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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9876 OF 2013

Aditya Kathula .. Petitioner

Vs.

Mrs.Kajal Kathula .. Respondent

Ms.Kejashri Thakar i/b Mr.Prashant Parsurampur, Advocate for the
Petitioner.

Mr.Shailesh I. Kantharia, Advocate for Respondent.

CORAM : R.G.KETKAR, J.

DATE : 08th JANUARY, 2015

P.C. :

. Heard Ms.Kejashri Thakar, learned Counsel for the
petitioner and Mr.Shailesh I. Kantharia, learned Counsel for the
respondent at length. Rule. Mr.Kantharia waives service. At the
request and by consent, rule is made returnable forthwith and the
petition is taken up for final hearing.

2. The Mediation report which was kept in a sealed cover in
the custody of the Assistant Registrar (Civil) is opened in the Court.
Perusal of the report shows that mediation has failed. The report shall
be kept in a sealed cover in the custody of the Assistant Registrar
(Civil).

3. By this petition under Articles 226 & 227 of the Constitution of India, the husband has challenged the judgment and order dated 17/09/2013 passed by the learned Judge, Family Court No. 2, Mumbai below Exhibit 9 in Petition No. A-2707 of 2012. By that order, the Family Court directed the petitioner to contribute Rs.17,000/- per month to the respondent towards her accommodation with effect from October 2013 onwards till further orders.

4. In support of this petition, Ms.Thakar submitted that the petitioner – husband is working as a Senior Consultant in Oracle Financial Services Software Limited. His net pay for the month of June 2013 was Rs.48,205/-. She submitted that the monthly expenses of the petitioner are to the tune of Rs.33,600/-. She further submitted that the petitioner has already paid security deposit of Rs.1,00,000/- to the respondent. By the impugned order, the Family Court has directed the petitioner to pay Rs.17,000/- per month towards accommodation of the respondent. However, having regard to his income and expenditure, it is not possible for him to pay Rs.17,000/- per month. She also invited my attention to reply Exhibit 11 filed by the petitioner to the application Exhibit 9. In reply, the petitioner contended that annual salary of the respondent is Rs.6,26,667/-. Though this fact is specifically pleaded in the reply, the learned Judge has not discussed this aspect in the entire order. She states that the petitioner has contributed Rs.17,000/- per month till January 2015.

She further states that the petitioner will go on contributing Rs.10,000/- per month from February 2015 towards respondent's accommodation till Exhibit 9 is decided afresh. In case, the Family Court holds that the petitioner is liable to contribute more than Rs.10,000/- per month, the petitioner will pay the difference with effect from February 2015.

5. Mr.Kantharia submitted that though father-in-law of the respondent has obtained prohibitory injunction against the petitioner and the respondent from entering into the petitioner's parental house, petitioner is residing with his parents. He submitted that earlier the petitioner even refused to pay security deposit. It is only because of the intervention of the Family Court, the petitioner had paid the security deposit. In any case, this being an interlocutory order, this is not a fit case for invoking the powers under Articles 226 & 227 of the Constitution of India.

6. I have considered the rival submissions made by the learned Counsel for the parties. I have also perused the material on record. As noted earlier, the respondent has filed application at Exhibit 9 for directing the petitioner to pay the requisite security deposit, regular monthly rental and brokerage charges, if any, for renewal of licence. The petitioner had filed reply at Exhibit 11. After considering the material on record, by the impugned order, the Family Court directed the petitioner to contribute Rs.17,000/- per month with

effect from October 2013 onwards till further orders. Perusal of the impugned order shows that though in reply Exhibit 11, the petitioner specifically contended that annual salary of the respondent is Rs.6,26,667/-, the said aspect was not adverted to at all in the impugned order. On this short-count alone, the impugned order is required to be set aside with a direction to the Family Court to decide the application afresh after considering the material on record including the income of the parties and pass appropriate order. Having regard to the fact that the petitioner has expressed his willingness to pay Rs.10,000/- per month, the petitioner shall go on paying Rs.10,000/- per month during the pendency of the application Exhibit 9. In case, the Family Court comes to a conclusion that the petitioner is liable to pay more than Rs.10,000/- per month, the difference shall be paid by the petitioner from February 2015. Hence, following order.

- i) The impugned order dated 17/09/2013 is quashed and set aside and Exhibit 9 is restored to the file of the Family Court.
- ii) The parties agree that they will appear before the Family Court on 02/02/2015 and for that purpose, fresh notice need not be issued to them. The Family Court is requested to decide the application within 2 months from the date of the appearance of the parties.

iii) The petitioner shall pay Rs.10,000/- per month from February 2015 till such time application Exhibit 9 is decided.

iv) In case, the Family Court comes to the conclusion that the petitioner is liable to pay over and above Rs.10,000/- per month, the petitioner shall pay the difference within 4 weeks from the date of the order.

v) The learned Judge will decide the matter afresh on own merits and in accordance with law on the basis of the material on record uninfluenced by any observations made in this order.

7. All the contentions of the parties on merits are expressly kept open.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)