

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 3864 OF 2009

Mrs. Meenakshi H. Khiste .. Petitioner  
vs.  
Hemant Dinkar Khiste .. Respondent

None for both the parties.

**CORAM : M. S. SONAK, J.**  
**DATE : 11 DECEMBER 2015.**

**P.C. :-**

1] The challenge in this petition is to the order dated 2 February 2009, to the extent it has denied the interim maintenance of Rs.10,000/- per month to the Petitioner and Rs.5000/- per month to her daughter. By the impugned order, the 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nashik had awarded an amount only Rs.3500/- to the Petitioner towards expenses.

2] Although, there was no reason, the Petitioner has obtained a stay on proceedings in Marriage Petition No. 439 of 2008. As a result of which, 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nashik may have been disabled to dispose of the marriage petition and the claim for maintenance made therein. Considering the reliefs applied for in the present petition, it was not at all necessary for the Petitioner, to have obtained the stay on the proceedings, which by now, would have perhaps concluded.

3] Be that as it may, from the perusal of the impugned order, it appears that the maintenance has been denied to the Petitioner and her daughter on the sole ground that the Petitioner is getting maintenance of Rs.1000/- per month and her daughter Rs.350/- per month, by virtue of the order made in Maintenance Application No. 565 of 2002. This is, by no means, a satisfactory approach. The circumstance that the Petitioner is getting some maintenance in other proceedings was a factor that was required to be taken into consideration in the matter of determination of the quantum of interim maintenance. However, on such sole basis, it was not permissible to deny any maintenance whatsoever to the Petitioner and her daughter.

4] Perusal of the impugned order indicates that the 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nashik has not at all applied its mind to the aspect of need of the Petitioner and her daughter as also the payment capacity of the Respondent. The relevant parameters in the matter of determination of interim compensation have not at all been considered. For this reason, the impugned order dated 2 February 2009 is set aside and the matter is remanded to the 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nahsik for fresh consideration of

the Petitioner's claim for interim maintenance. Now that the considerable time has elapsed since the institution of Marriage Petition No. 439 of 2008, the Petitioner is granted liberty to either amend their application for maintenance or to file an additional application and/or affidavit in support of her claim for interim maintenance. The Respondent is also entitled to file suitable reply to the claim for interim maintenance. 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nashik to dispose of the claim for interim maintenance within a period of two months from the date of production of authenticated copy of this order.

5] The 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nashik is also directed to dispose of, as expeditiously as possible, Marriage Petition No. 439 of 2008 in accordance with law and on its own merits.

6] The impugned order dated 2 February 2009 is set aside and the matter is remanded for expeditious disposal as aforesaid.

7] Though the impugned order is being set aside, the Petitioner shall not be required to refund the amount of Rs.3,500/-, which they may have received in pursuance of the impugned order.

8] Since, neither the parties nor their advocates are present, the Registry is directed to transmit the authenticated copy of this order to the 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nashik, which is taking up Hindu Marriage Petition No. 439 of 2008, within a period of fifteen days from today. The 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nashik is requested to issue notice to the parties and proceed to dispose of the application for interim maintenance as well as the Hindu Marriage Petition itself, as per the directions given in this judgment and order.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

10] All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**

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