

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.517 OF 2014

Sonal Chandrakant Bhoir and another

.. Petitioners

Versus

Chandrakant Baliram Bhoir

.. Respondent

Mr. R. S. Datar, Advocate for the Petitioners.

Mr. R. S. Gamare, Advocate for Respondent.

CORAM : R.M. SAVANT, J.

DATE : 13th JANUARY, 2015

PC.

1. The order dated 07.09.2013 passed by the Learned Civil Judge, Senior Division, Kalyan partly allowing the application Exh.7 filed for interim maintenance to the extent of granting Rs.10,000/- as interim maintenance to the Petitioner and Rs.5,000/- to the minor son Omkar is taken exception to by way of the above petition.

2. The Petitioners herein are the Plaintiffs who have filed Special Civil Suit No.314 of 2012 under Sections 18 & 20 of Hindu Adoption & Maintenance Act. The said suit has been filed claiming maintenance from the Respondent herein who is the original Defendant. In the said suit, the Plaintiffs have filed an application for interim maintenance which is

numbered as Exh.7. In the said application, the Plaintiffs have mentioned the various properties which are owned by the Defendant i.e. the husband of the Plaintiff No.1. It is averred that the Defendant is a developer by a profession who has undertaken development of various properties in Kalyan and Titwala area. It is further averred that the Defendant owns various cars and also there is a farm house in which there are twenty rooms which are let out to parties on payment basis. The lifestyle which the Plaintiff was enjoying with the Defendant and Defendant continues to enjoy is also highlighted in the application for interim maintenance. It is also averred that the Plaintiffs are residing in a bungalow which is of the ownership of the Defendant at Kalyan. The expenses which the Plaintiff No.1 has to incur have been mentioned in paragraph 22 of the application. A reference in the said paragraph is made to the daily expenses, monthly expenses and the yearly expenses. The statement contains expenses towards Electricity as Rs.6,300/-, towards Milk as Rs.2,500/-, towards payment to be made to the maid servant as Rs.2,000/-and towards holidays etc.. Plaintiffs therefore, having regard to the standard to which the Plaintiffs would be entitled to, have claimed the interim maintenance of Rs.1,00,000/- for the Plaintiff No.1 and Rs.50,000/- for the Plaintiff No.2. The said application Exh.7 was not replied to on behalf of the Defendant however a reply was filed to the application Exh.5 which was

filed by the Plaintiffs for injunction restraining the Defendant from disposing of the properties. The said reply was taken into consideration by the Trial Court. The Defendant in the said reply had averred that he is staying in a farm house and that the Plaintiffs are residing in bungalow, wherein he was residing with the Plaintiffs and his sons. The entitlement of the Plaintiffs to interim maintenance which was claimed in the application Exh.7 was questioned.

3. The Trial Court considered the said application Exh.7 and has by the impugned order dated 07.09.2013 partly allowed the same by granting interim maintenance of Rs.10,000/- to the Plaintiff No.1 and Rs.5,000/- to the Plaintiff No.2. The gist of the reasoning of the Trial Court as can be seen from the impugned order is that at the interim stage the bare minimum necessity of the Plaintiffs would have to be considered and that the maintenance can be fixed only after the parties lead evidence and the said evidence is considered by the Trial Court. As indicated above, it is the said order dated 07.09.2013 which is taken exception to by way of the above petition.

4. Heard the learned counsel for the parties.

5. The learned counsel appearing for the Petitioners Shri. R. S. Datar

would reiterate the submissions urged on behalf of the Petitioners/ Original Plaintiffs in the Trial Court in support of the case of the inadequacy of the maintenance granted. Whereas, the learned counsel appearing for the Respondent / original Defendant would support the interim order and would support the maintenance granted by the Trial Court and would contend that the Defendant is looking after the education of the two children.

6. Having heard the learned counsel for the parties and having regard to the material on record, in my view the Trial Court has erred in fixing the maintenance of Rs.10,000/- for the Plaintiff No.1 and Rs.5,000/- for the Plaintiff No.2. This, the Trial Court seems to have done on the basis that the bare minimum necessities would have to be considered at the interim stage. It is required to be noted that there is no dispute about the fact that the Defendant is developer by profession and has undertaken development of various properties in the Kalyan and Titwala area of District- Thane. The fact that the Plaintiffs are residing in a bungalow which is of the ownership of the Defendant is also not in dispute. The fact that the Defendant owns a number of cars is also not in dispute as also the fact that there is farm house and that there are rooms constructed, which generate revenue as it seems that the said farm house is in the nature of a Resort. In so far as grant of maintenance is concerned, it is trite that the

maintenance has to be fixed having regard to the lifestyle which the parties are accustomed to. The facts on record disclose the lifestyle to which the Defendant and the Plaintiffs were accustomed to. The pointer in that regard is the fact that the Plaintiffs are residing in a bungalow and therefore, commensurate with the said fact would be the attendant expenses that the Plaintiffs would have to incur for residing in the said bungalow. The facts on record also disclose that the Plaintiffs were going on holidays etc. and are also used to various gadgets which are mentioned in paragraph 22 of the application. The fact that the Plaintiffs have a car is also not disputed and therefore, the expenses towards the use of the vehicle of the Plaintiffs would also have to be provided. Having regard to the totality of the circumstances which have been mentioned in the application Exh.7, in my view the Trial Court has erred in fixing interim maintenance of Rs.10,000/- for Plaintiff No.1 and Rs.5,000/- for the Plaintiff No.2. In my view, the interest of justice would be served, if the said maintenance is enhanced. The enhancement of the maintenance would not affect the Defendant in any manner considering his income and lifestyle which the Defendant used to provide to the Plaintiffs whilst they were all staying altogether. Hence, the impugned order fixing the interim maintenance of Rs.10,000/- for the Plaintiff No.1 and Rs.5,000/- for the Plaintiff No.2 is quashed and set aside and the said figures are substituted

by Rs.25,000/- for the wife i.e. the Plaintiff No.1 and Rs.10,000/- for the Plaintiff No.2. The issue as to from which date the maintenance is to be granted is kept open, as a grievance is made by the learned counsel for the Petitioners that the Trial Court ought to have granted the maintenance from the date of the application. However, the said issue would be decided by the Trial Court at the final hearing of the suit. However, the enhancement is granted from the date of the impugned order i.e. 7th September, 2013. The Defendant therefore, would have to pay the difference in the maintenance to the Plaintiffs. The said difference to be paid within two months from date. However, the payment of the enhanced maintenance would commence from February, 2015, therefore, the arrears would have to be paid up to January, 2015. The interim maintenance to be paid on or before 10th day of every month till the suit is decided. The hearing of the suit is expedited. The amount of Rs.25,000/- which is lying in deposit in this Court pursuant to the order dated 14th October, 2014 is permitted to be withdrawn by the Plaintiffs i.e. Petitioners herein. The said amount would be taken into consideration whilst computing the arrears that are payable to the Plaintiffs i.e. Petitioners herein and accordingly adjusted. The Petition to stand disposed of in terms of the above.

[R.M. SAVANT, J]