

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6942 OF 2014

Harshad Joshi	... Petitioner
vs.	
Maithili H. Joshi	... Respondent

Mr. Mandar Limaye, for the Petitioner
Mr. Pramod Arjunwadkar, for the Respondent.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: JULY 30, 2015

P.C.:

. Rule. Rule made returnable forthwith. Heard the parties finally at the stage of admission, by consent.

2. This writ Petition is directed against the order dated 1st February, 2014 of the learned Judge of the Family Court No. 3, Pune thereby directing the Petitioner to pay interim maintenance of Rs. 5,000/- p.m. to the Respondent-wife from the date of filing of the application.

3. The marriage Petition for divorce on the ground of cruelty was filed by the Petitioner vide Petition No. 298 of 2012. So the application was filed under Section 24 of the Hindu Marriage Act for interim maintenance. The maintenance to the child Arnav was rejected as the learned J.M.F.C. in the proceeding filed under the Domestic Violence Act has earlier granted Rs. 4,000/- as maintenance towards the child and the application of the wife for maintenance was rejected.

4. The learned counsel for the Petitioner has submitted that the order passed by the learned Judge of the Family Court is illegal as the learned Judge has not considered the very material especially the earning of the wife and has passed an order of maintenance of Rs. 5,000/- against the Petitioner. He submitted that the Respondent-wife was appointed in a private college in the year 2011 as a “*Shikshan Sevak*” for the honorarium of Rs. 5,000/-. At the time of deciding the application, she becomes permanent and drawing the salary of Rs. 9,000/- p.m.. He submitted that she has completed her *PhD* and now she is working as an “Assistant Professor” in one private college and drawing salary nearly Rs. 50,000/-. He submitted that the

Respondent-wife did not come before the Family Court with clean hands and did not produce any document of her income. He argued that the learned Judge of the Family Court has erred in not considering this aspect. So also the learned Judge ignored the point that the order of JMFC granting her maintenance of Rs. 3,000/- in the Domestic Violence proceeding was turned down by the learned Additional Sessions Judge, Pune by an order dated 11th December, 2012 and the said order was confirmed in the High Court in Criminal Writ Petition No. 4492 of 2012. He further submitted that the Petitioner has moved a Marriage Petition for divorce in the year 2010. No application for interim maintenance was filed till the year 2013. On 17th January, 2013 the Respondent-wife has filed an application under Section 24 of the Hindu Marriage Act. This shows that she has financial resources to survive during those three years. The Respondent-wife has not filed her affidavit in chief though the evidence of the husband is over and she is protracting the matter.

5. The learned counsel for the Respondent-wife is present. He opposed the application and supported the order of the learned Judge of the Family Court.

6. On perusal of the order of the learned Judge of the Family Court, it is found that the Learned Judge has not ignored the fact of the income/honorarium of Rs. 5,000/- which the Respondent-wife was drawing from the private college, Pune. The learned Judge has also mentioned that there is nothing on record that Respondent-wife is getting Rs. 9,000/- p.m. by way of salary as alleged by the Petitioner. The fact of salary of Rs. 50,000/- or her appointment as an “Assistant Professor” in a private college would have been accepted if the documents to that effect would have been produced before the learned Judge. In the absence of documentary evidence, the learned Judge has rightly considered her income as Rs. 5,000/- p.m. and considering the income of the Petitioner-husband as Rs. 50,000/- p.m. (approx) has directed him to pay Rs. 5,000/- p.m. as interim maintenance.

7. It is to be noted that the second point raised by the learned counsel for the Petitioner-husband in respect of setting aside the order of granting maintenance to the Respondent-wife, of the learned JMFC, by the learned Additional Sessions Judge, Pune, it can not have bearing on the issue of maintenance under Section 24 of the

Hindu Marriage Act before the Family Court especially in view of the finding given by the learned Additional Sessions Judge, Pune in para 16 of her judgment. It was held that at this stage the Court refused to accept that the applicant-wife faced domestic violence at the hands of husband and therefore she was not entitled to relief under the law. The said finding was given under the Domestic Violence Act and therefore it is no bearing.

8. It appears from the record that the Marriage Petition for divorce is filed in 2010 and if it is pending, the learned counsel for the Petitioner has to move the application to expedite the matter before the Family Court itself.

9. In view of this, I do not find any illegality in the order passed by the learned Judge of the Family Court No. 3, Pune.

10. Hence the Petition stands rejected.

(MRS.MRIDULA BHATKAR, J.)