

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 9368 OF 2014

Sham Kalyan Tambe.

.. Petitioner

Versus

Shreya Sham Tambe.

.. Respondent

...

Mr. Ketan Dhavle i/b Ms Aparna Dhavle for Petitioner.

Mr. Amey Deshpande for Respondent.

CORAM : M. S. SONAK, J.

DATE : SEPTEMBER 14, 2015.

P.C.:

Rule.

2] Rule is made returnable forthwith with the consent and at the request of learned counsel for the parties.

3] This petition challenges order dated 09.07.2014 made by the Family Court Pune. Operative portion of the impugned order reads thus.

ORDER

1. The application is partly allowed.
2. The petitioner/husband is directed to pay interim maintenance @ Rs. 20,000/- (Rs.Twenty thousand) per month to the respondent/wife from the date of filing of the application i.e. since 03.05.2013 till the disposal of main petition.
3. The petitioner/husband is directed to pay Rs. 3000/- to the respondent/wife towards the traveling expenses for the date attended by her and fixed by the Court since filing of

the application i.e. 03.05.2013, till the disposal of the main petition.

3] In so far as the direction for payment of Rs. 3000/- to the respondent wife is concerned, the same is required to be set aside because, the proceedings which were earlier instituted in Pune, have now been transferred to Malegaon, where the respondent wife is residing. This amount was directed to be paid on the basis that the respondent wife would incur expenditure towards traveling from Malegaon to Pune to attend the case. Accordingly, the direction for payment of Rs. 3000/- to the respondent wife towards traveling expenses is set aside.

4] In so far as the award of interim maintenance @ 20,000/- per month is concerned, Mr. Ketan Dhavle learned counsel for the petitioner submitted that the Family Court has failed to take into consideration the actual salary drawn by the petitioner which was merely Rs. 38,000/- per month and further, the Family Court, has even failed to consider the ability and potential of the respondent wife to earn income, particularly considering the circumstances that the respondent wife has obtained degree of B.Com, MSW (Master of Social Welfare) and was also earlier employed and earning salary of Rs. 10,000/- per month.

5] In my judgment, no interference is warranted with the

award of interim maintenance. In the first place, this is only an interim maintenance and all the contentions of all the parties will obviously be considered by the Family Court at the stage of deciding the issue of maintenance finally. That apart, the Family Court has taken into consideration the circumstance that the petitioner admittedly draws salary of Rs. 38,000/- per month and further, the petitioner, stays with his parents. In these circumstances, it is reasonable to presume, that the petitioner, has no expenses towards his residential accommodation or for that matter even day to day expenses with regard to meals etc. This interference is reasonable, particularly considering that the petitioner is stated to be employed in the company K. B. Mehta Constructions Pvt. Ltd. (Company). The Board of Directors of this company comprises Mr. Kalyan Tambe, Mr. Kedar Tambe and Mr. Neshit P. Mehta. The two Tambes are the father and uncle of the petitioner. The Family Court, has noted that the income of company for the year 2009-10 was Rs. 5.94 Crore and for the year 2010-11 was 13.96 Crore. Even if such circumstances are excluded from construction, considering that the petitioner, who claims to be employed in the very company which is virtually owned and controlled by his father and uncle, is earning salary of Rs. 38,000/- per month, the award of interim compensation @ 20,000/- per month cannot be said to be exorbitant or in excess of

jurisdiction. The aspect of the ability or potential of the respondent to earn income, will obviously be adjudged at the stage of final disposal. As long as there is no material on record to establish that the respondent wife is presently earning any amount, there is no reason to interfere with the direction of payment of interim maintenance.

6] Accordingly, Rule made partly absolute. The direction for payment of Rs. 3000/- towards traveling expenses is set aside. However, the direction of payment of interim maintenance is not interfered with. There shall be no order as to costs.

7] It is made clear that the observations in the impugned order dated 09.07.2014 or for that matter observations made in this order are only prima-facie and therefore, the Family Court need not be influenced by any such observations at the stage of deciding the application for maintenance, finally.

8] 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 the original
signed Judgment/Order.**