

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10123 OF 2015

Shri Saiprasad Kamalkant Potnis.] ... Petitioner

Versus

Mrs. Preetam Saiprasad Potnis.] ... Respondent

Mr. Rohan Cama i/b Ms. Sapana Rachure for Petitioner.
Mrs. Preetam Saiprasad Potnis, Respondent, present in person.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 13, 2015

P. C. :-

1. Not on board. Upon production, taken on board.
2. Rule.
3. With the consent of respondent, Rule is made returnable forthwith.
4. The challenge in this petition is to the order dated 23/09/2015 by which the petitioner's application at Exh.70 seeking issuance of witness summons to certain persons/authorities has been dismissed.

5. The petitioner, by filing application at Exh.70, applied for issuance of witness summons to Little Hearts School and thereafter, to certain banks by stating therein the details of account nos. and fixed deposit receipts.

6. Insofar as the Little Hearts School is concerned, in my judgment, the same is not necessary particularly considering that what is being determined by the Family Court at present is the issue of interim maintenance. However, insofar as witness summons to the bank officials is concerned, the same, in the peculiar facts and circumstances of the present case, deserves to be allowed. Besides, in the present case, the Family Court has earlier issued similar witness summons in the contest of bank accounts and fixed deposit receipts held by the petitioner at the behest of the respondent.

7. It is to be noted that the issue of interim maintenance is pending since the year 2011. Both the parties have their own versions as to who is responsible for such delay. However, there is no point in delaying either this matter or the proceedings before the Family Court any further by attempting to decide which of the parties is precisely responsible for the delay. Considering that the claim is for interim maintenance, it is necessary that the same is decided expeditiously one way or the other.

8. Further, in this case, interest of justice would be met if the petitioner is permitted to deposit before the Family Court a sum of

Rs.2,00,000/- (Rupees Two Lacs Only) within a period of four weeks from today. The Family Court shall invest the said amount in an appropriate fixed deposit account with a nationalized bank. If ultimately, the Family Court decides to award any interim maintenance to the respondent, then the Family Court will permit the respondent to withdraw the said amount along with the interest that may have accrued thereon. If, however, the Family Court comes to the conclusion that no interim maintenance is due and payable to the respondent, the Family Court will make appropriate order permitting the petitioner to withdraw the said amount along with the interest that may have accrued thereon. This direction to deposit is obviously without prejudice to the rights and contentions of the petitioner.

9. Accordingly, the impugned order, to the extent it denies issuance of witness summons to the banks and bank officials, is set aside. The petitioner's application at Exh.70 is made absolute in terms of prayer clauses (b), (c) and (d). The Family Court is directed to dispose of the issue relating to interim maintenance as expeditiously as possible and in any case, within a period of three months from today. Both the parties to cooperate in the matter of expeditious disposal of the said issue.

10. It is made clear that this Court has not examined the merits of the matter and therefore all contentions of all parties are left open to be determined by the Family Court.

11. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

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

(M. S. SONAK, J.)