

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10844 OF 2015

Lina Alex Alias Lina Rachel Varughese .. Petitioner
Vs.
Alex Mathew .. Respondent

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Mr.Rohan Cama a/w. Ms. Sapna Rachure for Petitioner.
Mr. Alex Mathew in person.

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CORAM : M.S.SONAK, J.
DATE : 4TH DECEMBER, 2015.

P.C.:

1. Rule. With the consent of the respondent, who appears in person, Rule is made returnable forthwith.
2. The challenge in this petition is to the order dated 11th August, 2015 made by the Family Court, Mumbai, to the extent it purports to suspend the payment of maintenance from the date of order until further orders to be made by the Family Court.
3. This Court, upon hearing the parties, on 29th October, 2015 made the following order.

"1. Not on board. Upon production, taken on board.

2. Place this matter for further consideration on 24th November, 2015 on Supplementary Board (HOB).

3. On or before the next date, the Respondent to pay to the Petitioner the maintenance amount in terms of order dated 27 October, 2010 for the month of November 2015 i.e. Rs.20,000/-

There is no dispute that the Respondent is required to pay maintenance of Rs.10,000/- in respect of the daughter, which is in addition to the maintenance awarded in favour of the Petitioner. Even the impugned order has not in any manner suspended the requirement of paying maintenance to the daughter.

4. Further, it is clarified that the pendency of this petition shall not hinder the Family Court from proceeding with the pending petitions. In fact, the Family Court is directed to proceed with the pending petitions and endeavour to dispose of the same as expeditiously as possible and in any case within a period of three months from today.

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

The aforesaid directions to proceed with the pending petitions and to dispose of the same, as expeditiously as possible and in any case within a period of three months from the said date is reiterated.

4. Mr. Cama, learned Counsel for the petitioner, contends that the order of maintenance at the rate of Rs.20,000/- per month was made in Petition No.E-469 of 2008, being proceedings unrelated to the proceedings in which the impugned order dated 11th August 2015 came to be made. In such circumstances, Mr. Cama submitted that the Family Court lacked jurisdiction to suspend payment of maintenance in the present proceedings. That apart, Mr Cama submitted that even otherwise, there was no justification in making the impugned order. The additional issues came to be framed by the Family Court, as a result of which, the petitioner was required to file additional affidavit in lieu of examination-in-chief. There was no intention to protract the proceedings and the impugned order operates harshly upon the Petitioner.

5. Mr. Alex Mathew, who appears in person, made reference to several orders made by the Family Court in the proceedings between the parties and submitted that from the same it was quite clear that the petitioner was bent upon protracting the proceedings. Mr. Mathew submitted that on one hand, the Petitioner protracts the proceedings and on the other hand, he is required to pay the maintenance to the petitioner. With a view to remedy such an unjust situation, the Family Court has made the impugned order. Mr. Mathew submitted that since directions are already issued to the Family Court to dispose of the proceedings within three months, the impugned order can neither be styled as harsh nor disproportionate.

6. The rival contentions now fall for determination.

7. Upon perusing the record, it appears that the impugned order was made by the Family Court, because the petitioner was not proceeding with her examination-in-chief with utmost despatch and in the meantime, was insisting upon the payment of maintenance by the respondent. The issues were framed much earlier, but the petitioner, for one reason or other did not proceed with her examination-in-chief. The impugned order does grant the petitioner liberty to file additional affidavit in lieu of examination-in-chief, but, taking into consideration the delay, suspends the right of the petitioner to receive maintenance until further orders. In such circumstances, it cannot be said that there is any jurisdictional error in the making of the impugned order.

8. However, Mr. Cama, learned Counsel for petitioner, is right that the direction to suspend the payment of maintenance cannot be open ended, i.e., until further orders. Such direction, would undoubtedly operate very harshly upon the petitioner. The effect of such direction is totally

disproportionate, considering the facts and circumstances of the present case. The imposition of some condition upon the petitioner, was justified in the facts and circumstances of this case. However, the condition is required to be commensurate. Therefore, some modification is necessary.

9. Upon cumulative consideration of the facts and circumstances, the interest of justice would be met, if the directions for suspension of maintenance is restricted for period of two months only. Accordingly, the impugned order is modified.

10. There is some dispute as to whether the maintenance for the month of August 2015 has been paid by the respondent to the petitioner or not. The Family Court to ascertain the correct position in this regard. The respondent is relieved of the liability for payment of maintenance only for a period of two months, i.e., September and October 2015. The maintenance for the month of November 2015 was directed to be paid by the order dated 29th October 2015. This direction, if not complied with, is reiterated.

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

12. All contentions of all the parties are kept open for adjudication by the Family Court.

13. All concerned to act on the basis of authenticated copy of the order.

(M.S.SONAK, J.)