

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 824 OF 2014

Mr. Anurag Madangopal Khurana. ... Petitioner.
Versus
Mrs. Rashmi Anurag Khurana. ... Respondents.

Mr. N.P. Mule, advocate for petitioner.

Mr. Hitesh P. Vyas, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV,J
RESERVED ON: FEBRUARY 2, 2015

PRONOUNCED ON : JULY 8, 2015.

P.C.:

1 Heard the learned Counsel for the petitioner and the learned Counsel for the respondent.

2 Rule. Rule returnable forthwith and heard with the consent of the parties.

3 The Petitioner herein questions the correctness and validity of the order dated 11/3/2014 and 10/12/2013 passed by the Family

Court thereby directing the Petitioner to pay maintenance of Rs. 40,000/- per month to the respondent wife from 7/2/2013.

4 It is the case of the Petitioner that the Petitioner has got married to the respondent on 15/11/1996 at Jalandhar, Punjab according to the Hindu rites and customs. The couple is blessed with a daughter on 23/1/1998. The daughter is named as Nivedita.

5 It is a matter of record that a discordant note had struck between the spouses. On 7th April, 2012, the respondent herein filed a petition before the Family Court, Pune under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The respondent had also filed an application for interim maintenance to be paid to her by the present Petitioner as well as the interim custody of the child.

6 In the application seeking interim maintenance, the respondent herein had made an application that at the time of filing of the said petition/application, she was working with Verve Global Services and

was drawing salary of Rs. 50,000/- per month, That she was unable to maintain herself and minor daughter Nivedita. It was contended that the respondent i.e. the present petitioner was earning an amount of Rs. 50 Lakhs per annum. That the Petitioner herein is owner of two BHK flat at Magarpatta city and 3 BHK flat at Panchkula. That the present petitioner has deposited amounts under various heads including shares, debentures, insurance policies. The respondent herein had prayed for interim maintenance of Rs. 2,50,000/- per month for mother and daughter. It was demonstrated before the Family Court that the respondent herein was unable to bear the expenses of the litigation and hence, prayed for interim maintenance.

7 The present Petitioner had appeared in the said proceedings and had denied all the contentions raised by the Petitioner in that proceedings. The present petitioner had urged before the Family Court that his business is in doldrum and his annual income does not exceed Rs. 10 Lakhs.

8 The Petitioner herein had also filed an application requesting the Hon'ble Family Court to direct the respondent to produce on record the salary slips of the previous year, I.T. Returns for the last 3 years and documents relating to investments, deposits etc. The said documents were not produced on record by the respondent. The respondent herein had filed income tax return for the year 2012-2013. The petitioner had also tendered his income-tax return before the Family Court. Finally by order dated 11/3/2013 the learned Family Court was pleased to grant interim maintenance of Rs. 40,000/- per month from 7/2/2013 till final disposal of the main petition.

9 The learned Counsel for the Petitioner submits that the Family Court has granted maintenance in favour of the wife without considering the provisions of Hindu Marriage Act. It is presumed that the Petitioner earns much more than the wife. The learned Family Court has observed that the gross salary drawn by the spouses is almost the same. The learned Counsel for the Petitioner submits that

the Family Court has lost sight of the averment in the Petition that the Petitioner had to give proper and fair attention to her child. The Counsel for the petitioner submits that the Court ought to have considered that the salary drawn by the spouses was almost the same.

10 Upon perusal of the income-tax return filed by the respondent, it would be clear that the respondent was drawing a salary over and above the income of the petitioner. It is true that the respondent herein had to take care of child, her up-bringing and her educational expenses. It is submitted that in fact, it is a joint responsibility of the parents to bring up the child as per the standards of the family/family members. It is urged before this Court that the Court ought not to have been oblivious of the fact that the respondent herein i.e. the wife is residing in a residential premises owned by the present Petitioner. That she has rightly claimed the service charges of the said housing scheme.

11 Upon perusal of the order passed by the Family Court dated 11/3/2013, it is clear that the Court has also observed that the income of the spouses was not proved at the stage of granting interim maintenance. It has specifically observed that prima facie from the documents placed on record, the income of the husband appears to be little better than the Petitioner.

12 The learned Counsel for the Petitioner has vehemently submitted that the respondent herein had filed several documents on record to indicate that in fact, the respondent is residing in the premises of the Petitioner and that he is paying equated monthly installments. That he has no objection to her residing in the said flat. According to the learned Counsel for the Petitioner, the documents submitted by the husband in his defence have not been considered by the learned Family Court.

13 The Petitioner had also filed a review petition before the Family Court requesting the Family Court that the salary/income of the

respondent wife is sufficient to take care of the child and other incidental expenses. The child has to be brought up by both the spouses. After taking into consideration all the circumstances, the learned Judge was pleased to grant maintenance of Rs. 40,000/- to be paid to the respondent. The Review Petition being sans merit was rejected.

14 The learned Counsel for the petitioner submits that in fact, the respondent is staying in the house of the Petitioner. He has taken loan of Rs. 18 Lakhs to be paid in equal monthly installments for a period of 20 years. That at the time of purchasing the flat, he had made down payment by taking loan from his parents. The EMI is Rs. 15,000/-. It is a matter of record even according to the respondent that the Petitioner pays the educational expenses of the minor daughter Nivedita. The Family Court has not taken into consideration that the respondent is now (at the time of hearing of the petition) was working with Clarion Equity Partners as an Executive Director. It is also submitted that until the said fact was brought to the notice of

the Court, the respondent herein had not voluntarily stated so before the court and hence, there was suppression of facts. The respondent herein had filed Form No. 16 for the assessment year 2011-2012 showing income of Rs. 5.84 Lakhs. The form No. 16 for the assessment year 2012-2013 was showing her salary as Rs. 9,81,187/- which would show that the salary earned by her per month is approximately Rs. 82,000/-. As against this, the income of the husband is much less as per the income-tax return. The respondent had deliberately mentioned her income as Rs. 50,000/- per month in her application seeking interim maintenance and that the same has been considered by the learned Family Court. That in the month of May/June, 2012 she had joined as executive director with Clarion Equity Partners based in Magarpatta City. She has not placed on record the latest salary slip and hence, the learned Family Court has directed the Petitioner to pay maintenance to the tune of Rs. 40,000/-.

15 Section 24 of the Hindu Marriage Act contemplates as follows :

“Maintenance pendente lite and expenses of proceedings.-

Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

16 In the present case, the Court cannot be oblivious of the fact that the respondent has independent sufficient income for her support. In fact, she earns more than the Petitioner. The very object of enacting the said provision was to see that during the proceedings the claimant may not be handicapped. It aims at administering justice and maintaining equilibrium between the parties. It is true that the daughter Nivedita is in the custody of the respondent and not only her basic needs to be taken care of, but her educational expenses also have to be taken care of. The Petitioner has placed on record the receipts showing therein that he has paid towards the

educational expenses of his daughter. The Petitioner is not denying the said responsibility. In view of this, the Petition deserves to be partly allowed.

17 Hence, following order is passed :

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) The impugned orders dated 11/3/2013 and 10/12/2013 are hereby quashed and set aside. The Petitioner shall pay an amount of Rs. 20,000/- instead of Rs. 40,000/- from March, 2015. The payment, if any, made by the Petitioner for March, 2015 to July, 2015 shall be adjusted.
- (iii) The Petitioner shall bear the educational expenses of the daughter Nivedita by paying her fees as well as other incidental expenses including extra tuitions, books and curricular activities, medical expenses besides monthly maintenance of Rs. 20,000/- to be paid to the respondent.

(iv) The Petitioner shall continue to pay equal monthly installments for the residential flat besides Rs. 20,000/- to be paid towards interim maintenance to the respondent. The annual maintenance/service charges of the said flat shall also be borne by the Petitioner.

18 Rule is made absolute in the above terms. Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)