

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6575 OF 2015

Prasad Jankiram Jawaji .. Petitioner
Vs.
Ashwini Prasad Jawaji .. Respondent

.....
Ms.Seema Sarnaik for the Petitioner.
Mr. J.V. Parmar for the Respondent.

.....
CORAM : M.S.SONAK, J.
DATE : 4TH DECEMBER, 2015.

P.C.:

1. Rule. Rule is made returnable forthwith with the consent of the learned Counsel for parties.

2. Challenge in this petition is to the order dated 30th June, 2015 made by the Family Court, Pune in the matter of interim maintenance and residential accommodation. Operative portion of the impugned order reads thus:

"1. The husband is directed to pay of Rs.50,000/- (Rupees Fifty Thousand only) per month to wife towards interim maintenance from the date of application i.e. from 07/06/2014 till the final disposal of the petition.

2. The claim of wife of interim maintenance for her two children is rejected.

3. The husband is further directed to restore the possession of wife in the shared household i.e. Row house at Indrayani Nagar, Bhosari, Pune-411039 and permit her to reside therein.

4. The husband is hereby restrained from dispossessing or disturbing the possession of wife in the shared household i.e. Row House at Indrayani Nagar, Bhosari, Pune-411 039.

5. The husband is further prohibited from committing any act of domestic violence.

6. The husband is directed to pay of Rs.25,000/- (Rupees Twenty Five Thousand only) to wife towards litigation expenses.

7. There shall be no order as to costs."

3. Heard, the learned Counsel for the parties. Upon perusal of the record, the impugned order is required to be modified.. At interim stage, there does not seem to be justification to award maintenance @ Rs.50,000/- per month particularly since the petitioner has custody and is taking care of the two children Advait and Anushka aged 13 and 8 years. At the stage of issuing interim maintenance orders, the Family Court was required to take into consideration this aspect rather than determine the quantum solely relying upon the payment capacity of the petitioner.

4. Accordingly, considering the material on record, it would be appropriate if interim maintenance is reduced to Rs.25,000/- per month instead of Rs.50,000/- per month awarded by the Family Court, Pune. Notwithstanding the reduction as aforesaid it is made clear that such reduction shall not at all be the consideration at the stage of final disposal of the petition and determination of the final maintenance amount. At that stage the Family Court shall take into consideration the entire material on record including the material which is already on record and which may have been taken into consideration for the purpose of determination of interim maintenance.

5. All contentions of all parties in this regard are specifically kept open. At this stage it is made clear that the Family Court, will not permit itself to be influenced either by the observation in the impugned order dated 30th June, 2015 or for that matter the observation in present order on aspect of interim maintenance.

6. By the impugned order the petitioner has been directed to restore possession of the Row House at Yash Garden, Indrayani Nagar, Bhosari to the respondent and permit her to reside there. The Row House comprises of 3 bedrooms. It is the case of the petitioner that the petitioner alongwith his family members as also the children come to Pune and reside in the said Row House. The petitioner offered to the respondent a single Bedroom apartment wherein petitioners mother used to reside in Pune. Respondent has however expressed her inability to accept the same on the ground that the same is in a commercial locality not suitable for residential purposes. The petitioner also offered the respondent accommodation at Lonavala. The respondent has however declined to accept the same and perhaps rightly as she presently resides with her mother at Pune.

7. Although there may be some justification on the part of the petitioner in questioning the interim direction for restoration of possession of the row house, the petitioner is required to make some arrangement for the respondent to reside in Pune. The Petitioner cannot refuse to make any contribution or arrangement on the ground that respondent resides with her mother. In the facts and circumstances of this case it would be appropriate to direct the petitioner as directed to pay additional amount of Rs.15,000/- per month towards such accommodation. In all therefore the petitioner is directed to pay a sum of Rs.40,000/- to the respondent. The impugned order is modified to the said extent.

8. The direction with regard to payment of litigation expenses is not disturbed and accordingly the petitioner is required to comply with the same.

9. There are certain issues with regard to access of Advait and Anushka by way of interim arrangement during the pendency of the petition before the Family Court, Pune, parties have agreed that once a month i.e. one of the weekends, the petitioner shall reach the two children to the respondent at Pune. The respondent will have access from Saturday 10.00 am to Sunday 4.00 pm. Similarly, respondent shall be entitled to access once a month to the said children on Saturday between 10.00 am and 6.00 pm at Mumbai. Such access shall be availed at In-orbit Mall at Vashi because the children reside at Vashi with the petitioner. This arrangement shall operate during pendency of the petition in the Family Court.

10. Considering the facts and circumstances of the case, the Family Court at Pune is directed to dispose of P.A. No. 1184 of 2013 as expeditiously as possible in any case within a period of six months from today. Parties to produce authenticated copy of this order to the Family Court. All concerned to act on basis of the authenticated copy.

11. Rule is made absolute to the aforesaid extent only. However the petitioner shall pay cost of Rs.10,000/- to the respondent within a period of 4 weeks from today.

(M.S.SONAK, J.)

This order is corrected as per speaking to minutes dated 16th December, 2015