

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4273 OF 2014

Meena Rajesh Bhute & Ors. Vs. Rajesh Sopan Bhute & Ano.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri M. M. Papinwar Adv for petitioners.
Shri U. A. Gosavi Adv for respondents.

CORAM: A. S. CHANDURKAR J.

DATED: 06 JANUARY, 2015.

The petitioners in the present writ petition are challenging the order dated 16.05.2014 passed below Ex. 6 whereby the application filed by petitioner no. 1 for grant of interim maintenance has been rejected while interim maintenance at the rate of Rs. 10,000/- per month has been directed to be paid to the petitioner nos. 2 and 3 from the date of the application.

Petitioners have filed proceedings under the provisions of Hindu Adoptions and Maintenance Act, 1956 before the Family Court, Nagpur for grant of maintenance. In said proceedings an application for grant of interim maintenance was filed in which it was stated that the petitioner no. 1 was not having any

independent source of income. It was further stated that the petitioner nos. 2 and 3 who were undertaking education were required to be paid maintenance to facilitate the same. A prayer was also made to direct the respondent to repay the loan amount that was borrowed for purposes of purchasing the residential house.

The respondent filed reply in which he took the stand that the petitioner no. 1 was undertaking some home business activities and was having sufficient source of income. It was stated that the petitioner no. 1 was earning Rs. 20,000/- per month and hence was not entitled for any interim maintenance. A further plea was taken that the respondent no.1 was earning Rs. 29,600/- per month approximately and was having liability of Rs.26,020/-. As regards the prayer for directing the respondent no.1 to pay amount of loan, the Family Court on 23.01.2014 issued directions to the respondent to clear the loan amount within a period of two months. This part of the order was challenged by the present respondent in Writ Petition No. 5920 of 2014 and by judgment dated 24.12.2014 said direction has been set aside and liberty has been granted to the petitioners to take steps for provision of residence. Hence, that aspect of the matter is not required to be

considered in the present proceedings.

Shri M. M. Papinwar, the learned counsel appearing for the petitioner submitted that the learned Judge of the Family Court erred in holding that the petitioner no. 1 was not entitled for any interim maintenance. He submitted that though the petitioner no. 1 was not having any independent source of business, a finding has been recorded that she was earning an amount of Rs. 20,000/- on an average per month. He submitted that returns filed on record from the years 2003 to 2012 do not depict the true picture. Most of the returns were signed when the relations between the parties were cordial. He further submitted that no source of income had been disclosed in said returns. He submitted that a false plea had been taken by the respondents that he was bankrupt so as to avoid to pay an amount of interim maintenance. Learned counsel for the petitioners relied on decision of the Supreme Court in *Bhuwan Mohan Singh Vs. Meena & Ors. Decided on 15.07.2014* to urge that it was the responsibility of the respondent to ensure that the petitioner no. 1 and the children were provided sufficient amount of maintenance. He further submitted that the provision for education as made was on lower side and Court ought to have considered that the education of the children should not suffer. In

this regard he placed reliance on the decision *Malthi Ravi, M. D. Vs. B. V. Ravi, M. D. (2014) 7 Supreme Court Cases 640*. He, therefore, submitted that the impugned order deserves to be set aside.

Shri U. A. Gosavi, learned counsel appearing for the respondent submitted that the Family Court had on the basis of documents placed before it taken a prima facie view and had come to the conclusion that petitioner no.1 had independent source of income. He submitted that returns as filed indicated the source of income of the petitioner no. 1. At this stage the correctness or otherwise of said documents could not be gone into. He further submitted that though steps were being taken to clear other liabilities, same were the subject matter of other proceedings and hence separate residence and issues therein could not be canvassed in the present proceedings. He placed reliance on decision of learned Single Judge in *Anita Anand Tambe & anr. Vs. State of Maharashtra & anr. 2007(2) Bom. C. R. (Cri.) 227* to urge that income tax returns could be considered while determining entitlement for maintenance.

I have considered aforesaid submissions. I have also gone through the documents filed on record. It is to be noted that the order impugned determines the amount of interim

maintenance. The principal proceedings are pending before the Family Court for adjudication. The learned Judge of the Family Court while considering the material placed on record prima facie found that the income tax returns of the petitioner no.1 for the years 2003 to 2011-12 indicated that she was getting a sum of Rs. 20,000/- per month. It further observed that in the face of said documents, the stand of the petitioner no.1 that she was not receiving any income could not be accepted at said stage. It has further assessed the income of the respondent no. 1 at Rs. 50,000/- per month. Though it has observed that the respondent had not stated his exact income, the documents filed on record prima facie indicated that income tax returns were being filed on behalf of the petitioner no.1 since the year 2003. At this prima facie stage and in absence of any other evidence it would not be possible to record a finding that the petitioner no. 1 was not receiving any income what so ever and that said returns were filed at the instance of the respondent. The provision of Rs. 10,000/- each towards the education of the children has been made and said relief has been granted from the date of the application.

The decision relied upon in the case of *Bhuwan Mohan Singh* (supra) holds that adequate arrangement should be made to

ensure that wife and the children are not left high and dry and ensuring that they live with dignity. Said observations would have to be applied in the facts of each case. In the present case, there being prima facie material on record in the form of income tax returns, it cannot be said that the view as taken by the Family Court is either perverse or an impossible view. As regards the decision in *Malthi Ravi* (supra) observations made are that care should be taken to see that the education of the children is not affected. In the present case maintenance for the children has been provided. However, the observations made in *Anita Tambe* (supra) can be applied to the facts of the present case for considering the income tax returns while taking a prima facie view at the interim stage.

In view of aforesaid, as it is found that the interim order as passed is on the basis of material available on record, the same does not call for any interference. It is, however, clarified that while adjudicating the matter finally, the Family Court would take into account the evidence led before it and would not be swayed by the confirmation of the interim order of maintenance as passed. It is clarified that observations made herein are purely of a prima facie nature for the purposes of deciding the interim application for

maintenance. In view of aforesaid, I am not inclined to interfere in the writ petition. However, the proceedings before the Family Court are expedited. Writ Petition is disposed of with no order as to costs.

JUDGE

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