

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Mahavir Jalamchand Oswal	...	Petitioner
V/s.		
Manisha Mahavir Oswal	...	Respondent

Mr.H.P.Vyas, for the Respondent.

CORAM : REVATI MOHITE DERE, J.
DATED : 13th MARCH, 2015.

P.C.

1. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.
2. Heard learned counsel for the parties.
3. By this petition, the petitioner has impugned the order dated 1st February, 2014, passed by the learned Judge, Family Court No.5, Pune, only to the extent, that it directs the petitioner to pay Rs.50,000/- per month to the Respondent – wife and Rs.20,000/- per month to the minor son – Meet, by way of interim maintenance from the date of the

application i.e. 15th March, 2013, till the final disposal of the main Petition. The said impugned order has been passed below Exhibit – 17 in P.A. No.857 of 2012. The said application being Exhibit – 17 was preferred by the respondent – wife praying therein for a direction to the petitioner to pay a sum of Rs.5,00,000/- per month as and by way of interim maintenance to the respondent – wife and their son – Meet.

4. A few facts which are germane are as under:

The petitioner was married to the respondent on 18th February, 1995. From the said wedlock, a son – Meet, was born to them on 12th November, 1998. It appears that thereafter dispute arose between the parties. The petitioner filed a petition under Section 13 of the Hindu Marriage Act, seeking divorce from the respondent – wife in the Family Court on 19th July, 2012, on the ground of cruelty and adultery. During the pendency of the said petition, the respondent –wife herein, preferred an application, being Exhibit – 17 under Section 24 of the Hindu Marriage Act in P.A. No.857 of 2012, seeking interim maintenance for herself and son-Meet.

5. It appears, that on 18th June, 2012, the respondent – wife had also filed an application under Section 12, 18, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005. In the said application which was filed on 18th June, 2012, the respondent – wife had sought the following prayers :-

- a) that the Respondents may kindly be restrained from committing any act of domestic violence or aiding or abetting the commission of acts of domestic violence against the Applicant herein, as contemplated under the provisions of Section 18(a) and (b) of the Protection of Women from Domestic Violence Act, 2005 ;
- b) that the respondents may kindly be restrained from dispossessing or any other manner, disturbing the possession of the Applicant from the shared household, situate at D904 DSK Chandradeep, 9th Floor, Mukundnagar, Pune – 411 037, as contemplated under the provisions of Section 19(1)(a) of the Protection of Women from Domestic Violence Act, 2005 ;
- c) that the Respondent No.1 may kindly be directed to pay maintenance of Rs.5,00,000/- per month to the Applicant herself and minor son Meet, as contemplated under the provisions of Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005 ;
- d) that the Respondent No.1 may kindly be directed to pay Rs.1,00,000/- towards litigation expenses to the Applicant herein ;
- e) for any other just and reasonable orders to meet the ends of justice”

6. Vide order dated 8th August, 2013 passed below Exhibit – 5 in M.A. No.1429 of 2012, the learned Judicial Magistrate First Class, Pune, was pleased to award interim maintenance of Rs.10,000/- per month to the respondent – wife and Rs.5,000/- per month to the minor son – Meet, under Section 23(2) of the Domestic Violence Act.

7. Mr.Kamat, learned counsel for the petitioner essentially made the following three submissions ; (1) that the learned Family Court Judge has awarded maintenance, without taking into consideration the interim maintenance awarded by the learned J.M.F.C., under the Domestic Violence Act ; (2) that the order passed by the learned J.M.F.C., was not placed before the Family Court, while awarding maintenance, which has been impugned in the present petition ; and (3) that the maintenance cannot be awarded twice in two different proceedings. He submitted that the order dated 8th August, 2013 passed by the learned JMFC awarding maintenance had attained finality inasmuch as, the same was not challenged by both, the petitioner and the respondent. He submitted that in view of the same, the same will now operate as an estoppel and that the respondent – wife was precluded from seeking maintenance under Section

24 of the Hindu Marriage Act. He submitted that the applicant, in both the applications i.e. before the learned JMFC and the Family Court, Pune was the same i.e. the Respondent herein. According to Mr.Kamat, the respondent cannot claim maintenance under different laws and that the learned Family Court Judge had failed to take into consideration the lifestyle of the Petitioner, before awarding the maintenance which has been impugned in the present petition. He submitted that the learned Family Court Judge has considered the sundry debts as income, which was impermissible. He submitted that even otherwise, the respondent – wife is staying in the house of the petitioner’s father at Mukund Nagar at Pune and that all expenses with respect to the flat i.e. maintenance of the flat, electricity bills are being taken care of by the petitioner – husband. He submitted that even the son’s expenses are being taken care of by the petitioner i.e. education etc. He relied on certain documents in support of the same.

8. Per contra, Mr. Vyas, learned counsel for the respondent submitted that the documents and the material that was produced before the Family Court was not available at the time, when an application was made before the learned JMFC under the Domestic Violence Act. According to him, the

sundry debts is income, as it is recoverable. He vehemently refutes all the submissions and contentions raised by the learned Counsel for the applicant. Mr. Vyas submitted that the petitioner is in arrears of maintenance, pursuant to the order passed by the learned Family Court Judge dated 1st February, 2014, which is impugned in this petition.

9. Heard learned counsel for the parties at length. Admittedly, the order dated 8th August, 2013, passed by the learned JMFC awarding interim maintenance to the respondent – wife and son was not placed before the learned Family Court Judge, when the impugned order came to be passed. Both the parties allege against each other, that the onus to produce the same, was on the other party. Be that as it may, without going into the merits of the case, as to whether the amount awarded by the Family Court was exorbitant/unreasonable or not; whether the sundry debts can be considered as income or not; whether or not the respondent – wife had placed any material on record to show the income of the petitioner; or whether the learned Judge has considered the life style of the respondent–wife or not; or whether estoppel would operate or whether maintenance can be awarded under different laws, it is necessary to quash and set aside the impugned order dated 1st February, 2014,

passed below below Exhibit – 17 in P.A. No.857 of 2012, only on the ground, that admittedly the order dated 8th August, 2013 passed by the learned Judicial Magistrate First Class was not placed before the learned Family Court Judge by either of the parties. The onus was certainly on the respondent – wife to place the same on record, before the learned Judge, Family Court, in order to enable the learned Judge to come to a conclusion, before deciding the application i.e. Exhibit 17, under Section 24 of the Hindu Marriage Act.

10. Accordingly, I pass the following order :-

ORDER

- i) The impugned order dated 1st February, 2014, passed by the Family Court No.5, Pune is quashed and set aside and the original application being Exhibit – 17 is restored back to its original file and the matter is remitted back to the trial court, for deciding the same afresh on merits, in accordance with law ;
- ii) It appears that the amount of Rs.3 lacs which has been deposited in the Family Court, pursuant to the order dated 8th October, 2014, passed by this Court, has been withdrawn by the respondent. The

learned Judge, Family Court to take into consideration the fact, while deciding the application for maintenance and make appropriate adjustments accordingly.

- iii) The hearing of Exhibit 17 is expedited, in the peculiar facts of the case.

11. It is made clear, that this Court has not considered the petition on merits. All contentions raised by both the parties are kept open.

12. Petition is disposed of accordingly.

13. Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)