

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10307 OF 2014

Nitin Sakharam Karge	... Petitioner
vs.	
Jyoti Nitin Karge	... Respondent

Mr. Dilip Rai i/b. Ms. Aruna Singh, for the Petitioner.
Smt. Sunanda Apte, for the Respondent.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: JUNE 18, 2015

P.C.:

. Rule. Rule made returnable forthwith. Decided finally at the stage of admission, by consent.

2. This writ Petition is filed by the Petitioner-husband who has challenged the order of the Family Court, Bandra, Mumbai passed in Interim Application No. 210 of 2013 thereby directing the Petitioner-husband to pay Rs. 4,000/- p.m. i.e. Rs. 2,000/- p.m. to daughter Dixita and Rs. 2,000/- p.m. to the Respondent-wife.

3. It is pointed out by the learned counsel for the Petitioner that the Petitioner-husband is a mentally retarded person. He is earning Rs. 4,500/- p.m. His salary receipt is produced. Out of Rs. 4,500/- if Rs. 4,000/- is directed to pay to the Respondent-wife and daughter, it is

difficult for him to survive. He further submitted that the trial Court actually wrong in holding that the Petitioner-husband has purchased a room of Rs. 5 lacs and has received the possession of the said room. He submitted that the learned Judge has relied on the amounts which were credited in his account on 10th June, 2013, 6th January, 2014 and 13th February, 2014 and held that the Petitioner-husband is having other source of income. However, it is not produced on record. He submitted that no opportunity was given to the Petitioner-husband to explain those bank transactions. He prayed that the matter is to be remanded or the order is to be set aside.

4. The learned counsel for the Respondent-wife opposed the Petition. She has filed reply to this Petition. She submitted that the Petitioner-husband was working as 'postman' in the Post department and was drawing salary of Rs. 8,000/-. She further submitted that the mother and the brother of the Petitioner have given in writing before Panchayat that they will take the responsibility of Respondent-wife and the daughter. She supported the order passed by the learned Judge of the Family Court.

5. The issue involved in this matter can be decided only after taking of the evidence of both the parties. It appears from the record that

the amounts which were credited as mentioned in the order, those amounts were immediately withdrawn. The room which is mentioned as purchased by the Petitioner-husband is not purchased by him but, it was purchased by his brother. The salary of the Petitioner as per the salary certificate produced is Rs. 4,500/- p.m. No other evidence is produced that he has any other source of income. Admittedly he is a mentally retarded person.

6. Under such circumstances, the Petition can be allowed partly. Considering the earning capacity of the Petitioner-husband, order is modified as follows:

- a) The maintenance amount of Rs. 2,000/- to daughter Dixita is not disturbed. However, the Petitioner-husband instead of Rs. 2,000/- p.m. shall pay Rs. 1,500/- p.m. to the Respondent-wife from July, 2015;
- b) As per the submissions of the learned counsel as on today Rs. 40,000/- arrears is due from the Petitioner-husband. Out of Rs. 40,000/- the Petitioner-husband shall pay Rs. 20,000/- to the Respondent-wife on or before 30th June, 2015.

7. Writ Petition accordingly stands disposed of.

(MRS.MRIDULA BHATKAR, J.)