

Lekha Saurabh Nalwaya	...	Petitioner
Vs.		
Saurabh Nalwaya	...	Respondent

Ms Anjali Purav Yajurvedi for Petitioner.
Mr. Pritam Prakash Runwal for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 21, 2015

P.C. :

Heard Ms Purav, learned Counsel for petitioner and Mr. Runwal, learned Counsel for respondent at length.

2. Rule. Mr. Runwal waives service for respondent. At the request and by consent of the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner-wife has challenged the judgment and order dated 23.09.2013 passed by the learned Judge, 6th Family Court, Mumbai in Interim Application No.85 of 2013 (exhibit-9). By that order, the Family Court rejected the application made by the petitioner for interim maintenance.

4. In support of this Petition, Ms Purav invited my attention to the impugned order as also the application-exhibit 9 and in particular paragraphs 2 and 4 thereof. She submitted that in paragraph 2, petitioner has craved leave to refer to and reply upon the facts stated in the petition for divorce. In paragraph 4, it is asserted that her monthly

expenses that include traveling expenses, food, clothing and other miscellaneous expenses are around Rs.15,000/- among other expenses for the course of Company Secretary. She submitted that the Family Court however, rejected the application on the ground that application is vague and petitioner is claiming amount for pursuing educational course and not for maintenance. She submitted that the Family Court was also of the view that petitioner did not plead that she has no source of income and / or the same is not sufficient for her maintenance. She submitted that the Family Court committed error in not considering the case made out in the Petition for divorce and merely dealt with the interim application. For all these reasons, the impugned order deserves to be set aside.

5. On the other hand, Mr. Runwal submitted that the petitioner has suppressed her income and the respondent desires to produce documents in support of his case that petitioner has sufficient means and therefore, does not require maintenance to be provided by the respondent.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In the impugned order, the learned Judge has recorded that the application is vague on material aspect and that the petitioner has claimed maintenance for pursuing her education. Prima facie, the learned Judge is not justified in arriving at this conclusion. Perusal of paragraphs 2 and 4 of the interim application shows that the petitioner has craved leave to refer and rely upon the facts stated in the Petition for divorce and that her monthly expenses that include traveling expenses, food, clothing and other miscellaneous expenses are to the tune of Rs.15,000/-. In other words, in addition to claiming amount for pursuing educational course, the petitioner has claimed maintenance

from the respondent. The learned Judge has, therefore, committed serious error in holding that the petitioner did not claim any amount towards maintenance. On this short count alone, the impugned order deserves to be set aside.

7. Mr. Runwal submitted that respondent wants to produce on record documents to substantiate his case that petitioner has source of income. In view thereof, Petition is disposed of in the following terms:

- a. The impugned order is quashed and set aside and application (exhibit-9) being Interim Application No.85 of 2013 is restored to the file of the Family Court;
- b. Parties are at liberty to produce the documents in support of their respective case;
- c. The learned Judge is requested to decide Interim Application within 2 months from the date of appearance of the parties i.e. 26.02.2015;
- d. All contentions on merits of the parties are expressly kept open.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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