IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10237 OF 2013

Deepak Gokulchand Agarwal … Petitioner
Vs.
Meghna Depak Agarwal … Respondent

Mr. A. H. Nagi for Petitioner.
Mr. A. M. Saraogi for Respondent.

CORAM : R. G. KETKAR, J.
Reserved on: **05TH FEBRUARY, 2015**
Pronounced on: **18TH FEBRUARY, 2015**

ORDER :

Heard Mr. Nagi, learned Counsel for petitioner and Mr. Saraogi, learned Counsel for respondent at length.

2. By this Petition, the petitioner-husband has challenged the judgment and order dated 17.06.2013 passed by learned Principal Judge, Family Court, Mumbai in Interim Application No.160 of 2010, exhibit-13. By that order, the Family Court partly allowed the application filed by the respondent-wife for interim maintenance and directed the petitioner to pay interim maintenance @ Rs.30,000/- per month to the respondent and Rs.10,000/- to the minor son Kairav from the date of the application i.e. 19.05.2010 till the hearing and final disposal of the main Petition. The petitioner is directed to pay interim maintenance on or before tenth day of every month starting from July 2013 and to clear the arrears of interim maintenance within 3 months from the date of the order.

3. In support of this Petition, Mr. Nagi reiterated the submissions that were made before the Family Court. He submitted that the

petitioner is and has always been a salaried employee even before the marriage. He is a Chartered Accountant and his monthly take home salary after the tax deductions and loan payments is Rs.37,500/-. The respondent has her own source of income and is not dependent upon the income of the petitioner. The petitioner's mother is a cancer patient. He submitted that the findings recorded by the Family Court in paragraphs 10 and 15 are factually incorrect and contrary to record. He submitted that petitioner has only 2 bank accounts, one in Punjab National Bank and another in Bank of Baroda. He does not have any account in Bank of India, HDFC and ICICI. He invited my attention to the bank statements of Punjab National Bank in respect of following Accounts-

a. Account No.1232000100108303 in the joint name of petitioner and his father;
b. Account No.1232000100131639 in the joint name of petitioner, his father and respondent;
c. Account No.1232000100108321 in the joint name of petitioner's father and brother; and
d. Accounts No.1232000100002753 and 1232000100002744 in the name of petitioner's mother and father respectively.

4. As against this, he submitted that from the affidavits, all dated 12.06.2012, filed by (i) Mr. Linesh Leharchand Nagda, (ii) Mr. Ashish Nandkishore Goenka and (iii) Mr. Piyush Navalkishore Goenka, show that respondent has received various payments from these persons and thus, she has independent source of income. In fact, she has also purchased Maruti Swift LXI as is evident from tax invoice of Fortpoint Automotive (Cars) Pvt. Ltd. as also certificate-cum-policy schedule issued by IFFCO TOKIO General Insurance Company Limited.

5. He submitted that considering the salary of the petitioner of

Rs.37,500/- per month, the interim maintenance fixed @ Rs.40,000/- is beyond the means and capacity of the petitioner. Mr. Nagi further submitted that petitioner who is present in the court is in a position to explain the various entries in the bank accounts of the petitioner. For all these reasons, he submitted that the impugned order deserves to be set aside.

6. On the other hand, Mr. Saraogi supported the impugned order. He submitted that the petitioner has filed Petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'Act') for dissolution of marriage. During the pendency of the Petition, respondent has filed application for interim maintenance under Sections 25 and 26 of the Act. In paragraph 7 of the application, respondent has specifically asserted that the petitioner is a Chartered Accountant and is having consultancy in Project Finance. He has an affluent lifestyle. He stays at Cuffe Parade, South Mumbai but is claiming to be staying at Nerul. He submitted that parents of the petitioner are doctors. His brother is also well placed and nobody is dependent on the petitioner. The respondent is maintaining her minor son Kairav. Having regard to the standard of living as also status of the parties, the Family Court was justified in passing the impugned order. He has invited my attention to Forms No.16 under the Income Tax Act and submitted that the petitioner being a Chartered Accountant has gradually shown lesser income so as to avoid payment of maintenance. As far as the affidavits relied by Mr. Nagi are concerned, he submitted that since the petitioner is not maintaining the respondent and her son, she had borrowed money from various persons and it cannot be treated as an income. He further submitted that the Swift Car was gifted to the respondent by the in-laws of her brother in his wedding.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, petitioner-husband has filed Petition for divorce under Section 13(1)(ia) of the Act. During the pendency of that Petition, the respondent has filed interim application for maintenance. In paragraphs 10 and 15 of the impugned order, the Family Court has considered the fact that the petitioner is a Chartered Accountant. He has a wealthy lifestyle. The bank accounts reflect crores of fixed deposits. Bank account shows that the petitioner is holding it jointly with his father. It was also noted that during the course of arguments, the petitioner admitted that his monthly income is Rs.50,000/-. Having regard to his monthly income as also sufficient investments in various schemes and bank accounts, the Family Court awarded maintenance of Rs.30,000/- per month to the respondent and Rs.10,000/- per month to minor son Kairav.

8. With the assistance of the learned Counsel appearing for the parties, I have gone through the statement of accounts relied by the parties. (a) Statement of Account No.1232000100108303 of Punjab National Bank shows that it is in the joint name of petitioner and his father. Perusal of the statement shows credited amount on certain dates as under:

Date	Amount (Credited)
17.03.2010	31,780/-
27.05.2008	50,000/-
30.04.2008	70,000/-
15.03.2008	70,000/-
29.01.2008	1,00,000/-
07.04.2007	70,000/-
28.08.2006	1,10,000/-
04.04.2006	1,18, 052/- & 52,027/-
01.09.2005	50,000/-
02.04.2005	70,000/-
04.02.2005	36,298/-

(b) Statement of Account No.1232000100131639 of Punjab National Bank shows that it is in the joint name of petitioner, his father and respondent. Perusal of this statement shows that Rs.1,00,000/- was transferred to Fixed Deposit on 06.02.2007 and Rs.30,000/- was transferred to Fixed Deposit on 09.01.2007;

(c) Statement of Account No.1232000100002753 of Punjab National Bank shows that it is in the name of petitioner's mother. Perusal of the statement shows credited amount on certain dates as under:

Date	Amount (Credited)
02.05.2011	5,00,000/-
18.04.2011	11,04,995/-
11.02.2011	1,28,963/- & 10,31,494/-
10.08.2010	15,00,000/-
18.12.2009	1,20,000/-
09.10.2009	1,16,000/-
24.04.2009	2,20,000/- & 4,00,000/-
20.04.2009	3,76,998/-
09.04.2009	3,75,000/- & 5,46,004/-
06.04.2009	2,20,000/-
10.11.2008	14,99,795/-
05.02.2007	2,00,000/-
07.10.2006	1,00,000/-
28.08.2006	5,00,000/- & 5,00,000/-

(d) Statement of Account No. 1232000100002744 of Punjab National Bank shows that it is in the name of petitioner's father. Perusal of the statement shows credited amount on certain dates as under:

Date	Amount (Credited)
25.04.2011	6,54,167/-
12.02.2011	1,70,000/- & 1,28,084/- & 10,31,494/-
06.02.2010	5,00,000/-
26.11.2009	3,30,000/-
09.04.2009	3,76,998/-
02.02.2009	1,00,000/-
29.01.2008	2,00,000/-
28.01.2008	2,01,155/-
28.08.2006	1,00,000/- & 3,00,000/-

23.08.2006	6,00,000/-
09.08.2006	3,00,000/-
15.04.2006	4,10,000/-

9. Mr. Saraogi has also invited my attention to-

(a) Form No.16 dated 15.06.2011 wherein - (i) total income of the petitioner is shown as Rs.6,48,483/-, (ii) tax deducted at source is Rs.65,608 and (iii) gross salary is shown as Rs.6,60,983/- for the assessment year 2011-2012 for the period from 01.04.2010 to 31.03.2011;

(b) Indian Income Tax Return Verification Form for the assessment year 2010-2011 wherein gross total income is shown as Rs.6,05,945/- for the assessment year 2010-2011 for the period from 01.04.2009 to 31.03.2010;

(c) Tax deducted at source to the tune of Rs.85,786/- (page 114 of the Petition).

10. As far as the affidavits relied by Mr. Nagi are concerned, Mr. Saragi submitted that since the petitioner is not maintaining the respondent and her son, she had borrowed amount from her relatives and well-wishers. As against this Mr. Nagi submitted that these are not loan transactions but are to be treated as income of the respondent. Mr. Nagi submitted that the respondent has purchased Maruti Swift LXI. As against this, Mr. Saraogi submitted that the said car was gifted to the respondent by the in-laws of respondent's brother in his wedding. As noted earlier, the Family Court has decided the interim application on the basis of the documents on record. Mr. Nagi submitted that the petitioner is in a position to explain the bank statements before this Court. In my opinion, all these contentions require parties to lead evidence before the trial Court. Prima facie, after considering the material on record, the Family Court has awarded the maintenance.

11. In view thereof, in my opinion, no case is made out for interfering with the impugned order. It will be open to the parties to substantiate their case by leading evidence before the Family Court. In the result, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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