

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7237 OF 2014

Rakesh Chandanmal Jain ... Petitioner
Vs.
Manisha Rakesh Jain ... Respondent

Mr. Anushak Davar a/w. Ms Nisha Parmar i/b. Mr. Vijay Upadhyay for
Petitioner.

Mr. Anand J. Shinde a/w. Ms Sneha S. Kadam for Respondent.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 13, 2015

P.C.:

Heard Mr. Davar, learned Counsel for petitioner and Mr. Shinde, learned Counsel for respondent at length. Rule. Mr. Shinde waives service for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner-husband has challenged the judgment and order dated 11.07.2014 passed by the learned Judge, Family Court No.4, Mumbai in Interim Application No.84 of 2012, exhibit-10 in Petition No.A-1116 of 2012. By that order, the Family Court allowed the application filed by the respondent and directed the petitioner to pay interim maintenance @ Rs.20,000/- per month to her and Rs.20,000/- per month to each daughter - Shreya and Shika under Sections 24 and 26 of the Hindu Marriage Act, 1955 (for short 'Act') from the date of the order. The petitioner was directed to pay that amount directly in the bank account of the respondent via NEFT by 10th day of every month or else to pay interest @6% on overdue amount.

3. In support of this Petition, Mr. Davar submitted that the petitioner was not given fair and reasonable opportunity to put up his case. He was precluded from filing documents on record. He, therefore, submitted that the impugned order may be modified by treating it as ad-interim order and the petitioner may be permitted to produce the documents in support of his case. He further states that petitioner will take out application before the Principal Judge, Family Court for transferring the matter from the Court of the learned Judge who passed the impugned order to some other Court.

4. On the other hand, Mr. Shinde submitted that if the petitioner is given opportunity to produce the documents, even the respondent may also be permitted to produce the documents in support of her case. He further submitted that to the best of his knowledge, the learned Judge who passed the impugned order is transferred. In such event, Mr. Davar states that petitioner will not apply for transfer of proceedings. However, if the learned Judge who passed the impugned order continues to preside over the present proceedings, he will file application before the learned Judge within 2 weeks from today for transferring the proceedings.

5. In view thereof, the Petition is disposed of in the following terms:
- a. The impugned order is modified and is treated as ad-interim order;
 - b. The parties are at liberty to produce the documents in support of their case;
 - c. Petitioner will apply for transfer of the proceedings before the Principal Judge of the Family Court within 2 weeks from today. In such event, the proceedings before the Family Court shall remain stayed for the period of 6 weeks from today;
 - d. All the contentions of the parties on merits are expressly kept

open;

- e. As the application is pending since 2012, the Family Court is requested to dispose of the application within 3 months from today.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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