

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 119 OF 2014

WITH

WRIT PETITION NO. 11599 OF 2013

Neelkamal Singh .. Petitioner

vs.

Suresh Kumar Singh .. Respondent

AND

WRIT PETITION NO. 11202 OF 2015

Suresh Kumar Singh .. Petitioner

vs.

Neelkamal Singh .. Respondent

In Writ Petition Nos.119 of 2014 and 11599 of 2013

Ms Seema Sarnaik for the Petitioner-Neelkamal Singh.

Mr. Shashi. D. Pandey for the Respondent-Suresh Kumar Singh.

In Writ Petition No. 11202 of 2015

Mr. Shashi. D. Pandey for the Petitioner-Suresh Kumar Singh.

Ms Seema Sarnaik for the Respondent- Neelkamal Singh.

CORAM : M. S. SONAK, J.

DATE : 27 NOVEMBER 2015.

P.C. :-

1] The learned counsel for the parties agree that these petitions can be disposed by common order.

2] Rule in each of the petitions. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] In Writ Petition No. 119 of 2014 and Writ Petition No. 11202 of 2015, the challenge is to the order dated 31 October 2013 made by the Family Court awarding interim maintenance of Rs.25,000/- to Neelkamal and minor son Rushil. According to Neelkamal, the Petitioner in Writ Petition No. 119 of 2014, the interim maintenance amount ought to have been much higher. However, according to Suresh Kumar, the Petitioner in Writ Petition No. 11202 of 2015, the maintenance amount is excessive. Writ Petition No. 11599 of 2013 is instituted by Neelkamal to challenge the order dated 31 October 2013, by which the divorce by mutual consent is purported to be granted under Section 13-B of the Hindu Marriage Act, 1955 (said Act).

4] Insofar as the quantum of maintenance is concerned, it is to be noted that the Family Court has merely made an interim determination. The Family Court has adverted to the material on record in making the *prima-facie* determination. There is no unreasonability as such involved in the matter, though the Family Court was required to award some enhanced interim maintenance to the minor son Rushil or at least make some orders with regard to the financial concerns and security of Rushil. The learned counsel for

Suresh Kumar has submitted that Suresh Kumar is presently unemployed and is reeling under financial difficulties. The learned counsel for Mr. Suresh Kumar has submitted that since the impugned order is only an interim order, this variation in circumstance is required to be considered and suitable deduction is required to be made in the interim maintenance amount. The learned counsel for Suresh Kumar has further submitted that the arrears in terms of impugned order have already been paid/deposited. This position is however, disputed by the learned counsel appearing for Neelkamal, who states that there are arrears.

5] As noted earlier, on the basis of material on record, there is no reason to interfere with the impugned order. However, some suitable directions are necessary to protect the interest of Rushil, even at this interim stage. The issue of arrears can always be looked into by the Family Court. The interests of justice would be met if the Family Court is directed to dispose of Petition No.A-1010 of 2008 on merits and in accordance with law, as expeditiously as possible and in any case within a period of eight months from today. The Family Court is so directed. All contentions of all parties on the aspect of maintenance are therefore, kept open to be decided by the Family

Court in accordance with law and on their own merits.

6] Insofar as the interest of Rushil is concerned, Suresh Kumar, who is personally present in the Court, has undertaken to make a Fixed Deposit in an amount of Rs.10,00,000/- (Rs. Ten Lacs only) in the joint names of Rushil, Suresh Kumar and Neelkamal within a period of three months from today. The Fixed Deposit shall not be operated or encashed without the leave of the Family Court. However, the interest, which may accrue thereon, shall be deposited in the bank account to be designated by Neelkamal and Neelkamal shall utilize the said amount for the welfare of Rushil. In addition, now that the impugned interim maintenance order is not being interfered with, Suresh Kumar is directed to pay/continue to pay interim maintenance of Rs.25,000/- per month to Neelkamal and Rushil. The undertaking given by Suresh Kumar is accepted as an undertaking to this Court. The Family Court is required to ensure that Suresh Kumar complies with such undertaking.

7] The Family Court is also required to verify as to whether there exist any arrears in the matter of payment of interim maintenance.

Such verification to be done as expeditiously as possible and in any

case within a period of one month from today. In case, the Family Court determines that there are arrears, Suresh Kumar is directed to pay/deposit such arrears within a period of one month from the date of such determination.

8] Insofar as Writ Petition No. 11599 of 2013 is concerned, it is to be noted that Petition No.A-1010 of 2008 was instituted by Neelkamal seeking divorce on the ground of cruelty. Suresh Kumar, by his reply dated 21 October 2013, has not accepted the allegation of cruelty, but has expressed willingness to obtain divorce by mutual consent. On the basis of such response/reply dated 21 October 2013, there was no question of exercise of powers under Order XII Rule 6 of C.P.C. and to make a decree of divorce based on admissions. Insofar as grant of divorce by mutual consent under Section 13-B of the said Act is concerned, at no stage had Neelkamal recorded her consent for the adoption of any such course. In these circumstances, the impugned order dated 31 October 2013 made below Exhibit-79 cannot be sustained and the same is hereby set aside. The Family Court is directed to hear the dispose of Petition No.A-1010 of 2008 in accordance with law and on its own merits. All contentions of all parties are kept open for consideration by the Family Court.

9] Rule, in each of these petitions, is disposed of in the aforesaid terms. There shall, however, be no order as to costs.

10] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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