

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1948 OF 2014

Nilesh Maneklal Mistry

Petitioner

Vs

Sheetal Nilesh Mistry

.. Respondent

Ms Manjula Rao, Advocate for Petitioner.

Ms.Sangeeta Salvi, Amicus Curaie, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 05/02/2015

PC:

1. Heard Ms. Manjula Rao, learned counsel for the petitioner and Ms. Sangeeta Salvi, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner-husband has challenged the Judgment and order dated 6.1.2014 passed by the learned Civil Judge, Sr.Dn., Thane, below Exhibit-7 in Marriage Petition No.365 of 2012. By that order, the learned Judge allowed the application filed by the respondent-wife under sections 24 and 25 of the Hindu Marriage Act, 1955 (for short, "Act") for maintenance of herself and daughter Kashish during the pendency of the Marriage Petition. The trial Court directed the petitioner to pay amount of Rs.30,000/- each per month to the respondent and their daughter since the date of filing of the application, i.e. from 5.10.2012. The

petitioner was further directed to pay amount of Rs.20,000/- towards the expenses of the application.

3. In support of this petition, Ms Rao invited my attention to the assertions in paragraph 19 of the Petition. In paragraph 19 the respondent stated that she was compelled to apologize in writing about her friendly relations with one of the neighbours. She submitted that the petitioner filed Written Statement and in paragraph 14 he specifically asserted that the respondent befriended a gentleman, named Anil Ramchandra Nair and they used to go regularly to hotels for dinner and even went to Goa together. In short, she submitted that the respondent is unchaste and is, therefore not entitled to claim any maintenance whatsoever. She relied upon the decision of this Court in First Appeal No.1194 of 2009, decided by the Division Bench of this Court, (Coram: S.A.Bobde & S.B.Deshmukh,JJ.) on 29.4.2011.

4. Ms. Rao further submitted that the respondent claimed maintenance of Rs.20,000/- per month each to herself and their daughter. In other words, the respondent in all claimed maintenance of Rs.40,000/- per month. As against this, the learned trial Judge awarded maintenance at the rate of Rs.30,000/- each to the respondent and their daughter. In other words, the learned trial Judge had awarded maintenance, in all Rs.60,000/- per month which was not even claimed by the respondent. She further submitted that the relief not founded on

the pleadings cannot be granted. In support of this submission, she relied upon the decision of the Apex Court in the case of National Textile Corporation Ltd Vs. Nareshkumar Badrikumar Jagad and Ors, AIR 2012 SC 264. She submitted that it is a settled position of law that interim relief is to be granted in aid of final relief. In the present case, the respondent has claimed maintenance of Rs.60,000/- in all. As against this, the learned trial Judge has awarded maintenance of Rs.60,000/-. The respondent has also suppressed her income from the Court and after considering her income at any rate she is not entitled to maintenance of Rs.60,000/-.

5. On the other hand, Ms Salvi supported the impugned order. She submitted that the learned trial Judge while passing the impugned order has considered status of the parties and income of the petitioner and the respondent and, therefore, no case is made out for invoking powers under Article 227 of the Constitution of India.

6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the respondent had claimed maintenance of Rs.40,000/- in all. While awarding maintenance of Rs.60,000/- the learned trial Judge has considered the income of the petitioner. In paragraphs 3 and 7, the learned trial Judge recorded that the monthly salary of the

petitioner is Rs.2,50,000/-. The respondent is serving as a teacher on temporary basis. Ms Salvi submitted that at present respondent is drawing salary of Rs.15,000/-. The learned trial Judge, after considering the petitioner's income and the income of the respondent, has awarded maintenance during the pendency of the main proceedings. In other words, the trial Court has passed interim order during the pendency of the main proceedings. It will be open to the petitioner to substantiate his plea by leading evidence. Considering the totality of the circumstances, I do not find that the learned trial Judge has committed any error in passing the impugned order.

7. Ms.Rao relied upon the decision of this Court in First Appeal No. 1194 of 2009 decided on 29.4.2011 to contend that if the wife is unchaste, then she is not entitled to claim any maintenance. It is material to note that this Court was considering the provisions of Section 18 of the Hindu Adoption and Maintenance Act,1956. Section 18(3) specifically provides that Hindu wife shall not be entitled to separate maintenance from her husband, if she is unchaste. In the present case, the petitioner-husband has come with the case that the respondent is unchaste. That is the matter of evidence. I, therefore, do not find that the decision in the First Appeal is of any assistance to the petitioner.

8. In the case of National textile corporation Ltd (supra), the

Apex Court observed in paragraph 7 that it is a settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. In the present case, it is nobody's case that the respondent has not pleaded facts for claiming maintenance. The only grievance of the petitioner is that as against the claim of maintenance, amount of Rs.40,000/- in all, the trial Court awarded maintenance of Rs.60,000/- in all. In my opinion, the learned trial Judge, after considering Section 24 of the Hindu Marriage Act, 1955, has awarded maintenance. Section 24 of the Act reads as under :

“24. 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:**

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.”

Perusal of Section 24 lays down that while awarding maintenance, the Court will have due regard to the income of the petitioner as also the income of the respondent and accordingly

award maintenance which the Court finds to be reasonable. In the facts and circumstances of the present case, having regard to the income of the petitioner and respondents, I do not find that the Court committed any error in passing the impugned order. Mr. Rao seriously did not dispute that under Section 151 of C.P.C., the Court can award maintenance higher than what is claimed. Even otherwise, having regard to the petitioner's monthly income of Rs.2,50,000/- and respondent Rs.15,000/-, I do not find that the learned Judge committed error in granting maintenance of Rs.60,000/- as against Rs.40,000/- claimed by the respondent. That brings me to the decision of this Court in the case of Maharashtra Jeevan Pradhikaran Vs. M/s Lark Construction P. Ltd, AIR 2005 Bombay 161, In that case, the Court held that though the interim injunction can be granted in exercise of inherent powers, it is to be granted in aid of final relief. As noted earlier, in the present case, the learned Judge after considering Section 24 of the Hindu Marriage Act has awarded maintenance. I do not find that this is fit case for invoking powers under Article 227 of the Constitution of India.

9. At this stage, Ms Salvi states that the petitioner is in arrears of Rs.14,00,000/-. Ms Rao assures that the petitioner will clear the arrears within four weeks by paying Rs.3,50,000/- every week by drawing cheque in the name of the respondent. In view thereof, the petitioner is given four weeks time to clear the

arrears of Rs.14,00000/- subject to paying Rs.3,50,000/- every week by drawing cheque in the name of the respondent. If the petitioner commits single default in paying the arrears of maintenance, the respondent would be at liberty to proceed in the matter in accordance with law.

10. Ms. Rao states that the petitioner has filed application along with documents to substantiate the income of the respondent and submits that the trial Court may be directed to dispose of the said application expeditiously. In view thereof, the learned trial Judge is requested to decide such application expeditiously.

11. For the reasons indicated earlier, the Petition fails and the same is dismissed.

12. Before parting, the Court places on record the assistance rendered by Ms Salvi, who was appointed as Amicus Curaie.

(R.G.KETKAR, J.)