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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 441 OF 2014

Mr.Anil Baliram Yadav .. Petitioner

Vs.

1. Mrs.Saroj Anil Yadav

2. The State of Maharashtra .. Respondents

Mr.Mandar Limaye, Advocate for the Petitioner.

Mr.A.R.Patil, APP for Respondent No.2.

CORAM : R.G.KETKAR, J.

DATE : 03rd February, 2015

P.C. :

. Heard Mr.Mandar Limaye, learned Counsel for the petitioner and Mr.A.R.Patil, learned APP for respondent No.2 at length.

2. By this petition under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the petitioner-husband has challenged the judgment and order dated 17/10/2014 passed by the learned Judge, Family Court No. 4, Mumbai in Interim Application No.11 of 2013 below Exhibit 6. By that order, the Family Court allowed the application for maintenance filed by first respondent under section 125 of the Cr.P.C. and directed the petitioner to pay interim maintenance of Rs.7,000/- per month to the first respondent under section 125 of the Cr.P.C. The order is to take effect from the date of the application i.e. from 17/12/2012.

3. In support of this petition, Mr.Limaye submitted that the petitioner has specifically come with a case that his monthly income is Rs.10,000/-. He submitted that out of two minor sons, younger son namely Master Rahul is studying in 9th standard and the petitioner is regularly paying school fees and private tuition fees. Rahul is also interested in Athletics for which the petitioner is paying fees. Rahul is suffering from learning disability and is treated in Nair hospital for which he had made payment of Rs.3,500/-. The elder son Master Pankaj is studying in 10th standard. The petitioner is paying his school fees and private tuition fees regularly.

4. Mr.Limaye further submitted that in the written statement in paragraph 26, it was specifically asserted that first respondent did not mention about the nature of the expenses and manner of expenses nor she has produced any document as regards income of the petitioner except alleging in paragraph 26 that the income of the petitioner is about Rs.40,000/- to Rs.50,000/- per month and is living very luxurious life and owns flat premises, plot of land, one car and motor bike. The petitioner denied that first respondent is entitled to maintenance of Rs.15,000/- per month. Mr.Limaye submitted that in the impugned order, the Family Court has not considered the fact that the petitioner is maintaining his sons as also the fact that income of the petitioner is Rs.10,000/- per month. For all these reasons, he submitted that this petition requires consideration.

5. I have considered the submissions advanced by Mr.Limaye. I have also perused the material on record. Perusal of the impugned order and in particular paragraphs 9 & 10 thereof, prima facie, shows that the petitioner did not substantiate his plea that he earns Rs.10,000/- per month. No doubt, petitioner produced photocopy of certificate allegedly issued by Shree Krupa Enterprises dated 10/10/2014. The Family Court noted that the certificate is filed at the fag end of the hearing of the application. The certificate also prima facie indicates that the petitioner was working with Shree Krupa Enterprises for last past 2 months. The alleged certificate, prima facie shows that it was prepared after hearing of the interim application was commenced. The Family Court further noted that application is filed in December 2012. The petitioner did not bring on record his income, save and except, the income for last 2 months. In other words, the petitioner did not produce any material to indicate his income along with the documents while filing reply. In view thereof, I do not find that the Family Court committed any error while passing the impugned order, more so when this is purely an interim order passed during the pendency of the main proceedings.

6. In view thereof, no case is made out for invocation of powers under section 397 read with section 401 of the Cr.P.C.

7. The petition fails and the same is dismissed.

(R.G.KETKAR, J.)