

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3637 OF 2011

Satish R. Gaikwad .. Petitioner
vs.
Smt. Pratibha S. Gaikwad .. Respondent

Mr. P. D. Gharge for the Petitioner.
Mr. A.G. Toraskar for the Respondent.

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

P.C. :-

1] The challenge in this petition is to the order dated 1 January 2011 made by the Family Court, Mumbai. By which, the Petitioner was directed to pay interim maintenance of Rs.15000/- per month to the Respondent till disposal of main petition, i.e., Petition No.A-1180 of 2009.

2] Although, Rule was issued in this petition, by specific order dated 19 December 2011, interim relief was denied.

3] The learned counsel for the Petitioner submits that he has no instructions as to whether or not Petition No. A-1180 of 2009, in which, the impugned order came to be made is disposed of. He however, submits that the Petitioner has raised the issue of jurisdiction of the Family Court to entertain and decide the

application for maintenance by the Respondent-wife under the provisions of the Protection of Women from Domestic Violence Act, 2005 (said Act). The learned counsel for the Petitioner submits that in proceedings initiated by the Petitioner under the provisions of the Family Courts Act, 1984, it is not permissible for the Respondent-wife to seek maintenance under Section 20 of the said Act.

4] Since, the main petition was instituted in the year 2009, it is reasonable to presume that the same has been disposed of. In any case, if the same is not disposed of, the Family Court at Bandra, Mumbai is directed to dispose of the same, as expeditiously as possible and in any case within a period of six months from today. At that stage, the Family Court to decide the issue of jurisdiction as well. In case, the Petition No.A-1180 of 2009 has already been disposed of and the Petitioner desires to file a substantive appeal, the Petitioner is granted liberty to raise the issue of jurisdiction before the Appellate Authority.

5] At this stage, there is no necessity to interfere with the directions in regard to interim maintenance, as this interim relief was denied to the Petitioner and now the directions are being issued

to the Family Court for expeditious disposal of the petition. At this length of time, there is no case made out to interfere with the quantum of interim compensation. It is however, clarified that in case Petition No. A-1180 of 2009 has not already been disposed of by the Family Court, then the Family Court to dispose of the same uninfluenced by any observations in the impugned order or the circumstance that the present petition is being dismissed. The final disposal shall be on the basis of evidence/material, which the parties produced before the Family Court and in accordance with law as applicable.

6] With the aforesaid observations, this petition is disposed of.

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

(M. S. SONAK, J.)

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