IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4510 OF 2014
WITH
CIVIL APPLICATION NO. 250 OF 2015
AND
CIVIL APPLICATION NO. 818 OF 2015

ALONG WITH
WRIT PETITION (STAMP) NO. 25259 OF 2015

Biswas Nair .. Petitioner
vs.
Shinie Biswas Nair .. Respondent

Mr. Rajendra Sorankar for Petitioner in Writ Petitions.
Mr. Anirban Tripathy for Respondent in Writ Petitions.
Mr. A. R. Metkari for State in Civil Application.

CORAM : M. S. SONAK, J.
DATE: 07 OCTOBER 2015

P.C. :-

1] Heard learned counsel for the parties.

2] Writ petition no. 4510 of 2014 challenges order dated 3 January 2015 made by 9th Civil Judge, Senior Division, Pune, to the extent it directs the Petitioner to pay EMI of ICICI Bank at the rate of Rs.2,32,000/- per month and maintenance charges of Rs.3,79,230.08 in respect of premises at Ruby Emerald Diamond Park CHSL. In respect of rest of the reliefs granted by the impugned order dated 3 January 2015 are concerned, the learned counsel for the Petitioner has raised no grievance.

3] Mr. Sorankar, the learned counsel for the Petitioner has submitted that the Respondent – wife had instituted writ petition no. 3479 of 2014 questioning the certain proceedings initiated by the bank in respect of the premises in question before the Debt Recovery Tribunal, Pune (DRT). The said petition was disposed of by the Division Bench of this Court by its order dated 16 July 2015 and therein, the statement made on behalf of the Petitioner, that he is willing to give 2 BHK flat on leave and licence basis to the Respondent wife, in the event she is dispossessed by the bank, has been recorded and accepted. In view of this, the learned counsel contends that there could not have been any direction for payment of EMI. Further, the learned counsel for the Petitioner has submitted that the arrangement between the parties was that the premises in question had to be let out to a company Proquest Solutions Pvt. Ltd., of which both the Petitioner and the Respondent were stake holders against rent of Rs.1,60,000/- per month. This rent was to go towards the payment of part of the EMI. In so far as balance amount is concerned, there was an agreement between the parties that the same was to be borne in equal proportions. The learned counsel pointed out that the premises in question were purchased jointly by the Petitioner and the Respondent on the said basis. The learned counsel for the Petitioner pointed out that for the reasons entirely attributable to the Respondent, the Company Proquest Solutions Pvt. Ltd. is no longer functioning and therefore, it would be harsh and unjust to require the Petitioner to bear the expenses towards EMIs. Finally, the learned counsel submitted that the Trial Court has failed to take into consideration the income capacity of the Petitioner. The learned counsel submitted that the Trial Court has misdirected itself in this regard by placing emphasis upon the circumstance that the Petitioner, upon encashment of fixed deposit receipts has paid salaries to his employees to the tune of Rs.60,00,000/-. For these reasons, the learned counsel submitted that the impugned order warrants interference as the same is vitiated by perversity and unreasonableness.

4] Having heard the learned counsel for the parties and perused the material on record, there is no reason to interfere with the order. At the outset, it must be noted that this Court, whilst exercising supervisory jurisdiction under Article 227 of the Constitution of India is not expected to exercise any appellate powers. Therefore, unless it is demonstrated that the approach of the Trial Court is perverse or the order made is manifestly unjust, there is no question of interfering with the same merely on the basis of re-appreciation of material on record. There is a real distinction between exercise of appellate jurisdiction and supervisory jurisdiction, which will have to be taken into consideration in deciding the present petition.

5] In so far the order made in writ petition no. 3479 of 2014 is concerned, the same was in the context of action by the bank with regard to premises in question. As there were differences and disputes between the parties, the Respondent wife along with children resides in the suit premises. Again, on account of the disputes, instalment towards EMI have remained to be unpaid to the bank. The bank therefore, has initiated proceedings in the matter. The Respondent wife instituted writ petition no. 3479 of 2014 in the context of such recovery proceedings. In the said petition, the Petitioner did make a statement that he is willing to give 2 BHK flat on leave and licence basis in the event she is dispossessed by the bank and the statement was also accepted by this Court. However, this does not mean that the Petitioner should assist in dispossession of the Respondent by the Bank by not paying the EMI. Admittedly, the Respondent resides in the premises along with the children. The Trial Court has recorded a finding that at least at present the Respondent and her children are totally dependent upon the Petitioner. On the basis that the Petitioner will offer premises on leave and licence basis, in case the Respondent and the children are dispossessed by the bank, the Petitioner cannot avoid payment of EMI to the bank. The Trial Court has properly appreciated the material on record and issued the directions for payment of EMI as also maintenance charges. The Petitioner cannot, by avoiding to pay EMI and maintenance charges create a situation whereby the Respondent and the children are virtually dispossessed from the premises in question. Thus viewed there is neither any perversity nor unreasonableness in the approach of the Trial Court in making the impugned order. In so far as the arrangement between the parties is concerned, even assuming that such arrangement did exist, the same was whilst where were no differences and disputes between the Petitioner and the Respondent. Besides, at that time, the Respondent was also working and earning considerable amounts. After the disputes have commenced, the Respondent as well as children are depending upon the Petitioner. In such circumstances, at least the Trial Court, which was dealing with the matrimonial disputes and obligation to pay maintenance, cannot be held to be bound by so-called arrangement between the parties, at the stage prior to the disputes between them. The Petitioner's capacity to pay has also been considered by the Trial Court. The Trial Court has taken into consideration the bank statements as well as other material in the context of determining the financial capacity of the Petitioner. There is no perversity in the record of findings of fact at least at this stage, the Trial Court was not required to go into the issue as to why the Proquest Solutions Pvt. Ltd. faltered.

6] The Trial Court has applied the proper parameters. The Trial Court has taken into consideration the material before it in the proper perspective. In such circumstances, there is no case made out to interfere with the impugned order. Accordingly, writ petition no. 4510 of 2014 is liable to be dismissed and is hereby dismissed.

7] In view of disposal of writ petition no. 4510 of 2014, civil applications no. 250 of 2015 and 818 of 2015 do not survive and are disposed of accordingly.

8] In so far as writ petition (stamp) no. 25259 of 2015 is concerned, with the consent of the parties, the same is taken on board and disposed of. In this petition, the Petitioner prays for expeditious disposal of the matrimonial petition no. 780 of 2013. The Petitioner has made several allegations in the said Petition by pointing out that the Respondent is delaying disposal of the said proceedings. It is not necessary to advert to such allegations. Considering that the matrimonial petition was instituted in the year 2013, it would be appropriate if directions are issued to the Trial Court to dispose of the said petition as expeditiously as possible and in any case within a period of one year from the date of production of authenticated copy of this order. The Petitioner is at liberty to produce authenticated copy of this order.

9] Both the parties to cooperate in the matter of disposal of matrimonial petition no. 780 of 2013 and not indulge into any unnecessary dilatory processes.

10] Both the petitions are disposed of in the aforesaid terms. There shall be no order as to costs.

11] All concerned to act on basis of authenticated copy of this order.

12] At this stage, the learned counsel for the Petitioner seeks leave for continuation of interim relief, which was granted by this Court on 6 February 2015 for a period of six weeks from today. Subject to the Petitioner depositing before the Trial Court the amounts which the Petitioner has been directed to pay in terms of the impugned order, within a period of four weeks from today, the interim order will continue for a period of six weeks from today. If within four weeks from today, the amount is not deposited, then there shall be no interim relief in operation.

(M. S. SONAK, J.)

Chandka