

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7069 OF 2015
AND
CIVIL APPLICATION NO. 2092 OF 2015

Jimesh V. Shah .. Petitioner/Applicant

vs.

Binny J. Shah .. Respondent

WITH

WRIT PETITION (ST) NO. 26896 OF 2015

Binny J. Shah .. Petitioner

vs.

Jimesh V. Shah .. Respondent

Ms Hina A Mody for the Petitioner/Applicant in Writ Petition No. 7069 of 2015, Civil Application No. 2092 of 2015 and for the Respondent in Writ Petition (St.) No. 26896 of 2015.

Mr. Pankaj C. Kansara for the Respondent in Writ Petition No.7069 of 2015 and Civil Application No. 2092 of 2015 and for the Petitioner in Writ Petition (St.) No. 26896 of 2015.

CORAM : M. S. SONAK, J.

DATE : 05 OCTOBER 2015.

P.C. :-

1] These two petitions can be disposed of by common judgment and order.

2] Writ Petition No. 7069 of 2015 is instituted by Jimesh Shah questioning the order dated 28 November 2014, by which the Family Court at Mumbai has directed said Jimesh to pay interim maintenance at the rate of Rs.7000/- per month towards maintenance of his minor daughter from 1 December 2014 until

further orders and interim maintenance at the rate of Rs.10,000/- per month to his wife Binny for the period between 1 July 2012 to 30 November 2014.

3] Writ Petition (St) No. 26896 of 2015 has been instituted by Binny Shah questioning the very same order dated 28 November 2014, on the ground that the interim maintenance awarded is to meager and the same deserves to be enhanced.

4] Ms Hina Mody, learned counsel for the Jimesh Shah, submitted that the couple has separated from Jimesh's parents and were residing separately at Mumbai in premises taken on licence basis jointly. In such circumstances, the Family Court exceeded jurisdiction in making reference to the status and financial position of Jimesh's parents, which was a completely irrelevant circumstance. Ms Mody submitted that the Family Court has not at all taken into consideration the actual earnings of Binny as also her earning capacity particularly in the light of admissions in her own pleadings. Ms Mody also submitted that the Family Court has adopted an unequal yardstick in the matter of appreciation of Income Tax Returns of the parties. Insofar as the Income Tax Returns of Jimesh are concerned, the Family Court has observed that the parties do not

disclose their entire income in such Tax Returns whereas similar yardstick is not adopted when it comes to appreciating the tax returns of Binny. Further, Ms Mody submitted that the expenses towards the minor daughter school fees have been inflated. For all these reasons, Ms Mody submitted that the impugned order is required to be set aside.

5] Mr. Kansara, learned counsel for Binny Shah, submitted the interim maintenance awarded is on the lower side and the same, in the facts and circumstances of the present case, is required to be enhanced. Mr. Kansara submitted that Binny is no longer in employment, particularly as she is required to take care of minor daughter. Inasmuch as this aspect has been ignored, the impugned order is liable to be interfered with and the interim maintenance amount enhanced.

6] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no warrant for any interference with the impugned order dated 28 November 2014, which in any case has only directed payment of interim maintenance.

7] In proceedings under Article 227 of the Constitution of India, this Court does not exercise any appellate jurisdiction. Therefore,

unless it is demonstrated that the impugned order is without jurisdiction or in excess of jurisdiction or that the findings recorded therein are vitiated by perversity and non-application of mind, there is no scope to interfere with the impugned order. In the present case, the Family Court has taken into consideration the materials on record. In particular, the Family Court has taken into consideration that the considerable amounts are required to be expended for the purposes of minor daughter's education. The Family Court has also taken into consideration the relative financial position of both the parties and the financial background of both the parties. In the proceedings under Article 227 of the Constitution of India, there is no scope to re-appreciate such material and to base a decision on the basis of sufficiency of the material. Ultimately, it is to be noted that the determination by the Family Court is at the interim stage and once, the evidence is led by both the parties, the final determination will be made. At this stage, it is suffice to note that there is no perversity in the making of impugned orders.

8] The Family Court has not ignored any materials on record and inferences drawn by the Family Court also cannot be characterised as perverse or in the nature of surmises and conjectures. It is true that the Family Court has made certain observations, it ought to

have avoided at least at the interim stage. However, such observations do not render the impugned order vulnerable. In any case, the observations in the impugned order need not influence the Family Court at the stage of finally deciding the matter of maintenance. In this case, although Binny had prayed for maintenance at the rate of Rs.15,000/- per month for herself, the Family Court has awarded RS.10,000/- per month and that too for a particular period. The approach of Family Court is proper. The Family Court has taken into consideration not just income, but also the earning capacity of Binny. The award has, however, been rightly made taking into consideration the age and situation of the minor daughter, who lives with Binny. Despite the earning capacity, it is very much possible that Binny has not herself been able to earn substantial income, because at this stage, she was required to devote considerable time to the upkeep of minor daughter. Such approach on the part of Family Court is quite reasonable and does not warrant any interference.

9] At the same time, no relief can be granted to Binny in the petition instituted by her. This is because the Family Court has taken into consideration the circumstance that Jimesh though was earlier employed in China, he is no longer employed in China, but has to

rely upon the certain business dealings in India itself. In the facts and circumstances of the present case, therefore, there is no warrant to interfere with the impugned order either at the behest of Jimesh or at the behest of Binnay. There is neither any jurisdictional error nor any perversity involved in the making of impugned order.

10] In view of the aforesaid, both the petitions are dismissed. There shall, however, be no order as to costs.

11] In terms of the order issued by the Family Court, the arrears of maintenance had to be deposited latest by tomorrow, failing which, the Distress Warrant was to be executed. However, at the request of Jimesh the time limit for deposit of arrears is extended upto 5 December 2015. If by this date, the arrears are not paid, the Distress Warrant has to be executed against Jimesh. Further, no extension is granted for the purposes of payment of monthly interim maintenance.

12] Further, in case the Petitioner Jimesh clears the arrears towards maintenance on or before 5 December 2015 and is otherwise regular in the matter of payment of maintenance, the Family Court is directed to dispose of the main proceedings as

expeditiously as possible and in any case within a period of six months from the date of Jimesh clears the arrears of maintenance in terms of the order impugned in this petition.

13] Civil Application No. 2092 of 2015 does not survive and same is disposed of accordingly.

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

(M. S. SONAK, J.)

CERTIFICATE

**“Certified to be true and correct copy of
original signed Judgment/Order.”**