

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10952 OF 2014

Jaiprakash Balani

.. Petitioner
(Orig.Respondent)*-Versus-*

Mrs.Sneha Balani

.. Respondent
(Orig.Petitioner)Mr.Dipesh Siroya for petitioner
Ms.T.F.Irani for respondent.CORAM : R.G.KETKAR, J.
DATE : 16th January 2015.

P.C.

1] Heard Mr.Siroya for petitioner and Ms.Irani for respondent. By this petition under Article 227 of the Constitution of India, the petitioner husband has challenged the judgement and order dated 13th August 2014 passed by the learned Principal Judge, Family Court, Mumbai on Interim Application Exh.9 in Petition No.A-1009 of 2013. By the said order, the family court partly allowed the application at Exh.9 and directed the petitioner to pay an amount of Rs.15,000/- per month over and above the order passed in the Domestic Violence case from the date of the order till the final hearing and disposal of the petition to the respondent wife.

The arrears were to be cleared within one month from the date of the order.

2] In support of this petition, Mr.Siroya submitted that the family court has committed several errors in passing the impugned order. In particular, he invited my attention to para 15 of the impugned order and submitted that the family court recorded that the annual profit of the petitioner for the year ended December 2010 is Rs.10,812 which is said to be equivalent to U.S.Dollar as it is stated in the same financial statement. The total assets are shown to be equivalent to U.S.Dollar 11,312/- and lastly the income/assets for the year ending December 2012 is equivalent to U.S.Dollars 12,912/-. He further submitted that the learned Metropolitan Magistrate had directed the petitioner to pay rent in lieu of residence @ Rs.15,000/- per month from the date of application. By the impugned order, the family court had directed the petitioner to pay Rs.15,000/- per month over and above Rs.15,000/- awarded by the Metropolitan Magistrate. This, according to the petitioner, amounts to directing him to pay double maintainance. In support of this proposition, Mr.Siroya relied upon the decision of the Apex Court in

the case of Sudeep Chaudhary Vs. Radha Chaudhary, reported in A.I.R. 1999 S.C. 536 and in particular para 6 thereof. He further submitted that the respondent wife is gainfully employed and, therefore, the family court was not justified in ordering the husband to pay maintenance. In support of his submission, he relied upon a decision of this Court in the case of Madhu Gupta Vs. Pravin Kumar Gupta (Family Court Appeal No.144 of 2013 in M.J.Petition No.A-382 of 2008) decided by the Division Bench (Smt.V.K.Tahilramani and Shri P.N.Deshmukh, JJ) on February 11, 2014.

3] On the other hand, Ms.Irani submitted that the respondent was working with TCS (Tata Consultancy Services) as Senior Customer service Advisor. Thereafter she joined NCO located at Powar, Mumbai. After shutting down of this Division, she joined another company Tech Mahindra located at Malad and now since December 2014, she is without any job. In other words, Ms.Irani submitted that the respondent is not gainfully employed. Ms. Irani further submitted that the respondent made application Exh.27 seeking direction against the petitioner to produce certain documents. By an order dated 17th October 2014, the Family Court directed the petitioner to

produce the documents. The petitioner neither challenged that order nor produced the documents. She submitted that the respondent is advised to apply for enhancement in the amount of maintainance awarded by the family court.

4] I have considered the rival submissions. I have also perused the material on record.

5] The respondent has initiated proceedings before the learned Metropolitan magistrate 9th Court, Bandra. The learned Magistrate on 13th August 2013 directed the petitioner to pay rent in lieu of residence at the rate of Rs.15,000/- per month from the date of the application. The respondent, thereafter, filed interim application in the main petition claiming maintainance at Rs.50,000/- per month from the petitioner. In para 15 of the Family Court's order the Court considered the income aspect of the respondent and accordingly directed him to pay Rs.15,000/- over and above the amount awarded under Domestic Violence Act proceedings. The reliance placed by Mr.Siroya on the decision of the Apex Court in the case of Chaudhary (supra) does not assist the petitioner in any manner. In

that case, the wife had filed proceedings under section 125 of Cr.P.C. for maintainance. She was awarded maintainance at Rs.350/- per month with effect from 1990 and which was subsequently enhanced to Rs.500/-. The wife thereafter, claimed alimony at the rate of Rs.600/- per month under the Hindu Marriage Act. It was granted at the rate of Rs.600/- per month and subsequently enhanced to Rs.800/-. It is in that context the Apex Court observed in para 5 that the amount awarded under section 125 of the Cr.P.C. for maintainance was adjustable against the amount of alimony and not to be given over and above the same.

6] Mr.Siroya relied upon the decision of this Court in the case of Madhu Gupta (supra). In that case, wife did not specifically plead and stated in her evidence that she is not having any permanent source of income and that she is unable to maintain herself. In the cross examination, she admitted that near about Rs.50 lakhs have been deposited in the banks as fixed deposit. Considering the rate of interest of 9% for one year, wife would get Rs.4.50 lakhs per year by way of interest on F.Ds. In other words, the wife would get about Rs.37,500/- per month as interest on F.Ds. In view thereof, the

decision in the case of Madhu Gupta (supra) does not advance the case of petitioner any further.

7] As noted earlier, by an order dated 17th October 2014 below Exh.27, the family court directed the petitioner to produce the documents set out therein. The petitioner did not comply with that order. In view thereof, the direction by the learned Magistrate to the petitioner to pay Rs.15,000/- per month as and by way of rent in lieu of residence cannot be faulted. In my opinion, this cannot be termed as maintenance amount. Considering the income of the petitioner, the family court directed him to pay Rs.15,000/- over and above the amount granted by the learned Magistrate. After considering the income of the petitioner, I do not find that the family court has committed any error in passing the impugned order.

8] In the result, no case is made out for interfering with the impugned order. The petition fails and the same is dismissed.

(R.G.KETKAR, J.)