

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9931 OF 2014

Khemraj Gajanan Sawant ... Petitioner
Vs.
Amruta Khemraj Sawant @ Amruta Prakash Bagwe ... Respondent

Ms Sukeshi Bhandari for Petitioner.
Ms A. V. Vichare for Respondent.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 2, 2015

P.C. :

Heard Ms Bhandari, learned Counsel for petitioner and Ms Vichare, learned Counsel for respondent at length. Rule. Ms Vichare 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 has challenged the judgment and order dated 24.07.2014 passed by the learned Judge, Family Court No.4, Mumbai in Interim Application No.101 of 2013, exhibit-6 in Petition No.C-47 of 2013. By that order, the Family Court allowed the application filed by the respondent-wife and directed the petitioner-husband to pay interim maintenance of Rs.20,000/- per month to the respondent-wife under Section 24 of the Hindu Marriage Act, 1955. The petitioner is also directed to pay Rs.20,000/- towards cost of litigation to the respondent.

3. In support of this Petition, Ms Bhandari submitted that the respondent-wife has filed Petition No.C-47 of 2013 for maintenance and residence under Section 18(1), (2)(a) and (b) of the Hindu Adoptions and Maintenance Act, 1956. During the pendency of this Petition, respondent has filed application for interim maintenance. The Family

Court proceeded to consider interim application to be one under Section 24 of the Hindu Marriage Act, 1955. She submitted that Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956 provides that a Hindu wife, whether married before or after the commencement of the Act, is entitled to be maintained by her husband during her lifetime. Section 18(2)(g) provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance if there is any other cause justifying her living separately. Section 23(2) lays down that in determining the amount of maintenance, the Court shall have regard to, if the claimant is living separately, whether she is justified in doing so. She submitted that the Family Court proceeded on a premise that interim maintenance application is under Section 24 of the Hindu Marriage Act, 1955 and therefore, the conduct of the parties is irrelevant. She submitted that the Family Court committed fundamental error in passing the impugned order.

4. After arguing the Petition for some time, Ms Vichare submits that respondent has no objection for setting aside the impugned order and directing the Family Court to decide the application afresh in a time-bound manner.

5. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

- a. The impugned order dated 24.07.2014 is quashed and set aside and the Interim Application No.101 of 2013, exhibit-6 is restored to the file of the Family Court, Mumbai for deciding it afresh;
- b. The parties agree that they will appear before the Family Court on 16.02.2015 and for that purpose, fresh notice need not be issued to them;

- c. The Family Court is requested to decide the Interim Application within 2 weeks from the date of appearance of the parties;
 - d. The Family Court will decide the interim application keeping in mind the provisions of Hindu Adoption and Maintenance Act, 1956 and pass appropriate orders on the basis of material on record and in accordance with law;
 - e. All the contentions of the parties on merits are expressly kept open;
 - f. Rule is made absolute in the aforesaid terms with no order as to costs.
6. Parties including the Family Court to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab