2005, was duly considered while passing impugned order of interim maintenance. Learned Counsel then would urge that the fact remains that the respondent-wife is not earning and though her qualification is brought on record, is unable to meet her expenses out of the amount of Rs.2,000/-. He would then pray for dismissal of the present petition.

4. Upon perusal of the impugned order, it is required to be noted that the fact about order of payment of Rs.2,000/- as interim maintenance in the proceedings under the Domestic Violence Act, 2005, was very much before the Court. Apart therefrom, the learned Trial Court has taken note of the fact as regards the earning capacity of the petitioner, so also the issue as regards his accident in 2013, was also taken into account.

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5. The accident of the petitioner has resulted in his temporary inability to earn and the same has occurred in 2013. Apart therefrom, his contention that he is not employed anywhere, cannot be accepted, particularly having regard to the fact that it has already come on record that he was gainfully employed.

The brother and mother of the respondent-wife, who are earning, are having their own liabilities.

6. In view of above, no case for interference is made out. Writ Petition thus fails and stands rejected. However, at the request of learned Counsel appearing on behalf of the petitioner, hearing of Hindu Marriage Petition No.92 of 2013, is expedited.

(N.W. SAMBRE, J.)

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