

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL WRIT PETITION NO. 118 OF 2014

Mrs. Gauuri Kailash Rao Alias
Ms. Gauuri Purshottam Sharma

.....Petitioner

V/s.

Mr. Kailash Ramkrishna Rao
Through Power of Attorney
Mrs. Jayanthi Ramkrishna

....Respondent

Mr. Abhijit Sarwate for Petitioner
Mr. Tejas Dande h/f Rohan Nahar for the Respondent

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : FEBRUARY 6, 2015

PC :

- 1) Heard respective counsel.
- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein questions the correctness and validity of the order passed by Family Court No. 5, Pune vide order dated 15/01/2013 passed below Exhibit 21 in P.A. No. 396 of 2012. It is the case of petitioner that her marriage with the present respondent was solemnized on 20/02/2011. Petitioner and the respondents are highly qualified persons. That petitioner is graduated from the faculty of Finance and Marketing from IIMM Pune. That

even prior to marriage, she was living affluent life, while it is the case of respondent also. According to the petitioner she could not bear the ill-treatment meted out to her by her husband and hence, they started living separately from 20/12/2012. Petitioner has filed P.A. No. 396 of 2012 before Family Court seeking divorce. Respondent has filed counter petition seeking Restitution of Conjugal Rights. During the pendency of main petition, petitioner has filed an application seeking interim maintenance of Rs. 1,00,000/- per month. Respondent is working at Guatemala. According to the petitioner, respondent is living a lavish lifestyle, whereas he has ignored his responsibilities to maintain her during pendency of petitions.

4) Learned counsel for the respondent submits that petitioner is not entitled to any maintenance, since she is self employed. According to learned counsel for the respondent, petitioner had withdrawn herself from the society of her husband without there being any substantial cause and in the given circumstance, she cannot claim maintenance, since respondent is still willing to co-habit with the petitioner and has therefore, filed petition seeking Restitution of Conjugal Rights.

5) Learned counsel appearing for the petitioner has impugned the order

passed by the Family Court and has submitted that there has been miscalculation of the salary earned by respondent. Although, he has to maintain his lifestyle as well as maintain his mother in India, it is incumbent upon him to maintain his wife also, since he has filed a petition for Restitution. According to learned counsel for the petitioner, amount of maintenance awarded by the Family Court is not only inadequate, but is meager. Learned counsel for the petitioner further submits that the petitioner pays Rs. 46,000/- to his mother and that petitioner should be treated at par with his mother. The Court cannot be oblivious of the fact that due to old age the mother needs medical care. Hence, the amount paid to the mother cannot be faulted.

6) Learned counsel for the respondent submits that as on today, net monthly income of the respondent is Rs. 1,68,960/- after deduction of monthly tax. In the given amount, he has to maintain his mother in India. He has other incidental expenses and is left with hardly any income left for himself.

7) Taking into consideration the fact that respondent is earning about Rs. 1,68,960, this Court is of the opinion that maintenance of Rs. 25,000/- to be

paid to the petitioner would meet the ends of justice.

8) Learned counsel for the petitioner submits that respondent is in arrears of three months. Learned counsel for the respondent, upon instructions submits that he would clear the arrears within 8 weeks from today and shall continue to pay monthly maintenance at the rate of Rs. 25,000/- commencing from 1st September, 2012 i.e. the date when respondent had filed his say.

9) Learned counsel for the petitioner has vehemently argued that in fact maintenance is to be paid from the date of application, however, this Court is not inclined to grant from the date of application, since respondent has filed his say on 01/09/2012. It is apparent that learned Family Court has been swayed by typographical error in para 13 of say filed by respondent. In para 12 of the say, respondent has categorically stated that in the year 2012, his monthly salary approximately was \$ 45,000 per annum. \$ 45,000 divided by 12 months would be \$ 3750 per month. However, in para 13, respondent had stated that his monthly salary is \$ 2570 and on the basis of that, Family Court had granted maintenance at the rate of Rs. 15,000/- per month. Hence, the same is clarified with following order.

ORDER

- (i) Writ petition is partly allowed.
- (ii) Respondent shall pay the maintenance to the petitioner from 01/09/2012, at the rate of Rs. 25,000/- per month.
- (iii) Arrears of last three months shall be paid by the respondent within 4 weeks from today.
- (iv) Arrears from 01/09/2012 to January 2015 to be paid within 12 weeks or by the end of the trial.
- (v) Family Court is requested to make an endeavour to expedite the trial as far as possible.
- (vi) Rule is made absolute in above terms.
- (vii) Writ petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)