

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2608 OF 2014

Shri Pramod Madhukar Lavahe	...	Petitioner
vs.		
Sou. Netra Pramod Lavahe	...	Respondent

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Mr. Vasant D. Raut for petitioner.
Mr. G.N. Salunkhe i/b Mr. Mohan D. Tayade and Mr. K.S. Sarwade for respondent.

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CORAM : M. S. SONAK, J.
DATE : 21st NOVEMBER, 2015.

P.C.:

1. Rule.
2. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
3. The challenge in this petition is to the order dated 4th February, 2014 by which the 4th Joint Civil Judge, Senior Division at Kalyan has directed the petitioner to pay interim maintenance of Rs.20,000/- per month to the respondent-wife from the date of filing of the petition till the final disposal thereof, as also costs of Rs.10,000/-.

4. Mr. Raut, learned counsel for the petitioner has assailed the impugned order by pointing out that the petitioner and the respondent lived as husband and wife for a period of hardly four months. Further, the learned counsel submitted that at the stage when the impugned order was made, the petitioner was a student undertaking post graduation course in Architecture. He submitted that necessary documents to this effect including Identity Card was produced on record. However, same was not considered. The learned counsel pointed out that the respondent has not produced any documents whatsoever to substantiate her claim that the petitioner was earning amount of Rs.40,000/- for the said period and has a capacity to earn amount of Rs.1,00,000/- per month. The trial court has also not taken into consideration the circumstance. That the petitioner was living with his parents who are pensioners. Reliance was placed upon the decision of this Court in the case of Rajashree alias Vanita Rajesh Dixit Vrs. Rajesh Nagesh Dixit 2006 (2) Bombay Cases Reporter 106 and Shirish H. Garg Vrs. Nidhi S. Garg 2011 (1) Maharashtra Law Journal 520.

5. Mr. Salunkhe, learned counsel for the respondent on the other hand submitted that the petitioner has a professional degree in Architecture. The petitioner was in fact, in service earning an amount of

Rs.40,000/- p.m., but chose to resign from service. The learned counsel submitted that the petitioner is undertaking business and considering his qualification and status, he is in a position easily to earn the amount of Rs.1,00,000/- p.m. Mr. Solunkke submitted that the impugned order is only an interim order and therefore, no case is made out to interfere the same in exercise of supervisory jurisdiction under Section 226 of the Constitution of India.

6. Mr. Raut, learned counsel for the petitioner has admitted that for about three months ago, the petitioner has obtained a job from which, the petitioner earns Rs.20,000/- p.m. In this regard, across the bar, a salary slip is produced indicating that the net salary drawn by the petitioner is Rs.20,000/- p.m.

7. Having heard learned counsel for the parties, it is noted that the petitioner is having professional qualification of Post Graduation in Architecture. At the stage, when the impugned order was made, it may be true that the petitioner was only a student pursuing his post graduation course. Even at that stage, however, there was no dispute that the petitioner already had graduate qualification in Architecture. There is also material on record that the petitioner was in service, but had resigned from such service. There is dispute about the emoluments

drawn by the petitioner in such service. Mr. Raut submits that the emolument was hardly Rs.10,000/-, whereas Mr. Salunkhe submits that the same was Rs.40,000/-. Nevertheless, the fact remains that the petitioner is a professional in Architecture.

8. At the interim stage, particularly, when the party from whom maintenance has applied for, does not place all the material and facts on record, certain amount of guess work is inevitable. The circumstance that the petitioner and the respondent have lived for hardly four months as husband and wife may be relevant to some extent, but this is no occasion to lay any undue emphasis upon this aspect. Although, it is for the claimant to place material on record, it cannot be over-emphasized that it would be extremely difficult for the claimant to obtain documents with regard to salary and other earnings of her estranged spouse. Therefore, some responsibilities are also cast upon the estranged spouse in the matter. The plea of maintenance cannot be deemed on the sole ground that claimant has not been able to produce any documents with regard to the income of the estranged spouse. It is in these circumstances that it is observed that some amount of guess work is inevitable.

9. The trial Court in the present case, has taken into consideration the status as well as the professional qualification of the petitioner. The inference drawn by the trial Court that the petitioner must have been engaged in some private architectural practice is not unreasonable inference in the facts and circumstances of the present case. There is no dispute that the petitioner was earlier in service though the dispute is with regard to earning in the said service. The petitioner has not bothered to place any documents on record with regard to his earlier service. Across the bar, however, in the context of new service, the petitioner has produced a salary slip indicating salary income of Rs.20,000/-. Salary slip also indicates that the petitioner has joined his new service from June, 2015.

10. On the petitioner's own showing that his parents are not dependent on him as they are pensioners. Rather, it was sought to be contended that the petitioner is dependent upon his parents. Obviously, this aspect cannot be accepted.

11. However, considering the circumstances that the petitioner, having obtaining post graduation qualification has taken up a job as a lecturer and presently, drawing Rs.20,000/- p.m. by way of salary, some modification is required in the impugned order. It is once again

emphasized that the petitioner is qualified post graduate architecture professional. In these circumstances, the determination of compensation cannot be on the sole basis that the petitioner's income from all sources is pegged down only to Rs.20,000/- p.m.

12. The decision of this Court in case of Rajashree Dixit (supra) deals on its own facts. In the said case, there was no dispute that the husband was drawing salary of Rs.12,500/- p.m. and further, he was required to maintain his elderly parents. In the said case, it was also noted that the wife had not only completed her graduation, but was also staying with her parents. Her father was a pensioner and the mother was in employment. Such facts have not been presented in the case at hand.

13. The decision in the case of Shirish Garg (supra) points out that the petitioner's as well as respondent's income is to be taken into consideration for determination of the maintenance amount even at the interim stage. Further, the income of the parties before the Court has to be evaluated from the evidence produced by the parties as a whole. This is precisely the exercise undertaken by the trial Court in the present case. It is settled position in law that supervisory jurisdiction is not akin to Appellate Jurisdiction. Therefore, unless perversity is demonstrated,

there is normally no warrant to interfere with the exercise or discretion, particularly whether the discretion has been exercised at the interim stage.

14. Accordingly, considering the material on record, including in particular, the circumstances that even the respondent has a Diploma in Fashion Design and the petitioner is in service, since June, 2015 drawing salary of Rs.20,000/- p.m., the impugned order is modified and the amount of maintenance is reduced from Rs.20,000/- to Rs.14,000/- per month. With this modification, the rest of the impugned order is left undisturbed. Rule is made absolute to the aforesaid extent only.

15. The learned counsel for the respondents points out that arrears in accordance with the impugned order have run up to Rs.4,80,000/-. All this while there was no interim relief from this court, yet, the petitioner has not bothered to make payment towards the maintenance. No doubt, in view of modification of the impugned order, the amount of arrears will also be scaled down proportionately. However, the petitioner is directed to clear the arrears within a period of six weeks from today.

16. It is made clear that the observations in the impugned order or the present matter need not influence the Civil Court in deciding the matter finally on the basis of materials which the parties may place before it.

(M. S. SONAK, J.)